

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

Complainant,

v.

VALLEY RUN STONE, a Division of
AVERY GRAVEL CO., INC., an Illinois
Corporation,

Respondent.

PCB 04-06

(Enforcement-Pollution)

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OCT 14 2003

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

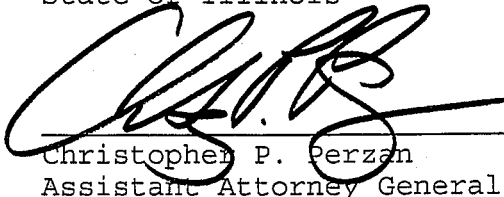
TO: See Attached Service List

PLEASE TAKE NOTICE that on October 14, 2003, we filed with the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:


Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3532

SERVICE LIST

Dorothy M. Gunn
Clerk of the Board
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James R. Thompson Center, Ste 11-500
100 W. Randolph Street
Chicago, Illinois 60601

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One IBM Plaza
Chicago, Illinois 60611

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AVERY GRAVEL CO., INC.)
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JUL 14 2003
STATE OF ILLINOIS
Pollution Control Board

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, VALLEY RUN STONE, a Division of AVERY GRAVEL CO., INC. ("VRS"), do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further state that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose in this, or any other proceeding, except to enforce the terms hereof, by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement, and any Illinois Pollution Control Board ("Board") order accepting same, may be used as evidence of a past adjudicated violation of the Act as alleged herein, pursuant to Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2002), in

determining appropriate civil penalties for any future violations of the Act. This Stipulation may also be used in any permitting action for the purposes of Section 39(i) of the Act, 415 ILCS 5/39(i) (2002). This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2002).

II.

AUTHORIZATION

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

III.

APPLICABILITY

This stipulation and Proposal for Settlement shall apply to, and be binding upon, the Complainant and VRS, and any officer, agent, employee or servant of VRS, as well as the VRS's successors and

assigns. VRS shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

1. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

2. Respondent VRS, at all times relevant to the Complaint in this matter, was and is an Illinois corporation in good standing.

3. Respondent VRS, at all times relevant to the Complaint in this matter, has owned and operated a facility located at 10425 Joliet Road, Lisbon, Kendall County, Illinois ("facility").

V.

VIOLATIONS

The Complaint alleges the following violations:

Count I: FAILURE TO OBTAIN A CONSTRUCTION PERMIT BEFORE CONSTRUCTING EQUIPMENT CAPABLE OF CAUSING OR CONTRIBUTING TO AIR POLLUTION;

violation of 415 ILCS 5/9(b) (2002) and 35 Ill. Adm. Code 201.142.

Respondent failed to obtain a construction permit from the Illinois EPA before constructing a new emission source.

Count II: FAILURE TO COMPLY WITH PRECONSTRUCTION PREVENTION OF SIGNIFICANT DETERIORATION STANDARDS; violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), and Sections 52.21(i)(1), 52.21(k), 52.21(m), and 52.21(n) of the Code of Federal Regulations, 40 C.F.R. 52.21(i), (l), (k), (m) and (n). Respondent failed to comply with applicable requirements of the Prevention of Significant Deterioration program prior to construction and operation of an emission source subject to those requirements.

Count III: FAILURE TO OBTAIN AN OPERATING PERMIT; violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.143. Respondent failed to obtain an operating permit before operating a new emission source.

Count IV: FAILURE TO OBTAIN A CLEAN AIR ACT PERMIT; violation of 415 ILCS 5/39.5(6)(b) (2002). Respondent operated a new CAAPP source without obtaining a CAAPP permit.

VI.

NATURE OF RESPONDENT'S OPERATIONS

Respondent operates a quarry. The Respondent installed a natural gas-fired power generation engine at the facility to provide power during periods of peak power usage.

VII.

EXPLANATION OF PAST FAILURES TO COMPLY

1. Respondent submitted a permit application to the Illinois EPA in July 2000 for a natural gas-fired power generation engine. The Illinois EPA issued a notice of incompleteness to the Respondent dated August 21, 2000.

2. The Respondent did not respond to the notice of incompleteness and subsequently constructed and operated the natural gas-fired power generation engine.

3. The Illinois EPA issued a violation notice to the Respondent dated August 30, 2002. The Respondent did not respond to the violation notice, but did cease operation of the engine in August 2002 and has not operated the engine since that time.

4. VRS did subsequently respond to the issuance of a notice of intent to pursue legal action issued November 6, 2002. VRS also submitted an application for a permit to the Illinois EPA in November 2002. That application is currently under Illinois EPA review.

VIII.

FUTURE PLANS OF COMPLIANCE

VRS shall comply with all requirements of the Act, 415 ILCS 5/1 et seq. (2002), and the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

IX.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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 questions 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 state as follows:

1. The impact to the public resulting from VRS's noncompliance was that the Illinois EPA and the public were not privy to information that is important to the control of air pollution in Illinois. The permit process and Prevention of Significant Deterioration ("PSD") program and is the only method available for the State to identify possible air pollution sources and their control and to ensure that those sources will not contribute to or cause the deterioration of air

quality in Illinois.

2. The gravel production facility that is the subject of the Complaint has social and economic value.

3. The facility that is the subject of the Complaint is suitable to the area in which it is located.

4. Complying with the requirements of the Act and the Board Regulations is both technically practicable and economically reasonable.

5. VRS ultimately achieved compliance by ceasing the unpermitted operation of the emission source and has applied for and the requisite air permit for the regulated emission sources, which is currently under review at the Illinois EPA.

X.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(3), or (b)(5) of 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 violator 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 violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. The violations that are the subject of the Complaint occurred over an approximately fourteen-month period.
2. The Respondent was not diligent in initially failing to follow through on an incomplete permit application submitted to the Illinois EPA in July 2000 and a notice of incompleteness from the Illinois EPA on August 21, 2000, and in failing to respond to a violation notice issued August 30, 2002. VRS did subsequently respond to the issuance of a notice of intent to pursue legal action issued November 6, 2002. The Respondent also showed diligence in ceasing operation of the noncompliant emission source in August 2002 and seeking a permit in compliance with the applicable environmental statutes and regulations.
3. The Respondent did accrue an economic benefit by avoiding timely preparation of construction and operating permit applications, CAAPP permit application submittal and PSD demonstrations, operating without said permits and in avoiding an air pollution site fee.
4. The parties believe that a civil penalty of \$24,500.00 will

deter VRS from committing further violations, and will aid in enhancing voluntary compliance by VRS and others similarly subject to the Act.

5. The State is not aware of any other adjudicated violations of the Act by VRS.

XI.

TERMS OF SETTLEMENT

1. 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 Proposal for Settlement and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

2. VRS shall pay a civil penalty of \$24,500.00 into the Environmental Protection Trust Fund within thirty (30) days after the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

A copy of the check shall be sent to:

Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601

VRS shall write the case caption and number, and its Federal Employer Identification Number ("FEIN"), 36-2586514, upon the certified check or money order.

3. For purposes of payment and collection, the Respondent may be reached at the following address:

Grant Avery
Valley Run Stone
10426 Joliet Road
Newark, Illinois 60541

4. Pursuant to Section 42(g) of the Act, 415 ILCS 4/42(g) (2002), interest shall accrue on any amount not paid within the time period prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Complainant, shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI.2.

herein.

5. VRS shall cease and desist from future violations of the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

XII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the Respondent's responsibility to comply with any federal, state or local laws and regulations.

XIII.

RELEASE FROM LIABILITY

In consideration of the Respondent's payment of a \$24,500.00 civil penalty and its commitment to refrain from further violations of the Act and the Board Regulations, upon receipt by Complainant of the payment required by Section XI of this Stipulation, the Complainant releases, waives and discharges Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties for violations which were the subject matter of the Complaint herein. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

WHEREFORE, Complainant and Respondent request that the Board

adopt and accept the foregoing Stipulation and Proposal for Settlement
as written.

AGREED:

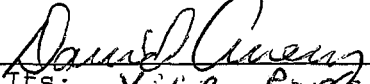
FOR THE COMPLAINANT:

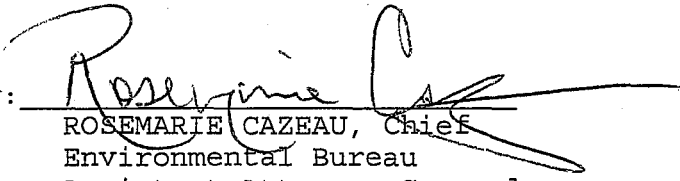
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

FOR THE RESPONDENT:

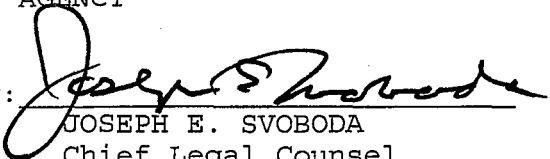
VALLEY RUN STONE, a Division of
AVERY GRAVEL CO., INC.

By: 
Its: Vice President

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 9/19/03

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

Dated: 9-11-03

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(Enforcement - Air)

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**MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On June 11, 2003, a Complaint was filed with the Pollution Control Board ("Board") in this matter. Simultaneously with this Motion, the parties are filing a Stipulation and Proposal for Settlement with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), (2002) allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

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 currently scheduled in the instant case.

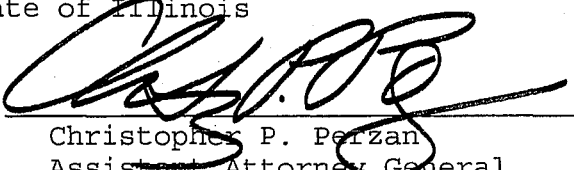
4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2)(2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General of the
State of Illinois

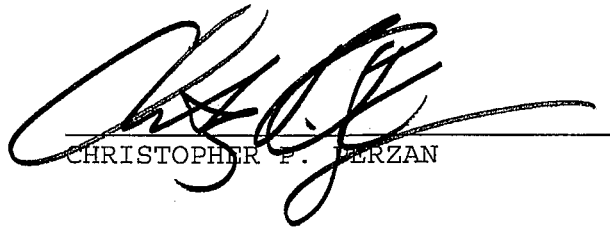
By: 

Christopher P. Perzan
Assistant Attorney General

Environmental Bureau
188 West Randolph Street, 20th Fl.
Chicago, IL 60601
312/814-3532

CERTIFICATE OF SERVICE

I, CHRISTOPHER P. PERZAN, an Assistant Attorney General, certify that on the 14th day of October, 2003, I caused to be served by U.S. Mail by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601 or by hand delivery the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached service list.



CHRISTOPHER P. PERZAN

