

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	
v.)	PCB No. 2018- 001
)	(Enforcement-Air)
KENNY CONSTRUCTION COMPANY,)	
an Illinois Corporation,)	
)	
Respondent.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on the 19th day of July, 2017, I caused to be filed with the Clerk of the Illinois Pollution Control Board via the "COOL" System the Motion to Request Relief from Hearing Requirement and Stipulation and Proposal for Settlement, with Respondent, Kenny Construction Company, copies of which are attached hereto and are hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: /s/ Elizabeth Dubats
ELIZABETH DUBATS
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2069
edubats@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No. 2018- 001
)	(Enforcement-Air)
KENNY CONSTRUCTION COMPANY,)	
an Illinois Corporation,)	
)	
Respondent.)	

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) (2014), moves that the Illinois Pollution Control Board (“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) (2014). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 12(a), 12(d), and 12(f) of the Act, 415 ILCS 5/12(a), 5/12(d), and 5/12(f)(2016) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).
2. Complainant filed the Complaint on July 14, 2017.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.
5. 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) (2014).

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) (2014).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: /s/ Elizabeth Dubats
ELIZABETH DUBATS
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2069
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DATE: July 19, 2017

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
)	
Complainant,)	
)	
v.)	PCB No. 2018-001
)	(Enforcement-Water)
KENNY CONSTRUCTION COMPANY,)	
an Illinois Corporation,)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

The 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 KENNY CONSTRUCTION COMPANY (“Respondent”), (collectively “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. (2014), 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. Simultaneously with this Stipulation, 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 (2014), 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 (2014).

3. At all times relevant to the Complaint, the Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, the Respondent owned and operated a construction company, specializing in the construction of overhead and underground electric power transmission and distribution systems, tunneling, and underground services.

5. At all times relevant to the Complaint, the Respondent was contracted for work on a construction project for the Illinois Department of Transportation ("IDOT") near the intersection of York Road and Irving Park Road in the Village of Bensenville, DuPage County, Illinois ("Site").

6. The Complainant alleges that, on June 13, 2015, while performing repair work on a damaged sanitary wastewater line, the Respondent caused or allowed sanitary wastewater to be discharged into the Bensenville Ditch and into Silver Creek.

B. Allegations of Non-Compliance

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

Count I: Water Pollution

By causing, threatening, or allowing the discharge of sanitary wastewater into the environment so as to cause or tend to cause water pollution, the Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

Count II: Creating a Water Pollution Hazard

By depositing sanitary wastewater on the ground at the Site and into Bensenville Ditch, which drained into Silver Creek, the Respondent created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

Count III: Discharge of Contaminants without an NPDES Permit

By causing discharges of sanitary wastewater into the Bensenville Ditch and Silver Creek, the Respondent caused, threatened or allowed the discharge of contaminants from a point source into waters of the State without an NPDES permit, and thus violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

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 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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 Complainant contends that human health and the environment were threatened by the Respondent's alleged violations.
2. There is social and economic benefit to the services provided by the Respondent.
3. The Respondent's operations were and are suitable for the area in which they are located.
4. Compliance with the Act and Board regulations is both technically practicable and economically reasonable.
5. The Respondent has subsequently complied 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) (2014), 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 Complainant alleges that the Respondent discharged an estimated 54,000 gallons of sanitary wastewater into Bensenville Ditch and Silver Creek. The discharge occurred on June 13, 2015, and lasted approximately thirty minutes.

2. The Complainant alleges the Respondent exhibited a lack of diligence in preventing the alleged violations of the Act. However, Respondent did exhibit diligence in repairing the line and agrees to cease and desist from future violations.

3. The civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance.

4. The Complainant has determined, based upon the specific facts of this matter, that a penalty of Seventeen Thousand and Five Hundred Dollars (\$17,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To the Complainant's knowledge, the 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.

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 Seventeen Thousand and Five hundred dollars (\$17,500.00) 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
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:

Elizabeth Dubats
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. 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.

2. 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 \$17,500.00 penalty and its commitment to cease and desist as contained in Section V.D.2 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 the Complainant's Complaint filed simultaneously with this Stipulation. 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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 7/13/17

DATE: 7/7/17

RESPONDENT
KENNY CONSTRUCTION
COMPANY

BY: _____
MICHAEL E. STOECKER,
PRESIDENT

DATE: _____

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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ALEC MESSINA, Director
Illinois Environmental Protection Agency

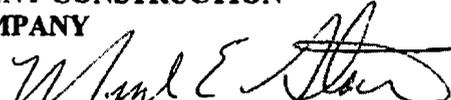
BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

RESPONDENT
KENNY CONSTRUCTION
COMPANY

BY: 
MICHAEL E. STOECKER,
PRESIDENT

DATE: 7/17/17

MW

CERTIFICATE OF SERVICE

I, Elizabeth Dubats, an Assistant Attorney General, do certify that I caused to be mailed and emailed on this 19th day of July, 2017, the foregoing Motion for Request Relief from Hearing, and Stipulation and Proposal for Settlement with Respondent, Kenny Construction., by first class mail by depositing same in an envelope addressed to Katherine Hodge, Hepler Broom, LLP, 4340 Acer Grove Drive, Springfield, IL 62711, and via electronic mail with return receipt requested to katherine.hodge@heplerbroom.com.

/s Elizabeth Dubats

Elizabeth Dubats

Assistant Attorney General

Environmental Bureau

69 W. Washington Street, Suite 1800

Chicago, IL 60602

(312) 814-2069

edubats@atg.state.il.us