

ILLINOIS POLLUTION CONTROL BOARD

March 21, 1996

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 96-122
)	(Enforcement - Air)
EUGENE GROTHAUS,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board upon a one-count complaint filed December 5, 1995, by the Attorney General of the State of Illinois, on behalf of the Illinois Environmental Protection Agency and the People of the State of Illinois, against Eugene Grothaus, regarding his property located at Central and South First Streets, Benld, Macoupin County. The complaint alleges that Eugene Grothaus has violated Section 9(d)(1) of the Illinois Environmental Protection Act (Act), (415 ILCS 5/9(d)(1) (1994)) by failure to provide demolition notification.

Pursuant to 415 ILCS 5/31(a)(2), the parties filed a joint motion requesting relief from the Act's hearing requirement on January 29, 1996. The Board published a notice of the waiver on February 8, 1996; no objection to the granting of the waiver was received. Waiver of hearing is hereby granted.

The parties filed a Stipulation and Settlement Agreement on January 29, 1996. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. Eugene Grothaus admits the alleged violations and agrees to pay a civil penalty of two thousand five hundred dollars (\$2,500.00).

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. This settlement agreement in no way affects respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and the Board's pollution control regulations.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1) The Board hereby accepts the Stipulation and Settlement Agreement executed by the People of the State of Illinois and against Eugene Grothaus, regarding his property located at Central and South First Streets, Benld, Macoupin County. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) Eugene Grothaus shall pay the sum of two thousand five hundred dollars (\$2,500.00) in two installments of one thousand two hundred fifty dollars (\$1,250.00) each and due within 60 days and 120 days respectively of the date of this Order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

The certified check or money order shall clearly indicate on its face Eugene Grothaus's Federal Employer Identification Number and that payment is directed to the Environmental Protection Trust Fund.

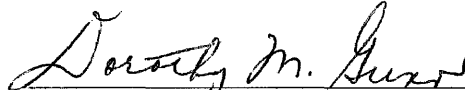
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

- 3) Eugene Grothaus shall cease and desist from the alleged violations.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of March, 1996, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 EUGENE GROTHAUS,)
)
 Respondent.)

PCB No. 96-122
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, EUGENE GROTHAUS, do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties agree that this Settlement is a compromise of a disputed claim. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into the Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence 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 in any future enforcement action as evidence of a past adjudication of violation, as provided in Sections 39(i) and 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39(i) and 42(h)

(1994). The agreement 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.* (1994).

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 Respondent and any officer, director, agent, employee or servant of Respondent, as well as the Respondent's successors and assigns. The Respondent 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 Environmental Protection Agency ("Agency") is an administrative agency established in the executive branch of the State government by Section 4 of the Act,

415 ILCS 5/4 (1994), and is charged, inter alia, with the duty of enforcing the Act.

2. Respondent, Eugene Grothaus, owned a lumber yard located at Central and South First Streets, Benld, Macoupin County, Illinois 62009 ("the facility").

3. On or before February 23, 1995, the exact date known only to Respondent, Respondent performed a demolition of the facility.

4. The Respondent did not submit a demolition notification to the Agency prior to the demolition date, in violation of Section 9.1(d)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/9.1(d)(1) (1994), and 40 C.F.R. 61.145(b) (1993).

V.

FUTURE PLANS OF COMPLIANCE

Respondent shall diligently conform to the Act, 415 ILCS 5/1 et seq. (1994), and the Board's Air Pollution Regulations, 35 Ill. Adm. Code Subtitle B.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1994), provides:

- c. 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 or 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. If the Complainant's allegations are accepted as correct, the injury to, or interference with the protection of the health, general welfare, and physical property of the People would be characterized as a potential for exposure to asbestos-containing materials and the degree of injury would be dependent upon the extent of exposure;
2. The parties agree that the activity arising from the demolition of a building may be of social and economic benefit;
3. The issue of suitability or unsuitability of the pollution source has no applicability in this instance;
4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable; and
5. The Respondent is currently in compliance with the Act and the Board's Air Pollution Regulations.

VII.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1994), provides:

- h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) 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 alleged violations occurred on or about February 23, 1995.
2. The Respondent contends that he was unaware of the notification requirement prior to initiating demolition activity.
3. The economic benefit of Respondent's noncompliance is the savings, if any, realized by not paying the expenses incurred in the preparation and submittal of documentation required to ensure compliance with applicable regulations.
4. Complainant has determined, in this instance, that a penalty of two thousand five hundred dollars (\$2,500.00) will serve to deter further violations and aid in future voluntary enforcement of the Act and applicable regulations; and
5. Respondent has no previously adjudicated violations.

VIII.

TERMS OF SETTLEMENT

- A. The Respondent admits violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(1) (1994), and 40 C.F.R. 61.145 (1993).
- B. The Respondent shall pay a penalty of Two Thousand Five Hundred Dollars (\$2,500.00) into the Illinois Environmental Protection Trust Fund payable in two installments of One Thousand Two Hundred Fifty Dollars (\$1,250.00) each and due within 60 days and

120 days, respectively, from the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

Respondent's Federal Employer Identification Number shall be written upon the certified check or money order.

C. Respondent shall comply with Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (1994), and 40 C.F.R. 61.145(b) (1993), and shall cease and desist from future violations of any other federal, state, or local environmental statutes and regulations, including the Act and the Board Rules and Regulations.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondent to comply with any federal, state, or local regulations, including but not limited to the Act, 415 ILCS 5/1 et seq. (1994), and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.


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

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General of the
State of Illinois

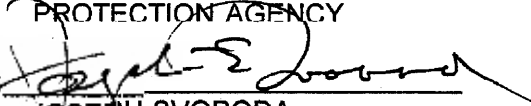
MATTHEW J. DUNN, Chief
Environmental Enforcement Division

DATED: 11/30/95

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DATED: 12/5/95

BY: 
JOSEPH SVOBODA
General Counsel
Division of Legal Counsel

EUGENE GROTHAUS
Respondent

DATED: 1-24-96

BY: 
EUGENE GROTHAUS