

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 BRADLEY PROPERTY, LLC, an Illinois limited)
 liability company, BRADLEY AUTO SPA, LLC,)
 an Illinois limited liability company, and A-K)
 UNDERGROUND, INC., an Illinois corporation,)
)
 Respondents.)

PCB No. 14- 039
 (Enforcement - Water)

**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH RESPONDENTS,
 BRADLEY PROPERTY, LLC, AND BRADLEY AUTO SPA, LLC**

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 Respondents, Bradley Property, LLC, and Bradley Auto Spa, LLC, ("Respondents"), (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. (2012), 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 November 26, 2013, 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 (2012), against the Respondents.

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 (2012).

3. At all times relevant to the Complaint, Respondent Bradley Property, LLC ("BP") has been and is an Illinois limited liability corporation registered with the Illinois Secretary of State's Office. At all times relevant to the Complaint, Respondents BP has been and is owner of the subject property located at 900 North Kinzie Avenue, Bradley, Kankakee County, Illinois ("Site").

4. At all times relevant to the Complaint, Respondent Bradley Auto Spa, LLC ("BAS") has been and is an Illinois limited liability corporation registered with the Illinois Secretary of State's Office. At all times relevant to the Complaint, Respondent BAS managed waste water removal operations at the Site.

5. The subject property is a former oil change/car wash business located at 900 North Kinzie Avenue, Bradley, Kankakee County, Illinois ("Site"). The receiving waters for the Site are a Village of Bradley ("Bradley") storm sewer at the Site ("Storm Sewer") and a culvert adjacent to the east side of the Site ("Culvert"), where BAS and BP allowed the release of waste water from the Site.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

- Count I: WATER POLLUTION
Violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
- Count II: VIOLATING GENERAL USE WATER QUALITY STANDARDS - OFFENSIVE CONDITIONS
Violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
- Count III: CREATING A WATER POLLUTION HAZARD
Violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);
- Count IV: OPERATING WITHOUT AN NPDES PERMIT
Violations of Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code §309.102(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).

C. Non-Admission of Violations

The Respondents represent that they have 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 Respondents do 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.

D. Compliance Activities to Date

On July 31, 2013, the Illinois EPA did a follow up inspection and found the Site to be in Compliance with the Act and Board Regulations.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents 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 Respondents 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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), 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 by discharging wastewater from the Site.
2. There is social and economic benefit to the Site.
3. Operation of the Site was suitable for the area in which it occurred.
4. Obtaining a permit prior to discharge from a point source at the Site and compliance with its terms was both technically practicable and economically reasonable.
5. Respondents have 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) (2012, *effective as of August 23, 2011*), 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 Respondents 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 Respondents 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 Respondents and to otherwise aid in enhancing voluntary compliance with this Act by the Respondents 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 Respondents;

6. whether the Respondents voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the Respondents have agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a Respondents agree to undertake in settlement of an enforcement action brought under this Act, but which the Respondents are not otherwise legally required to perform; and
8. whether the Respondents have 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 Respondents failed to obtain a permit for discharging wastewater from the Site to the Storm Sewer and Culvert prior to beginning activities at the Site. The violations occurred on or around February 7, 2012. Photographs of the Storm Sewer and Culvert taken by employees of the City of Bradley on February 7, 2012 show visible discoloration and sheen on the waters in the Storm Sewer and the Culvert. On February 8, 2012, Illinois EPA inspector observed no water quality issues in the Storm Sewer or the Culvert, even though remediation activities had not taken place. The compliance was resolved on July 31, 2013 when the Illinois EPA did a final compliance inspection and found the Site to meet its compliance criteria for water quality.

2. Respondents were 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 noncompliance.

3. The material released by Respondents should have been taken to a publicly-owned treatment works ("POTW") or industrial pretreater for proper disposal. Prior to disposal, Respondents should have obtained laboratory analysis of the wastewater to ascertain its contents.

Accordingly, there was a nominal economic benefit for Respondents, BAS and BP for their noncompliance in this matter.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Five thousand, Three hundred dollars (\$5,300.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have 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 proposed by Respondents, but rejected by the Illinois EPA.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

The Respondents shall pay a civil penalty in the sum of Five thousand, Three hundred dollars (\$5,300.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. **Stipulated Penalties, Interest, and Default**

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

3. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

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:

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondents' facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondents 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 Respondents' payment of the \$5,300.00 penalty, their commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents

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 November 26, 2013. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' 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 Respondents.

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

LISA BONNETT, Director

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 3/11/14

DATE: 3/6/14

RESPONDENTS:

BRADLEY PROPERTY, LLC

BY: _____
Its _____

DATE: _____

BRADLEY AUTO SPA, LLC

BY: _____
Its _____

DATE: _____

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PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
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BY: _____
ELIZABETH WALLACE, Chief
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Environmental Bureau

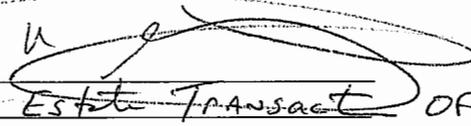
BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

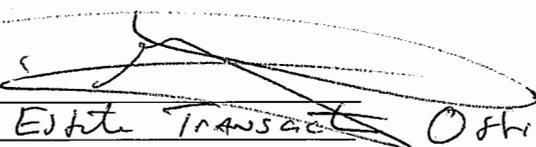
RESPONDENTS:

BRADLEY PROPERTY, LLC

BY: 
Its Real Estate Transact Office

DATE: 3/12/14

BRADLEY AUTO SPA, LLC

BY: 
Its Real Estate Transact Office

DATE: 3/12/14

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).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2012).

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) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

BY:



NANCY J. TIRALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-8567

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

PCB No. 14- 039
(Enforcement - Water)

BRADLEY PROPERTY, LLC, an Illinois limited)

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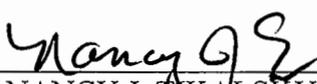
Respondents.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 19th day of March, 2014, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement with Respondents, Bradley Property, LLC, and Bradley Auto Spa, LLC and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

BY: 
NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-8567

DATE: March 19, 2014

THIS FILING IS SUBMITTED ON RECYCLED PAPER

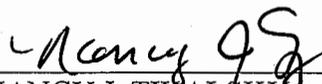
SERVICE LIST

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601
Brad.Halloran@Illinois.gov

Natalie A. Walsh
Walsh Law Offices
4434 North Tripp Avenue
Chicago, IL 60630
walshlaw@comcast.net

CERTIFICATE OF ELECTRONIC SERVICE

I, NANCY J. TIKALSKY, an Assistant Attorney General, do certify that I caused to be mailed this 19th day of March, 2014, the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing with Respondents, Bradley Property, LLC, and Bradley Auto Spa, LLC, by electronic mail.



NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau
69 W. Washington, Suite 1800
Chicago, IL 60602
312-814-8567