

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 12-21
)	
ALTIVITY PACKAGING, LLC,)	
a Delaware limited liability company,)	
INTRA-PLANT MAINTENANCE CORPORATION,)	
an Illinois corporation,)	
IRONHUSTLER EXCAVATING, INC.,)	
an Illinois corporation, and)	
RON BRIGHT, d/b/a Quarter Construction,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

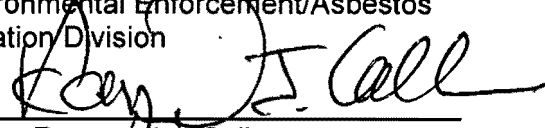
PLEASE TAKE NOTICE that on April 10, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT 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

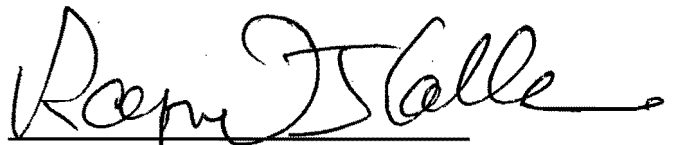
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
 Raymond J. Callery
 Assistant Attorney General
 Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on April 10, 2013, 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.

A handwritten signature in black ink, appearing to read "Raymond J. Callery", written over a horizontal line.

Raymond J. Callery
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Intra-Plant Maintenance Corporation
c/o Charles M. Rock
Hasselberg Rock Bell & Kuppler LLP
Suite 200 Associated Bank Building
4600 North Brandywine Drive
Peoria, IL 61614

Altivity Packaging, L.L.C.
c/o Eleni Kouimelis & Wm. O'Neal
Winston & Strawn LLP
35 W. Wacker Dr.
Chicago, IL 60601

Ironhustler Excavating, Inc., & Ron Bright, d/b/a Quarter Construction
c/o Thomas J. Immel
Feldman Wasser Draper & Cox
PO Box 2418
1307 South Seventh Street
Springfield, IL 62705

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
Springfield, IL 62794

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 12-21
)	
ALTIVITY PACKAGING, LLC,)	
a Delaware limited liability company,)	
INTRA-PLANT MAINTENANCE CORPORATION,)	
an Illinois corporation,)	
IRONHUSTLER EXCAVATING, INC.,)	
an Illinois corporation, and)	
RON BRIGHT, d/b/a Quarter Construction,)	
)	
Respondents.)	

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 26, 2011, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties to the Stipulation 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. The parties to the Stipulation 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: 

RAYMOND J. CALLERY
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 10, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

**PCB No. 12-021
(Enforcement - Land)**

ALTIVITY PACKAGING, L.L.C.,)

a Delaware limited liability company,)

INTRA-PLANT MAINTENANCE)

CORPORATION, an Illinois corporation,)

IRONHUSTLER EXCAVATING, INC.,)

an Illinois corporation, and RON BRIGHT,)

d/b/a QUARTER CONSTRUCTION,)

Respondents.)

STIPULATION AND PROPOSAL FOR SETTLEMENT
ALTIVITY PACKAGING, L.L.C.

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 Respondent, Altivity Packaging, L.L.C., a Delaware limited liability company ("Altivity"), now known as Graphic Packaging International, Inc., a Delaware Corporation and successor-in-interest to Altivity, ("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. The stipulation of facts herein 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. Neither the fact that a party has entered into this Stipulation, nor any 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 26, 2011, 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 Altivity.

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. Altivity was formerly a Delaware limited liability company formed on May 1, 2006 that merged into Graphic Packaging International, Inc. in December 2008. Altivity had been merged into Graphic Packaging International, Inc. at the time the State filed its complaint.

4. Graphic Packaging International, Inc. is a Delaware corporation registered to do business in the State of Illinois.

5. Altivity, and subsequent to the 2008 merger, Graphic Packaging International, Inc. operated a wastewater treatment plant located at 1525 South Second Street, Pekin, Tazewell County, Illinois ("Source Site").

B. Stipulated Facts

1. In January 2008, Altivity contracted with Respondent Intra-Plant Maintenance Corporation ("IPM") for the construction of a new wastewater treatment plant at the Source Site.

2. On January 21, 2008, IPM subcontracted the excavation and disposal work for the construction of the wastewater treatment plant at the Source Site to Respondent Ironhustler Excavating, Inc. ("Ironhustler").

3. Thereafter in January 2008, Ironhustler excavated soil (the "Material") from the Source Site that could not be used for the wastewater treatment plant's foundation because of soil compaction / loading requirements and hauled the Material to Clouse Quarry, a sand and gravel pit located at 10513 Levy Road, Hopedale, Tazewell County, Illinois (the "Disposal Site"), owned by Respondent Ron Bright, d/b/a Quarter Construction.

4 On January 24, 2008, January 30, 2008 and August 24, 2010, the Illinois Environmental Protection Agency ("Illinois EPA") inspected the Disposal Site.

5. The Material observed at the Disposal Site on January 24, 2008 was allegedly dark brown in color and consisted of fine grained sand with medium to coarse grained brick and cinder fragments. The Material also allegedly contained slag, brick and concrete.

6. On January 30, 2008, the Illinois EPA returned to the Disposal Site to collect three soil samples of the Material for comparison with the Tiered Approach to Corrective Action Objectives Tier I Remediation Objectives for Concentrations of Chemicals in Background Soils within Metropolitan Statistical Areas ("TACO Tier I Soil Standards") for cadmium, mercury, lead, and selenium.

7. On August 24, 2010, the Illinois EPA re-inspected the Disposal Site and observed that the Material had been committed to grade.

8. The Disposal Site has never been permitted by the Illinois EPA as a sanitary landfill.

9. The Complainant contends that the Material is waste as defined by Section 3.535

of the Act, 415 ILCS 5/3.535 (2010), which Altivity denies. Altivity contends the Material, which consists of native soil excavated from the Source Site, is not waste, that the TACO Tier I Soil Standards are not applicable to the Material, and that the TACO Tier I Soil Standards are not relevant to the issue of whether a substance is waste as defined by Section 3.535 of the Act, 415 ILCS 5/3.535 (2010).

C. Allegations of Non-Compliance

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

Count I: Causing or allowing the open dumping of waste, in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).

Disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

D. Non-Admission of Violations

By entering into this Stipulation and complying with its terms, Altivity neither admits nor denies any of the factual or legal allegations contained in the Complaint filed in this matter and referenced herein, and this Stipulation shall not be interpreted as including such admission or denial.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and their predecessors, successors, and assigns, including, but not limited to, Graphic Packaging International, Inc. Neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the alleged violations of the Act and the Board's regulations alleged in the Complaint, except to

enforce the terms of this Stipulation. Notwithstanding the previous sentence, this Stipulation and any Board order accepting the same may be used in any future enforcement action or permit proceeding by complainant as evidence of a past adjudication of an alleged violation of the Act and the Board regulations for all violations alleged in the Complaint in this matter, for purposes of Section 39 and 42 of the Act, 415 ILCS 5/39 and 5/42 (2010), or in any subsequent dispute between the Respondents as evidence of Altivity's good-faith resolution of this dispute. Altivity 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.

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 consideration of these factors, the Parties to the Stipulation stipulate to the following:

1. The Complainant contends human health and the environment were threatened by the alleged violations, which Altivity denies.
2. There are environmental, social, and economic benefits to Altivity's construction of the new wastewater treatment plant at the Source Site.
3. The Disposal Site is not permitted by the Illinois EPA as a landfill and does not meet the requirements of the Act and of the regulations for the disposal of "waste" as defined by the Act.
4. Disposal of the Material at a permitted landfill meeting the requirements of the Act and regulations was and is technically practicable. Altivity did not select the Disposal Site or contract directly with Ironhustler or Quarter Construction for the placement of the Material at the Disposal Site.
5. Altivity does not own or control the Disposal Site.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2012), 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 there from 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 stipulate to the following:

1. The alleged violations initially occurred in January 2008 and are ongoing. The gravity of the alleged violations is considered low in their potential for harm and low in their deviation from the statutory and regulatory requirements.

2. Altivity does not own or control the Disposal Site and did not contract directly with Ironhustler or Quarter Construction for excavation of the Material, the transportation of the Material to the Disposal Site, or the placement of the Material at the Disposal Site. Once made aware of the alleged violations, Altivity made efforts to resolve the matter.

3. The Complainant contends there was some economic benefit to Altivity in the disposal of the Material at the Disposal Site instead of at a permitted landfill. Altivity denies that it received any economic benefit because it did not arrange for the excavation, transportation, or disposal of the Material.

4. The Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-five Thousand Dollars (\$25,000.00) will serve to deter future violations and aid in future voluntary compliance with the Act and Board regulations.

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

6. Altivity did not self-report the alleged violations, but once made aware of the alleged violations Altivity did make efforts to resolve the matter.

7. The proposed settlement of this matter does not include performance of a Supplemental Environmental Project.

8. This matter did not involve a compliance commitment agreement.

V. TERMS OF SETTLEMENT

A. Penalty Payment

Altivity shall pay a civil penalty in the sum of Twenty-five Thousand Dollars (\$25,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. This settlement and Altivity's payment of the civil penalty amount are made in good faith.

B. Interest and Default

1. If Altivity fails to make the civil penalty payment required by this Stipulation on or before the date upon which the payment is due, Altivity 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 Altivity 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

The civil penalty payment 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 Graphic Packaging'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. This Stipulation in no way affects the responsibilities of Altivity to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations.

2. Altivity 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 Altivity's payment of the civil penalty of Twenty-five Thousand Dollars (\$25,000.00), 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 fully releases, waives and discharges forever Altivity, its officers, directors, principals, managers, agents, members, representatives, owners, stockholders, shareholders, employees, and their predecessors, successors, and assigns, including, but not limited to, Graphic Packaging International, Inc., from any further liability or penalties for the alleged violations of the Act and Board regulations that were the subject matter of the Complaint and described herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on July 26, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Altivity 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 Altivity's failure to satisfy the requirements of this Stipulation.

Upon Board approval of this Stipulation, Complainant agrees to dismiss Altivity from the above-captioned matter with prejudice. 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 Alitivity or its successor-in-interest Graphic Packaging International, Inc.

F. Execution of Stipulation


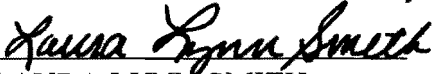
The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

<p>PEOPLE OF THE STATE OF ILLINOIS,</p> <p>LISA MADIGAN Attorney General State of Illinois</p> <p>MATTHEW J. DUNN, Chief Environmental Enforcement/ Asbestos Litigation Division</p> <p>BY: _____ THOMAS DAVIS, Chief Environmental Bureau Assistant Attorney General</p> <p>DATE: _____</p>	<p>ILLINOIS ENVIRONMENTAL PROTECTION AGENCY</p> <p>LISA BONNETT, Director Illinois Environmental Protection Agency</p> <p>BY:  JOHN J. KIM, Chief Legal Counsel</p> <p>DATE: <u>4/1/13</u></p>
<p>GRAPHIC PACKAGING INTERNATIONAL, INC., SUCCESSOR- IN-INTEREST TO ALTIVITY PACKAGING, L.L.C.</p> <p>BY: _____ LAURA LYNN SMITH, Assistant General Counsel and Assistant Secretary</p> <p>DATE: _____</p>	

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

<p>PEOPLE OF THE STATE OF ILLINOIS, LISA MADIGAN Attorney General State of Illinois MATTHEW J. DUNN, Chief Environmental Enforcement/ Asbestos Litigation Division BY:  THOMAS DAVIS, Chief Environmental Bureau Assistant Attorney General DATE: <u>4/10/13</u></p>	<p>ILLINOIS ENVIRONMENTAL PROTECTION AGENCY JOHN J. KIM, Director Illinois Environmental Protection Agency BY: _____ JOHN J. KIM, Director DATE: _____</p>
<p>GRAPHIC PACKAGING INTERNATIONAL, INC., SUCCESSOR- IN-INTEREST TO ALTIVITY PACKAGING, L.L.C. BY:  LAURA LYNN SMITH, Assistant General Counsel and Assistant Secretary DATE: <u>February 27, 2013</u></p>	