

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
-vs-)
TRI-K DEVELOPMENT, INC.,)
an Illinois corporation,)
Respondent.)

PCB No.

04-24

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SEP 05 2003

STATE OF ILLINOIS
Pollution Control Board

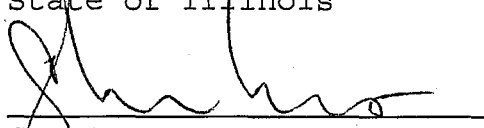
NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, September 5, 2003, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, and Motion to Request Relief from Hearing Requirement, copies of are attached herewith and served upon you.

PEOPLE OF THE STATE OF ILLINOIS

ex rel. LISA MADIGAN
Attorney General of the
State of Illinois

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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PCB No. 04-24 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, at the request of the Illinois Environmental Protection Agency, and Respondent, TRI-K DEVELOPMENT, INC., do hereby agree to 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 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, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms of 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 of the Illinois Environmental Protection Act ("Act") for purposes of Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2002).

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 Respondent, and each of them, and on any officer, director, agent, employee or servant of the 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 officers, directors, agents, servants, or employees of the Respondent to take such action as shall be required to comply

with the provisions of this settlement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brought this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an 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.

3. Respondent, TRI-K DEVELOPMENT, INC., is an Illinois corporation, duly authorized to transact business in the State of Illinois.

B. Facility Description

The Respondent was the developer and builder of a 29 Unit, 6 acre residential development, commonly known as "Meadows Edge", located near the intersection of 59th Street and Interstate 355, Lisle, Du Page County, Illinois ("Site").

C. Noncompliance

Complainant has alleged the following violations of the Act against the Respondent:

COUNT I: WATER POLLUTION
Violation of Section 12(a) of the Act, 415 ILCS
5/12(a) (2002);

COUNT II: FAILURE TO PROVIDE WATER POLLUTION CONTROLS
Violation of Section 12(a) of the Act, 415 ILCS
5/12(a) (2002), and 35 Ill. Adm. Code 306.102;

COUNT III: WATER QUALITY AND EFFLUENT VIOLATIONS
Violation of Section 12(a) of the Act, 415 ILCS
5/12(a) (2002), and 35 Ill. Adm. Code 302.203;

COUNT IV: NPDES PERMIT VIOLATION
Violation of Section 12(f) of the Act, 415 ILCS
5/12(f) (2002), and 35 Ill. Adm. Code 309.146.

D. Response to allegations

The Respondent neither admits nor denies the allegations in the Complaint.

. V.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

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 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.

ANALYSIS:

The parties mutually state as follows:

1. *Character and Degree of Injury:*

The impact to the public from the alleged violations was a degradation of water quality in Prentiss Creek and the East Branch of the Du Page River and an increased detrimental risk to fish and aquatic vegetation.

2. *Social and Economic Benefit:*

The parties agree that construction of Meadows Edge is of social and economic benefit.

3. *Suitability to the Area:*

The construction is suitable to the area, provided that discharges of sediment are controlled in conformance with the requirements of the Act and Board Water Pollution regulations.

4. *Technical Practicability:*

The construction and maintenance of barriers and controls to prevent sediment migration is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Subsequent to the alleged violations, construction areas at the Site were stabilized. Ownership and control of the Site has been transferred to third parties.

VI.
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 . . . 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.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

The conditions which caused the alleged violations existed from at least July 19, 2001 until at least May 5, 2002.

2. *Diligence of Respondent:*

The Respondent was slow to address the alleged violations. However, since May 5, 2002, exposed areas of the Site have been

stabilized and ownership transferred to third parties. No ongoing violations are alleged.

3. *Economic Benefit of Noncompliance:*

The Respondent received a minimal economic benefit from the alleged noncompliance, through delay in stabilizing soils at the Site. However, the exact value of this benefit is difficult to quantify accurately.

4. *Deterrence:*

A penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) against the Respondent will deter future noncompliance by the Respondent and others.

5. *Compliance History:*

The Respondent has no previously adjudicated violations of the Act.

VII.

TERMS OF SETTLEMENT

1. The Respondent neither admits nor denies the violations as alleged in the complaint against it.

2. The Respondent shall pay a penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) within thirty (30) days after 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 Illinois EPA, designated for deposit into the Environmental Protection Trust Fund ("EPTF"), and shall be sent by first class mail to:

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

3. The Respondent's Federal Employer Identification Number ("FEIN") shall be written on the face of the certified check or money order. For issues relating to the payment of the penalty, the Respondent may be reached at the following address:

Mr. James Corso, President
Tri-K Development, Inc.
15811 Annico Drive, Unit 6
Lockport, Illinois 60441

A copy of each certified check or money order, and all related correspondence, shall be sent by first class mail to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

4. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any penalty amount owed by the Respondent 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) (2002).

5. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

6. 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.

7. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

VIII.

CEASE AND DESIST

The Respondent shall cease and desist from future violations of the Act and Board regulations, including but not limited to, those sections of the Act and Board regulations that were the subject matter of the Complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

IX.

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 regulations, including but not limited to the Act and Board regulations.

X.
RELEASE FROM LIABILITY

In consideration of the Respondent's payment of a Seven Thousand Five Hundred Dollar (\$7,500.00) penalty, and its commitment to cease and desist from future violations, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 the Complaint filed on 9/29/03. 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 or the

Illinois EPA may have against any person, as defined by Section 3.26 of the Act, 415 ILCS 5/3.26 (2002), or entity other than the Respondent.

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

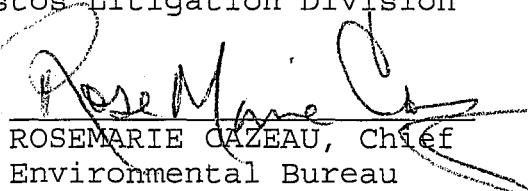
AGREED:

FOR THE COMPLAINANT:

LISA MADIGAN
Attorney General of
the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

By:

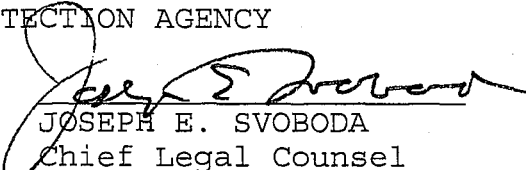

ROSEMARIE GAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated:

7/28/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:


JOSEPH E. SVOBODA
Chief Legal Counsel

Dated:

7/16/03

FOR RESPONDENT TRI-K DEVELOPMENT, INC.

BY: James Corso

Title: President

Dated: 08/25/03

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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 requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a complaint against Respondent TRI-K DEVELOPMENT, INC., alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (2002) ("Act"), and Illinois Pollution Control Board ("Board") regulations, and a Stipulation and Proposal for Settlement, executed between Complainant and Respondent.

2. Section 31 of the Act, 415 ILCS 5/31 (2002), 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.

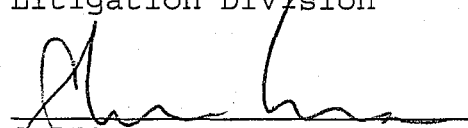
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c) (2) (2002).

Respectfully submitted,

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

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

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388

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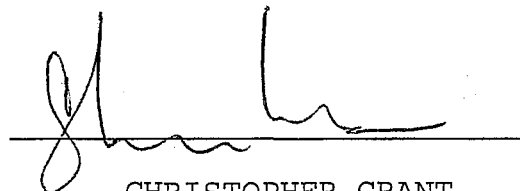
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 5th day of September, 2003, by first class mail, the foregoing Stipulation and Proposal for Settlement and Motion to Request Relief from Hearing Requirement upon the person listed below, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List:

Mr. George Arnold
Sosin Lawler & Arnold, LLC
11800 South 75th Street, Suite 300
Palos Heights, Illinois 60463