

ORIGINAL

RECEIVED  
CLERK'S OFFICE  
APR 13 1998  
STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
DIXON-MARQUETTE CEMENT, INC., )  
an Illinois corporation and )  
a division of Prairie Material )  
Sales, Inc., )  
)  
Respondent. )

PCB 97-116  
(Enforcement-Water)

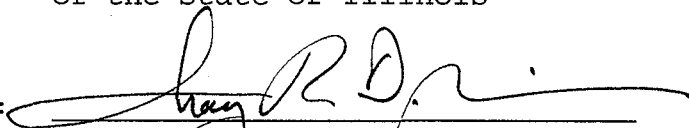
NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that we have today filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement, an Agreed Motion to Request Relief from the Hearing Requirement and a Certificate of Service, copies of which are attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
JAMES E. RYAN, Attorney General  
of the State of Illinois

BY:   
MARY ROSE D. SILVA  
Assistant Attorney General  
Environmental Bureau  
100 W. Randolph St., 11th Fl.  
Chicago, Illinois 60601  
(312) 814-5282

DATED: 4/13/98

SERVICE LIST

Via Hand Delivery

John Burds  
Hearing Officer  
Illinois Pollution Control Board  
JRTC, 100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Via Regular U.S. Mail

Scott R. Marquardt  
Connolly, Ekl & Williams, P.C.  
115 West 55th Street, Suite 400  
Clarendon Hills, IL 60514

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE  
APR 13 1998  
STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

v. )

DIXON-MARQUETTE CEMENT, INC., )

an Illinois corporation and )

a division of Prairie Material )

Sales, Inc., )

Respondent. )

PCB 97-116  
(Enforcement-Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, DIXON-MARQUETTE CEMENT, INC. ("DMC"), 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 was held. 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 this Stipulation, or any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms of this Stipulation and Proposal for Settlement by the parties to this agreement. Notwithstanding the previous sentence, for purposes of

Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (1996), this Stipulation and Proposal for Settlement and any Pollution Control Board ("Board") order accepting same may be used in any future enforcement action as evidence of a past adjudication of violations of the Act. This 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. (1996).

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,

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 Stipulation 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 Stipulation.

#### IV.

#### STATEMENT OF FACTS

##### A. PARTIES

1. The Attorney General of the State of Illinois brings this action on his own motion and at the request of the Illinois EPA pursuant to the statutory authority vested in him under Section 31 of the Act, 415 ILCS 5/31 (1996).

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 (1996), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to administer and abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. Section 1342(b)(7).

3. DMC has been and is a corporation duly organized and existing under the laws of the State of Illinois. DMC is also a division of Prairie Material Sales, Inc.

**B. FACILITY DESCRIPTION**

DMC operates a 1,500-acre limestone quarry and kiln plant for the production of portland cement, as well as a wastewater treatment plant ("WWTP") located at 1914 White Oak Lane, Dixon, Lee County, Illinois ("Site"). The WWTP is a package plant of 0.25 million gallons per day average flow, and it consists of a primary tank, aeration basin and chlorination facilities. DMC's WWTP discharges cooling water, storm water runoff and sewage treatment plant effluent into the Rock River.

**C. ALLEGED VIOLATIONS**

Complainant, People of the State of Illinois, filed a four-count complaint against Respondent, DMC, on December 31, 1996. The complaint alleges, in pertinent part, the following violations:

**Count I:** Discharging Without a Valid NPDES Permit - violations of Sections 309.102(a) and 309.104(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (1996).

**Count II:** Failure to Comply With Reporting Requirements - violations of Special Condition 5 and Standard Condition 12(d)(1) of NPDES Permit No. IL0003514, Sections 305.102(a) and (b) and 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 305.102(a) and (b) and 309.102(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (1996).

**Count III:** Failure to Retain Records - violations of Standard Condition 10(b) of NPDES Permit No. IL0003514, Sections 305.102(b) and 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), and Section 12(f) of the

Act, 415 ILCS 5/12(f) (1996).

**Count IV:** Failure to Have a Certified Class K Operator - violations of Special Condition 7 of NPDES Permit No. IL0003514, Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (1996).

V.

**NATURE OF RESPONDENT'S OPERATIONS**

DMC's operations include the excavation, crushing, transporting and processing of limestone for the manufacture of portland cement. Located on the property is DMC's WWTP, as described herein.

VI.

**EXPLANATION OF PAST FAILURES TO COMPLY WITH THE ACT**

DMC contends that its past failures to comply with the Act was primarily due to its employee's failure to notify corporate superiors or officers regarding the Illinois EPA's allegations of non-compliance.

VII.

**FUTURE PLANS OF COMPLIANCE**

Respondent shall comply with the Act and the Board's Regulations and all permits issued thereunder, and shall cease and desist from future violations of the Act and the regulations promulgated thereunder.

VIII.

CONSIDERATION OF SECTION 33(c) FACTORS

Section 33(c) of the Act, 415 ILCS 5/33(c) (1996), 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, Complainant contends that Respondent has violated the sections of the Act and Board Regulations, as provided herein. Respondent neither admits nor denies any violation of the Act and Board's Regulations. In addition, the parties state as follows:



1. The impact to the public resulting from DMC's non-compliance was that the Illinois EPA and the public were not privy to information that is important to the control of water pollution in Illinois. Also, the Illinois EPA and the public were not privy to complete information regarding Respondent's point source discharges and the content of such discharges from the facility. The permit process and reporting requirements prescribed therein are dependent upon self-reporting by dischargers and are the primary methods available to the State to identify possible water pollution sources and their control;

2. The parties agree that DMC is of social and economic benefit;

3. DMC is suitable for the area in which it is located;

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

5. DMC did subsequently comply with some of the Board's Water Pollution Regulations and the conditions of NPDES Permit No. IL0003514 by obtaining the necessary NPDES permit and by acquiring the proper Class K operator certification for those employees required to be certified by law. DMC has failed to maintain copies of Discharge Monitoring Reports ("DMRs") from July 1992 to February 1, 1993 in its files.

IX.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1996), 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 violator 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 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, Complainant contends that Respondent violated the Act and Board's Regulations, as provided herein. Respondent neither admits nor denies any violation of the Act and the Board's Regulations, as set forth herein. In addition, the parties state as follows:

1. The duration of the violations alleged in Counts I, III and IV of the complaint was approximately three years. With respect to the violations alleged in Count II of the complaint, Respondent still has not submitted DMRs for July 1992 to February 1993 because it cannot find copies of said DMRs in its files;

2. DMC applied to renew its NPDES Permit in May 1995 and was reissued NPDES Permit No. IL0003514 in September 1995. The pertinent employees at DMC received Class K operator certification on June 6, 1995;

3. DMC may have accrued some economic benefit by avoiding costs related to the preparation and submittal of an NPDES permit renewal application, the preparation and submittal of DMRs, and the certification of its WWTP operators;

4. Complainant has determined that a Forty Thousand Dollar (\$40,000.00) penalty will serve to deter any future violations and aid in future voluntary compliance of the Act and Board Regulations; and

5. Respondent has no record of previously adjudicated violations of the Act.

**X.**

**TERMS OF SETTLEMENT**

1. Complainant contends that Respondent violated the Act, Board's Regulations and conditions of its NPDES permit, specifically

Section 12(f) of the Act, 415 ILCS 5/12(f) (1996), 35 Ill. Adm. Code 305.102(a), 309.102(a) and 309.104(a), and Standard Conditions 10(b) and 12(d)(1) and Special Conditions 5 and 7 of NPDES Permit No. IL0003514. Respondent neither admits nor denies violating said sections of the Act, Board's Regulations and said conditions of NPDES Permit No. IL0003514.

2. Respondent shall pay a penalty of Forty Thousand Dollars (\$40,000.00) by certified check or money order made payable to the Treasurer of the State of Illinois and designated to the Environmental Protection Trust Fund. Payment shall be made within thirty (30) days 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 Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

On the check or money order, Respondent shall include the case name and number, and Respondent's Federal Employer Identification Number ("FEIN") 362368188.

3. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1996), interest shall accrue on any amount not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1996).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty payment 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 the unpaid amount then owing.

c. All interest on amounts owed the Complainant shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and number of the case and Respondent's FEIN shall appear on the face of the check. Respondent's FEIN is 362368188.

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

Dixon-Marquette Cement, Inc.  
1914 White Oak Lane  
Dixon, Illinois 61021

5. Respondent shall:

a. At all times maintain valid permits for its WWTP and all point source discharges at the Site, as required by the Act and the Board's Regulations;

b. Submit DMRs to the Illinois EPA as required by the Board's Regulations and DMC's NPDES permit;

c. At all times maintain qualified persons to operate its WWTP, as required by the Board's Regulations and DMC's NPDES permit; and

d. At all times properly maintain its records, as required by the Board's Regulations and DMC's NPDES permit.

6. Respondent shall cease and desist from future violations of the Act and regulations promulgated thereunder.

#### XI.

#### COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to, the Act, 415 ILCS 5/1 *et seq.* (1996), and the Board's Water Pollution Regulations, 35 Ill. Adm. Code Subtitle C, Chapter I.

XII.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Illinois Attorney General, and his/her agents and representatives, shall have the right of entry to Respondent's facility at all reasonable times, for the purposes of conducting inspections. In conducting such inspections of Respondent's facility the Illinois EPA, its employees and representatives, and the Attorney General, and his/her agents and representatives may take any photographs or samples as they deem necessary in order to conduct their inspection.

XIII.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of a Forty Thousand Dollar (\$40,000.00) penalty and commitment to refrain from future violations of the Act, the Complainant shall release, waive and discharge Respondent from any further liability or penalties from violations of the Act which were the subject matter of the complaint, upon receipt by Complainant of all payments required in Section X. of this Stipulation and Proposal for Settlement. However, nothing in this Stipulation and Proposal for Settlement shall be construed to waive or estop 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

JAMES E. RYAN  
Attorney General  
State of Illinois

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

BY:

  
WILLIAM D. SEITH, Chief  
Environmental Bureau  
Assistant Attorney General

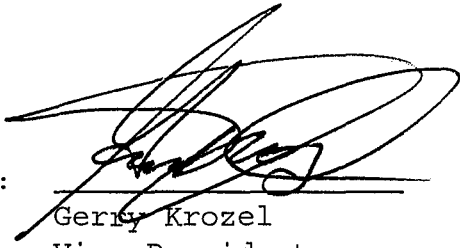
Dated:

4/1/98

FOR THE RESPONDENT:

DIXON-MARQUETTE CEMENT,  
INC.

BY:

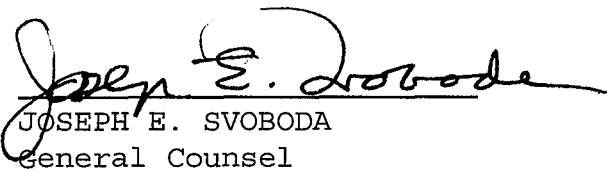
  
Gerry Krozel  
Vice President  
Praire Material  
Services, Inc.  
Sales

Dated:

4-8-98

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:

  
JOSEPH E. SVOBODA  
General Counsel  
Division of Legal Counsel

Dated:

3/25/98

c:\dixon.stp



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE  
APR 13 1998  
STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. )  
 )  
DIXON-MARQUETTE CEMENT, INC., )  
an Illinois corporation and )  
a division of Prairie Material )  
Sales, Inc., )  
 )  
Respondent. )

PCB 97-116  
(Enforcement-Water)

**AGREED MOTION TO REQUEST  
RELIEF FROM THE HEARING REQUIREMENT**

NOW COME Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, and Respondent, DIXON-MARQUETTE CEMENT, INC. ("DMC"), by its counsel, and request relief from the hearing requirement in the above-captioned matter.

In support of this motion, the parties state as follows:

1. On December 31, 1996, the People of the State of Illinois filed with the Illinois Pollution Control Board ("Board") the complaint against DMC.

2. Today, the parties filed a Stipulation and Proposal for Settlement.

3. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (1996), provides in pertinent part as follows:

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). . . .

4. The parties hereto agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c) (2) of the Act.

5. Counsel for Respondent has been made aware of the contents of this Motion and has agreed to waive signature of same.

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c) (2) of the Act.

Respectfully submitted,

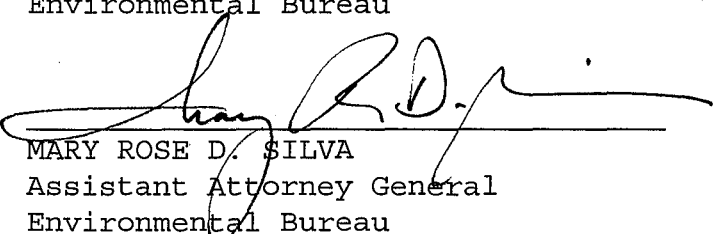
PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN  
Attorney General  
State of Illinois

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

WILLIAM D. SEITH, Chief  
Environmental Bureau

BY:

  
MARY ROSE D. SILVA  
Assistant Attorney General  
Environmental Bureau  
100 W. Randolph St., 11th Fl.  
Chicago, Illinois 60601  
(312) 814-5282

DATED:

4/13/98

CERTIFICATE OF SERVICE

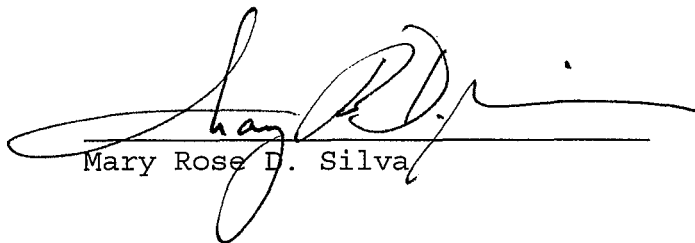
I, MARY ROSE D. SILVA, an Assistant Attorney General in this case, do certify that on this 13<sup>th</sup> day of April 1998, caused to be served by First Class U.S. Mail the foregoing Notice of Filing, Stipulation and Proposal for Settlement and Agreed Motion to Request Relief from the Hearing Requirement upon:

Scott R. Marquardt  
Connolly, Ekl & Williams, P.C.  
115 West 55th Street, Suite 400  
Clarendon Hills, IL 60514

by U.S. Mail and depositing same in a U.S. Mail depository located at 100 W. Randolph Street, Chicago, Illinois, in an envelope with sufficient postage prepaid; and

John Burds  
Hearing Officer  
James R. Thompson Center  
100 West Randolph  
Suite 11-500  
Chicago, Illinois 60601

by hand delivery.

  
Mary Rose D. Silva