

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 06-8
	)	(Enforcement - Air)
	)	
BRIDGEPORT GRAIN, INC.,	)	
	)	
Respondent.	)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

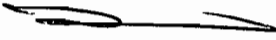
PLEASE TAKE NOTICE that on August 9, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

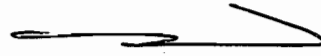
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: August 9, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I did on August 9, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



---

Thomas Davis, Chief  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Katherine D. Hodge  
Hodge Dwyer & Driver  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705-5776

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No. 06-8</b>
	)	<b>(Enforcement - Air)</b>
	)	
<b>BRIDGEPORT GRAIN, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010). In support of this motion, Complainant states as follows:

1. On July 19, 2005, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: 

\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: August 9, 2012

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 06-8</b>
	)	<b>(Enforcement – Air)</b>
<b>BRIDGEPORT GRAIN, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Bridgeport Grain, Inc., (“Respondent”) (“Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2010), and the Board’s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On July 19, 2005 a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2010).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a grain elevator and storage facility located at 123 Main Street, Bridgeport, Lawrence County, Illinois ("site").

4. The emission sources at the facility include grain pits, railcar loading operations, truck loading operations, grain drying operations, and grain handling operations. Respondent's operations at the facility are governed by permit numbered 72111147 issued by the Illinois EPA. Permit conditions require proper housekeeping practices with maintenance of checklists and good operating practices to minimize particulate matter emissions.

5. On January 9, 2002, an inspection was performed by the Illinois EPA in response to citizen complaints regarding dust and odors. Rotten grain was observed in and around the grain pits, storage bins, the base of the grain dryer, the railcar loading area, the railroad tracks, and on the driveway through the grain pit area at the facility. Corn chaff was observed throughout the elevator and outside of the facility.

6. The Illinois EPA reviewed the facility's housekeeping checklist and determined that the most recent entry was dated August 14, 2001. The truck load-out chutes utilized inadequate socks for particulate matter control. The Illinois EPA determined that the conditions at the facility intermittently created dust and odor problems.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Section 9(a) of the Act, 415 ILCS 5/9(a) (2006); 35 Ill. Adm. Code Section 212.461(b); 35 Ill. Adm. Code Section 212.462(d)(1); and 35 Ill. Adm. Code Section 201.141.

Count II: Sections 9(a) and 9(b) of the Act, 415 ILCS 5/9(a) and (b) (2006); 35 Ill. Adm. Code Section 212.461(b); 35 Ill. Adm. Code Section 212.462(d)(1); and Conditions 5(b), 6(a), 6(e), And 8(a)(I) of Operating Permit No. 72111147.

**C. Non-Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. Respondent has cleaned up spilled grain on a daily basis and has committed to doing so on an on-going basis.

2. Respondent has cleaned up rotten grain and properly disposed it on an as needed basis and has committed to continuing to do so on an on-going basis.

3. Respondent has installed canvas socks with an adequate length for load-out chutes so that the socks penetrate the receiving vehicle by six inches when loading, except when topping-off the load.



4. Respondent has inspected the load-out chutes on a regular basis to ensure that they have socks in good condition and long enough to penetrate the receiving vehicle by six inches when loading, except when topping-off the load.

5. Respondent has developed and utilized a housekeeping checklist and has committed to following and evaluating the checklist on an on-going basis to ensure that it is appropriate for the conditions.

6. Respondent has added a regular inspection of the load-out socks to the elevator's housekeeping checklist to ensure that torn or worn out socks are replaced promptly.

7. Respondent has repaired defective or worn-out chutes and spouts to prevent grain and dust leaks during operation.

8. Respondent has trained employees to be more vigilant regarding spilled or rotten grain and has committed to conducting additional training on a regular basis.

9. Respondent has trained employees to be more vigilant regarding looking for worn-out equipment, grain leaks, and dust leaks so that problems can be identified early and promptly repaired.

10. Respondent has built two dump sheds which cover the two dump pits at the elevator.

11. Respondent has installed concrete around and between the dump pits and grain bins and has committed to maintaining said areas in a clean condition.

12. Respondent has applied recycled asphalt to the parking lot and driveways to reduce dust created by vehicles and has committed to maintaining the driveway and parking areas using materials that are effective in accomplishing dust control.

13. Respondent has installed polyurethane lining material in the northeast metal grain bin spout.

14. Respondent has installed polyurethane lining material in the west spout leading to the rail conveyor.

15. Respondent has chipped and sealed the driveways and parking area at the grain elevator.

16. Respondent has replaced the pipe from the east leg of the elevator to the northeast metal grain bin.

17. Respondent has modified the bottoms of the east and west leg distributors by enclosing the bottoms of the distributors and installing devices to contain and redirect spout overflow from the distributors to the dump pits.

18. Respondent has installed two new dump shed doors.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action by the Complainant or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that, prior to the termination of this Stipulation, the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligations required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

### **III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c)(2010), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Complainant alleges that human health and the environment were threatened by the Respondent's violations.

2. The facility has social and economic benefit to the community.

3. Operation of the facility was suitable for the area in which it occurred.

4. Complainant alleges that compliance with the Act and with the terms and conditions of Respondent's Operating Permit are both technically practicable and economically reasonable.

5. Respondent has made significant progress in complying with the Act and the Board Regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2010), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Parties to the Stipulation state as follows:

1. Complainant alleges that the Respondent violated the Act and Board Regulations and certain provisions of its permit. Complainant further alleges that the violations began on or about January 9, 2002, and were individually resolved at various times in the following year.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable provisions of its operating permit, once the Illinois EPA notified it of its noncompliance.

3. Respondent has incurred costs of approximately \$67,164 in implementing compliance measures thus far. Complainant submits that the civil penalty in this matter will equal or exceed the economic benefit, if any, of noncompliance.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Six Thousand Dollars (\$6,000.00) will serve to deter further

violations and aid in future voluntary compliance with the Act and Board Regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Six Thousand Dollars (\$6,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below in Subsection C.

### **B. Stipulated Penalties, Interest and Default**

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$200.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent

for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. As part of its Compliance Plan, Respondent shall continue to perform all activities which comprise "Compliance Activities to Date" found in Section I.D.
2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.
3. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.
4. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.



**E. Release from Liability**

In consideration of the Respondent's payment of the \$6,000.00 penalty, its commitment to cease and desist as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on July 19, 2005. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

**F. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Assistant Attorney General Thomas Davis  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

Maureen Wozniak  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Manager  
Compliance and Enforcement Section  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Respondent

Katherine D. Hodge  
Hodge Dwyer & Driver  
3150 Roland Avenue  
P. O. Box 5776  
Springfield, IL 62705-5776

Arthur A. Eubank, Jr.  
Bridgeport Grain, Inc.  
902 Monroe Street  
Evanston, IL 60202-2627

**G. Termination**

Except for Section II paragraph one and Sections V.D.1 and E, this Stipulation and

Proposal for Settlement shall terminate upon payment of the penalty as referenced in Section V.A.

**H. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Parties to the Stipulation may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

**I. Execution of Stipulation**

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

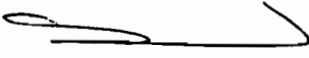
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS, ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

JOHN J. KIM, Interim Director  
Illinois Environmental Protection Agency

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division


BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
JULIE ARMITAGE  
Acting Chief Legal Counsel

DATE: 7/05/12

DATE: \_\_\_\_\_

BRIDGEPORT GRAIN, INC.

BY:   
\_\_\_\_\_  
ARTHUR A. EUBANK, JR.  
President

DATE: 7/31/12

PEOPLE OF THE STATE OF  
ILLINOIS,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

JOHN J. KIM, Interim Director  
Illinois Environmental Protection Agency

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY: \_\_\_\_\_

BY: 

JULIE ARMITAGE  
Acting Chief Legal Counsel

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

BRIDGEPORT GRAIN, INC.

BY: \_\_\_\_\_

ARTHUR A. EUBANK, JR.  
President

DATE: \_\_\_\_\_