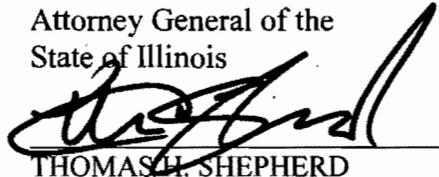


Respectfully submitted,

LISA MADIGAN,
Attorney General of the
State of Illinois

By:



THOMAS H. SHEPHERD
Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-5361

to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

* * *

3. No hearing is now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:



THOMAS H. SHEPHERD
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-5361

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 a Delaware limited liability company that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated the commercial portion of the building located at 401 North Wabash Avenue, Chicago, Cook County, Illinois ("Facility" or "Site"), including the heating, ventilation, and air conditioning ("HVAC") system and HVAC cooling water system for the Facility.

4. On July 12, 2011, the Illinois EPA inspected the Site and observed thermal process non-contact cooling water from the Site's HVAC cooling water system discharging directly into the Chicago River from piping at the Site's southwest embankment on the river.

5. On September 13, 2011, the Illinois EPA sent Respondent Violation Notice No. W-2011-50384 ("Violation Notice"), which alleged among other things that Respondent was discharging thermal contaminants without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of the Act.

6. After receipt of the Violation Notice, Respondent submitted an application to the Illinois EPA for a NPDES permit. Thereafter, Respondent submitted a revised NPDES permit application.

7. Respondent's revised application was approved and, on September 7, 2012, the Illinois EPA issued to Respondent NPDES Permit Number IL0079812 authorizing the discharge

of non-contact cooling water, unused river water, strainer backwash and storm water runoff from the HVAC cooling water system directly into the Chicago River subject to the terms and conditions thereof ("NPDES Permit No. IL0079812").

8. Prior to September 7, 2012, the Respondent did not possess an NPDES permit for the discharge of a contaminant from a point source into the waters of Illinois.

B. Allegations of Non-Compliance

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

Count I: Water Pollution

Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010); and

Count II: Discharge of Contaminants Without a NPDES Permit

Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

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.

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 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).

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. The health, general welfare and physical property of the people were threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's alleged violations.
2. There is social and economic benefit to the Facility.

3. Operation of the Facility is suitable for the area in which it is located.
4. Operating the Facility in compliance with all applicable statutory and regulatory requirements is both technically practicable and economically reasonable.
5. Respondent obtained NPDES Permit No. IL0079812 after Respondent was notified of the alleged violations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010, *effective as of August 23, 2011*), 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;
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; and

8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

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

1. The Respondent failed to obtain a NPDES permit for the discharge of thermal contaminant from a point source into the waters of the State of Illinois. The Respondent has been discharging the water that is now subject to NPDES Permit No. IL0079812 into the Chicago River since 2008.
2. The Respondent was not diligent in obtaining a NPDES permit before being contacted by the Illinois EPA. After being contacted by the Illinois EPA, the Respondent was diligent in obtaining a permit.
3. The Illinois EPA has determined that the penalty of Forty-six Thousand Dollars (\$46,000.00) referenced in paragraph 4 below exceeds the economic benefit to the Respondent associated with the alleged violations. For purposes of making that determination concerning the Respondent's economic benefit and the appropriate penalty amount, the Parties to this Stipulation have taken into consideration the financial benefit the Respondent received by not having paid permitting fees since it began discharging water into the Chicago River in 2008.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Forty-Six Thousand Dollars (\$46,000) 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. Respondent did not self-disclose the alleged violations.
7. The settlement of this matter does not include a supplemental environmental project.
8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Forty-Six Thousand Dollars (\$46,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. 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.

2. 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

1. 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
Mailcode #2
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Thomas H. Shepherd
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. 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.

2. 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.

3. The Respondent shall cease and desist from future violations of the Act that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$46,000.00 penalty and its commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant and Illinois EPA release, waive, and discharge the Respondent for any further liability or penalties for violations of the Act that were the subject matter of the Complaint herein, including, liability for any unpaid NPDES permitting fees from 2008 to the date of entry of this Consent Order. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on December 18, 2012. 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. Enforcement of Stipulation

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.

G. Execution of Stipulation

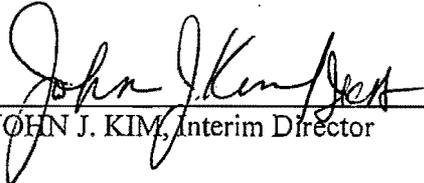
The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

by LISA MADIGAN
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
JOHN J. KIM, Interim Director

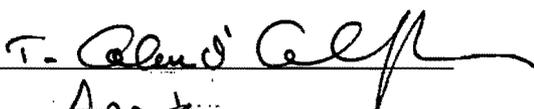
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

DATE: _____

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

DATE: 12/17/12

**401 NORTH WABASH VENTURE,
LLC**

By: 
Its Agent

DATE: 12/17/12

CERTIFICATE OF SERVICE

I, THOMAS H. SHEPHERD, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the foregoing Notice of Filing, Motion to Request Relief From Hearing Requirement, Stipulation and proposal for Settlement, and caused them to be served this 18th day of December, 2012, upon the following persons:

Prentice Hall Corporation
Registered Agent for 401 North Wabash Venture, LLC
801 Adlai Stevenson Drive
Springfield, Illinois 62703

John F. Shonkwiler
Attorney for 401 North Wabash Venture, LLC
Novack and Macey LLP
100 North Riverside Plaza
Chicago, Illinois 60606

Chad M. Kruse
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276

by depositing true and correct copies of same in an envelope, certified mail postage prepaid, with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601, at of before the hour of 5:00 p.m.



THOMAS H. SHEPHERD