

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
By KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
-vs-)	PCB No. 23-112
)	
INLAND-FRYCEK, INC.,)	
an Illinois Corporation, and)	
969 NORTHWEST HWY LLC,)	
an Illinois Limited Liability Company,)	
)	
Respondents.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that today, December 19, 2003, Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Office of the Illinois Pollution Control Board (“Board”) its Stipulation and Proposal for Settlement with Respondent 969 Northwest Hwy LLC, and Motion to Waive Requirement of Hearing, copies of which is attached and herewith served upon you.

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

BY: *S/ Christopher Grant*
Christopher Grant
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington Street, #1800
Chicago, IL 60602
(312) 814-3532
Christopher.grant@ilag.gov

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served on those listed below this 19th day of December, 2023, the Stipulation and Proposal for Settlement with Respondent 969 Northwest Hwy LLC, and Motion to Waive Requirement of Hearing, by electronic mail.

S/ Christopher Grant
CHRISTOPHER GRANT

SERVICE LIST:

Bradley Halloran
Hearing Officer
Pollution Control Board
60 E. Van Buren, Suite 630
Chicago, IL 60605
Brad.Halloran@illinois.gov

Inland-Frychek, Inc.
Jennifer A. Burke
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969 Northwest Hwy LLC
David E. Schroeder, Esq.
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MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a Stipulation and Proposal for Settlement executed between Complainant and Respondent 969 Northwest Hwy LLC only. Complainant’s allegations against Respondent Inland-Frycek, Inc. are not covered by the proposed Stipulation and remain the subject of an enforcement action before the Board.

2. Section 31 of the Act, 415 ILCS 5/31 (2020), provides, in pertinent part, as follows:

* * *

(c)(2) 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 now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2022).

Respectfully submitted,

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

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

STEPHEN SYLVESTER, Chief
Environmental Bureau North

BY: /s Christopher Grant
CHRISTOPHER GRANT
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**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH
RESPONDENT 969 NORTHWEST HWY LLC ONLY**

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 the Respondent 969 Northwest Hwy LLC (“969 LLC”) (“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.* (2022), 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. COVERED MATTER

This Stipulation and Proposal for Settlement is limited to Complainant's allegations of violation against Respondent 969 LLC. Complainant's allegations of violation against Respondent Inland-Frycek, Inc. are not covered by this Stipulation and Proposal for Settlement and remain the subject of an ongoing enforcement action before the Board.

II. STATEMENT OF FACTS

A. Parties

1. On April 17, 2023, 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 (2022), 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 (2022).

3. Respondent 969 LLC is an Illinois Limited Liability Company in good standing.

4. At all times relevant to the Complaint, Respondent 969 LLC was the owner of property located at 969 Northwest Highway, Park Ridge, Cook County Illinois ("Site"). Respondent 969 LLC retained Respondent Inland-Frycek, Inc. to perform remediation of the Site.

5. On or about July 16, 2019, Respondent Inland-Frycek, Inc. brought calcium peroxide to the Site. Respondent 969 LLC has denied knowledge as to why calcium peroxide was brought to the Site by Respondent Inland-Frycek Inc.

6. On or about July 17, 2019, a fire at the Site spilled and spread calcium peroxide

on the ground at the Site, exposed to the environment.

B. Allegations of Non-Compliance

Complainant contends that Respondent 969 LLC has violated the following provisions of the Act and Board regulations:

- Count I: OPEN DUMPING OF WASTE, violation of 415 ILCS 5/21(a) (2022);
- Count II: WASTE STORAGE AND DISPOSAL AT AN IMPROPER SITE, violation of 415 ILCS 5/21(e) (2022);
- Count III: FAILURE TO PERFORM A SPECIAL WASTE DETERMINATION, violation of 415 ILCS 5/21(d)(2) (2022), and 35 Ill. Adm. Code 808.121;
- Count IV: CREATING A WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2022); and
- Count V: CAUSING AND ALLOWING LITTER, violation of 415 ILCS 5/21(p)(1) (2022).

C. Non-Admission of Violations

Respondent 969 LLC represents that it has 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 Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section II.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

By December 4, 2020, Respondent 969 LLC completed removal of all spilled calcium peroxide for disposal at a permitted landfill.

III. APPLICABILITY

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

Respondent 969 LLC 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 969 LLC 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 5/42 (2022).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), 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. The accumulation of spilled calcium peroxide at the Site created a nuisance and

threatened water pollution. The alleged violations were therefore harmful to the general welfare of residents living in the vicinity of the Site.

2. After being spilled, the accumulated calcium peroxide did not have social or economic value.

3. The Site is not suitable for unpermitted waste storage and/or disposal.

4. Maintenance and use of the Site in accordance with the provisions of the Act is technically feasible and economically reasonable.

5. Respondent 969 LLC completed removal of all spilled calcium peroxide for disposal at a permitted landfill by December 4, 2020.

V. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2022), 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 requirements of this Act and regulations thereunder or to secure relief there from as provided by this Act;
3. any economic benefits accrued by the respondent 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 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 i of this Section, the non-compliance to the Agency; and
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;
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. Spilled calcium peroxide accumulated at the Site beginning in July 2019 and was not fully removed until December 4, 2020.
2. Complainant asserts that Respondent 969 LLC failed to ensure that spilled calcium peroxide was timely removed to a permitted waste disposal facility until compelled through ordinance enforcement by the City of Park Ridge. Accordingly, Complainant asserts that Respondent 969 LLC was not diligent in addressing the storage and accumulation of waste at the Site.
3. Complainant is unaware of a substantial economic benefit to Respondent 969 LLC related to the alleged violations and asserts that assessment of a civil penalty of \$8,800.00 will recover any potential economic benefit realized by Respondent 969 LLC.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of \$8,800.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. Respondent 969 LLC has no previously adjudicated violations.

6. Respondent 969 LLC did not self-disclose the alleged violations.
7. The settlement of this matter does not include a supplemental environmental project.
8. The parties did not enter into a Compliance Commitment Agreement.

VI. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent 969 LLC shall pay a civil penalty in the sum of eight thousand eight hundred dollars (\$8,800.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If Respondent 969 LLC fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the 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, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2022), interest shall accrue on any penalty amount owed by Respondent 969 LLC 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

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, IL 62794-9276

The case name and case number shall appear on the face of the certified check or money order.

A copy of the certified check or money order and any transmittal letter shall be sent to:

Christopher J. Grant
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington, Suite 1800
Chicago, Illinois 60602
Christopher.Grant@ilag.gov

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondent's 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, his 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 Respondent 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 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 the Respondent's payment of the \$8,800.00 penalty, its commitment to cease and desist as contained in Section VI.D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondent 969 LLC 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 April 17, 2023. The Complainant reserves and this Stipulation is without prejudice to, all rights of the State of Illinois against the 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 (2022), or entity other than Respondent 969 LLC.

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

KWAME RAOUL
Attorney General of the
State of Illinois

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

JOHN KIM, Director
Illinois Environmental Protection Agency

BY: 
STEPHEN J. SYLVESTER, Chief
Assistant Attorney General
Environmental Bureau

BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 12/5/23

DATE: 12/5/23

FOR THE RESPONDENT:

969 Northwest Hwy LLC

BY: _____

ITS: Azim Hemani manager 969 Northwest Hwy llc

DATE: 12/7/23

People v. Inland-Frycek, Inc. and 969 Norwest Hwy LLC, PCB 2023-112