

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 ERICKSON STEEL COMPANY, INC.,)
)
 Respondent.)

PCB No. 2020-13
(Enforcement)

NOTICE OF FILING

To: See attached service list

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

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL, ATTORNEY GENERAL

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

BY: s/Emma L. Hudspath
 Emma L. Hudspath, #6324083
 Environmental Bureau
 Assistant Attorney General
 500 South Second Street
 Springfield, Illinois 62701
 217/782-9031
ehudspath@atg.state.il.us
ebs@atg.state.il.us

Dated: May 27, 2020.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

Iir Imeri (via electronic mail)
Knell Law, LLC
504 Fayette Street
Peoria, IL 61603
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Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
Carol.Webb@illinois.gov

BEFORE THE ILLINOIS POLLUTION BOARD

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

Complainant,)

v.)

ERICKSON STEEL COMPANY, INC.,)
an Illinois corporation,)

Respondent.)

PCB No. 2020-13
(Enforcement-Air)

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 ERICKSON STEEL COMPANY, INC., an Illinois corporation ("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.* (2018), 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 September 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. 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.

4. At all times relevant to the Complaint, Respondent owned and operated a metal fabrication business located at 715 South Second Street, Pekin, Tazewell County, Illinois ("Site").

5. On May 15, 2018, Illinois EPA inspected the Site.

6. On May 15, 2018, Illinois EPA observed a 55-gallon drum container placed a few feet away from the entrance of Respondent's facility at the Site. Inside the container, Illinois EPA observed residues of burnt wastes, including ash and pieces of plastic waste. A representative of the Respondent acknowledged that the container had earlier been used to burn waste.

B. Allegations of Non-Compliance

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

Count I: Open Burning

415 ILCS 5/9(c) (2018)

C. Admission of Violations

The Respondent admits to the violation alleged in the Complaint filed in this matter and referenced within Section I.B. herein.

D. Compliance Activities

To cease the burning of waste at the Site, Respondent took the following actions:

1. Removed the 55-gallon drum container;
2. Cleaned and excavated the area surrounding the location of the 55-gallon drum container to remove remaining ash and residues of burnt waste;
3. Advised all employees and other parties Respondent knew to burn waste in the 55-gallon drum container that they could no longer dispose of waste by burning it; and
4. Contracted with the Peoria Disposal Company for the removal of Respondent's waste.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 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 (2018).

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. Respondent caused or allowed the open burning of refuse in a manner that was not approved by the Agency or the Board. The requirement that refuse not be burned in a manner not approved by Illinois EPA or the Board is of significant importance to Illinois EPA's air program.
2. There is social and economic benefit in the operation of Respondent's metal fabrication facility.
3. Respondent's metal fabrication facility is suitable for the area in which it is being operated, so long as it is operated in compliance with the Act and Board regulations.
4. Refraining from burning refuse was both technically practicable and economically reasonable.
5. Respondent has subsequently resolved the allegations in the Complaint.

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 the 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 of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
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 1 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. On May 15, 2018, Illinois EPA observed a 55-gallon drum container placed a few feet away from the entrance of Respondent's facility at the Site. Inside the container, Illinois EPA observed residues of burnt wastes, including ash and pieces of plastic waste. A representative of the Respondent acknowledged that the container had earlier been used to burn waste.

2. A Violation Notice was issued to Respondent on May 31, 2018. The Agency did not receive a written response to the Violation Notice. A Notice of Intent to Pursue Legal Action was issued on August 16, 2018. No response was received.

3. No calculable economic benefit has been derived from the burning of refuse.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Three Thousand Dollars (\$3,000.00) 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.

8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

1. Respondent shall pay a civil penalty in the sum of Three Thousand Dollars (\$3,000.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation.

B. **Interest and Default**

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

2. The 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:

Emma L. Hudspath
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 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. 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 Respondent's payment of the \$3,000.00 penalty, its commitment to cease and desist as contained in Section V.D.2 above, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges 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 September 9, 2019. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against 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.

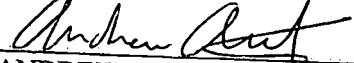
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

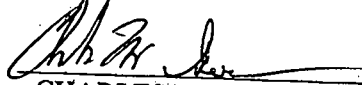
PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL
Attorney General
of the State of Illinois

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: 
CHARLES W. GUNNARSON
Acting Chief Legal Counsel

DATE: 05/20/2020

DATE: 5/8/2020

ERICKSON STEEL COMPANY, INC.

BY: 
JOHN ERICKSON, President

DATE: 5/5/20

CERTIFICATE OF SERVICE

I, Emma L. Hudspath, an Assistant Attorney General, certify that on the 27th day of May, 2020, I caused to be served via e-mail, a copy of the foregoing Notice of Filing and Stipulation and Proposal for Settlement to the following:

Iir Imeri
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504 Fayette Street
Peoria, IL 61603
iimeri@knelllaw.com

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
Carol.Webb@illinois.gov

s/Emma L. Hudspath

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