

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 PITCHFORD ELEVATOR COMPANY,)
 an Illinois corporation,)
)
 Respondent.)

PCB No. 2020-01

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
 KWAME RAOUL, Attorney General of the
 State of Illinois,

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

BY: s/Christina L. Nannini
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Dated: February 14, 2020

SERVICE LIST:

Carol Webb (via Electronic Mail)
Hearing Officer
Illinois Pollution Control Board
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Brian Grathwohl
Pitchford Elevator Company
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Richview, IL 62877

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by KWAME RAOUL, Attorney General)
of the State of Illinois,)

Complainant,)

v.)

PCB No. 2020-1

PITCHFORD ELEVATOR CO.,)
an Illinois corporation,)

Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and PITCHFORD ELEVATOR CO., an Illinois corporation ("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.* (2016), 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 9, 2019, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018), 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 (2018).

3. Pitchford Elevator Company ("Respondent") is an Illinois corporation and full-service grain elevator, agri-chemical sales, seed sales, and application company located at 880 South Locust Street, Richview, Illinois 62877 ("site").

4. On September 14, 2017, Illinois EPA inspected the site and observed a pit containing various items of trash with the side walls charred from previous fires. Illinois EPA also observed three large vertical metal tanks, large piles of concrete, and material which appeared to be treated seed in a drainage way.

5. On September 28, 2017, Illinois EPA conducted a follow-up inspection.

6. On September 28, 2017, Illinois EPA observed additional trash in the pit observed on September 14, 2017. Illinois EPA also observed an empty pesticide container and eight 55-gallon drums; one drum had a hole, and one had leaked onto the ground.

7. On January 10, 2018, February 1, 2018, and February 6, 2018, Respondent's personnel dug twenty-seven test pits that unearthed additional trash and waste materials.

B. Allegations of Non-Compliance

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

- Count I: Open Dumping of Waste
415 ILCS 5/21(a)
- Count II: Open Dumping Resulting in Litter
415 ILCS 5/21(p)(1)
- Count III: Conducting a Waste-Disposal Operation Without a Permit
415 ILCS 5/21(d)(1)
- Count IV: Developing and Operating a Landfill Without a Permit
415 ILCS 5/21(d)(2)
35 Ill. Adm. Code 812.101(a)
- Count V: Waste Determination Violations
415 ILCS 5/21(d)(2)
35 Ill. Adm. Code 722.111
35 Ill. Adm. Code 808.121(a)
- Count VI: Waste Disposal at an Improper Site
415 ILCS 5/21(e)
- Count VII: Open Dumping of Used or Waste Tires
415 ILCS 5/55(a)(1)
- Count VIII: Air Pollution – Open Burning
415 ILCS 5/9(a)
415 ILCS 5/9(c)
- Count IX: Open Dumping Resulting in Open Burning
415 ILCS 5/21(p)(3)

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation and Proposal for Settlement 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 alleged in the Complaint, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

The Respondent removed all of the waste uncovered in the test pits, organized its building, and is properly managing the pesticide rinse water. The Respondent has returned to compliance with respect to the violations alleged in the Complaint filed in this matter.

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 (2016).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), 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. Human health and the environment were threatened.
2. There is social and economic benefit in the operation of Respondent's business.
3. Respondent's business is suitable for the area in which it is operated, so long as it is operated in compliance with the Act and Board Regulations.
4. Compliance with the Act and Board regulations is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), 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 Illinois EPA observed buried waste at the site and concluded the Respondent did not conduct proper waste determination for potentially hazardous waste. These observations and conclusions were first made by the State at Illinois EPA's inspection on September 14, 2017 and all allegations of non-compliance were fully resolved by April 26, 2018.

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

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

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Forty Thousand Dollars (\$40,000.00) will serve to deter further non-compliance 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.

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 Thousand Dollars (\$40,000.00) within thirty (30) calendar 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

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

The name and case 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:

Christina L. Nannini
Assistant Attorney General
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 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 \$40,000.00 penalty, its commitment to cease and desist as contained in Section V.D.2 above, 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 9, 2018. 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

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,

KWAME RAOUL
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

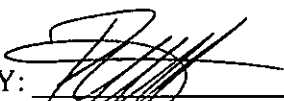
BY: 
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY: 
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: 02/13/2020

DATE: 2-4-20

PITCHFORD ELEVATOR CO.

BY: 
Brian Grathwohl, President

DATE: October 31, 2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by KWAME RAOUL, Attorney General)
of the State of Illinois,)

Complainant,)

v.)

PCB No. 2020-01

PITCHFORD ELEVATOR COMPANY,)
an Illinois corporation,)

Respondent.)

MOTION FOR RELIEF FROM HEARING

NOW COMES Complainant, People of the State of Illinois, by Kwame Raoul, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, Complainant states as follows:

1. Filed contemporaneously with this Motion is a Stipulation and Proposal for Settlement executed between Complainant and the Respondent, Pitchford Elevator Company.

2. Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018), provides as follows:

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant 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 scheduled in this matter.

4. Complainant hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

KWAME RAOUL
ATTORNEY GENERAL

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

BY: /s/ Christina L. Nannini
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cnannini@atg.state.il.us
ebs@atg.state.il.us

Dated: February 14, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have served on February 14, 2020, the foregoing Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement, and Notice of Filing upon persons listed on the Service List by electronic mail, as noted, or First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois by the time of 5:00 PM.

s/Christina L. Nannini
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500 South Second Street
Springfield, Illinois 62701
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