

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

DEC 22 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
RIVERDALE RECYCLING, INC.,)
an Illinois corporation, and)
TRI-STATE DISPOSAL, INC.,)
an Illinois corporation,)
)
Respondents.)

No. PCB 03-73
(Enforcement)

TO: Mr. Mark LaRose
Attorney for Respondents
734 N. Wells
Chicago, IL. 60610

Bradley Halloran
Hearing Officer
100 West Randolph Street
11th Floor
Chicago, IL. 60601

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, December 22, 2003, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached herewith and served upon you.

Respectfully submitted,

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

BY: Paula Becker Wheeler
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-1511

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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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 hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On November 19, 2002, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On December 22, 2003, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective June 26, 2002, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

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 currently scheduled in the instant case.

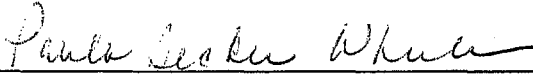
4. The Complainant requests the relief conferred by Section 31(c) (2) of the Act.

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), effective June 26, 2002.

Respectfully submitted,

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

By: _____


PAULA BECKER WHEELER
Assistant Attorney General

Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
(312) 814-1511

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 an Illinois corporation,)
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 Respondents.)

**STATE OF ILLINOIS
Pollution Control Board**

No. PCB 03-73
(Enforcement)

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 Respondents, RIVERDALE RECYCLING, INC., an Illinois corporation, and TRI-STATE DISPOSAL, INC., an Illinois corporation, do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). 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 Respondents, and each of them, and on any officer, director, agent, employee or servant of Respondents, as well as Respondents' successors and assigns. Respondents 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

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, RIVERDALE RECYCLING, INC. ("RRI"), is an Illinois corporation, duly authorized to transact business in Illinois.

4. Respondent, TRI-STATE DISPOSAL, INC. ("TSD"), is an Illinois corporation, duly authorized to transact business in Illinois.

B. Facility Description

At all times relevant to the Complaint, RRI owned property commonly known as 13901 South Ashland, Riverdale, Cook County, Illinois ("Site"). At the Site, Respondents jointly operate a waste transfer and recycling business on an 11.47 acre portion of

the Site, permitted by Illinois EPA for municipal waste transfer.

C. Noncompliance

1. Violations Alleged in the Complaint

The Complaint has alleged the following violations of the Act and Illinois Pollution Control Board ("Board") regulations against the Respondents:

COUNT I: OPEN DUMPING OF WASTE, violation of 415 ILCS 5/21(a) (2002);

COUNT II: WASTE STORAGE WITHOUT A PERMIT, violation of 415 ILCS 5/21(d) (2002);

2. Additional Alleged Violations

a. On October 30, 2002, the Illinois EPA conducted a Compliance Evaluation Inspection of the facility.

b. On December 16, 2002, the Illinois EPA issued letters to each Respondent informing them of the results of the inspection. The letters advised each Respondent that they were in apparent violation of the following environmental statutes and regulations:

i. Section 21(a) of the Act: open dumping of waste; and

ii. Section 21(d) of the Act: waste storage without a permit.

c. On March 28, 2003, the Illinois EPA conducted a Compliance Evaluation Inspection of the facility. The following violations were alleged to be continuing in the Inspector's

reports dated April 2, and April 3, 2003:

- i. Section 21(a) of the Act: open dumping of waste;
- ii. Section 21(d)(1) of the Act: operating a waste storage operation in violation of its Permit, by not conducting its load checking program in accordance with 35 Ill. Adm. 811.323, by not having the eastern and southern portions of the perimeter fence completed, and by using loading and unloading areas outside of the transfer building.
- iii. Section 21(d)(1) of the Act: conducting a waste storage operation outside the permitted area.

D. Response To Allegations

Respondents neither admit nor deny the alleged violations in the Complaint or as stated in SECTION IV.C.2. of this Stipulation.

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 of the Act is the threat of uncontrolled accumulation of waste at locations not permitted for the storage or disposal of waste.

2. *Social and Economic Benefit:*

The parties agree that operation of Respondents' business is of social and economic benefit, provided it operates in conformance with the requirements of the Act and pertinent Board waste disposal regulations.

3. *Suitability to the Area:*

Operation of Respondents' business at the Site is suitable to the area, provided that all refuse is handled and disposed in conformance with the Act and Illinois Pollution Control Board regulations.

4. *Technical Practicability:*

Proper handling of waste and refuse at the Site is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondents have received a permit under Permit Log No. 2003-55 for modifications to its facility, including the management of construction and demolition debris on the southeast portion of the site. outdoor storage and are now in full compliance.

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 violations that are the subject of the Complaint and that are stated in Section IV.C.2 of this Stipulation have existed for over three years and resulted in no known injury to the public.

2. *Diligence of Respondents:*

The Respondents have removed waste and refuse from outside of the Permitted Area, as described in the Complaint, and have applied for and received the permit for modifications to its facility, including the management of construction and demolition debris on the southeast portion of the site.

3. *Economic Benefit of Noncompliance:*

The Respondents may have received an economic benefit from the alleged noncompliance, however the exact value of the economic benefit is difficult to quantify at this time.

4. *Deterrence:*

A penalty of Nine Thousand Dollars (\$9,000.00) against the Respondents, jointly and severally, will deter future noncompliance by the Respondents and others.

5. *Compliance History:*

The Respondents have no previously adjudicated violations of the Act and Board Regulations.

VII.

TERMS OF SETTLEMENT

1. The Respondents neither admit nor deny the violations

as alleged in the Complaint.

2. Respondents are now in full compliance.

3. The Respondents shall pay, jointly and severally, a penalty of Nine Thousand Dollars (\$9,000.00) within 30 days of the date the Board issues an Order accepting this Stipulation.

4. All Payments shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund, 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

Copies of the certified checks or money orders, and all related correspondence, shall be sent by first class mail to:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

5. Respondents' FEIN numbers must be on the certified check or money order. For issues relating to the payment of the penalty, the Respondents may be reached at the following address:

For purposes of payment and collection, the Respondents' attorney may be reached at the following address:

Mr. Mark La Rose, Attorney
La Rose & Bosco
734 North Wells Street
Chicago, Illinois 60610

For purposes of payment and collection, Respondents may be reached at the following address:

13903 South Ashland Avenue
Riverdale Illinois 60872

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

7. 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.

8. 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.

9. 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 Respondents' Social Security numbers 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:

Paula Becker Wheeler
Assistant Attorney General (or other designee)
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

10. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

VIII.
CEASE AND DESIST

Respondents 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 and 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 Respondents' responsibility to comply with any federal, state or local regulations, including but not limited to the Act and Board regulations.

X.
RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondents' facility which is the subject of this

Consent Order, at all reasonable times for the purposes of carrying out inspections. 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.

XI.

RELEASE FROM LIABILITY

In consideration of Respondents' joint and several payment of Nine Thousand Dollars (\$9,000.00), and each Respondents' commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges the Respondents from any further liability or penalties for violations of the Act and regulations which were the subject matter of the Complaint and as alleged in SECTION IV.C.2 of this Stipulation, upon the payment of all monies owed. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undiscovered violations, or obtain penalties with respect thereto.

WHEREFORE, Complainant and Respondents 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: *Rose Marie Cazeau*

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 12/17/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: *Joseph E. Svobeda*

JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 12-11-03

FOR RESPONDENTS:

RIVERDALE RECYCLING, INC.

BY: _____

Title: _____

FEIN: _____

TRI-STATE DISPOSAL, INC

BY: _____

Title: _____

FEIN: _____

AGREED:

FOR THE COMPLAINANT:

LISA MADIGAN
Attorney General of
the State of Illinois

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

FOR RESPONDENTS:

RIVERDALE RECYCLING, INC.

BY: *Kristi Lane*

Title: *President*

FEIN: *36-3943487*

By: _____

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____

JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: _____

TRI-STATE DISPOSAL, INC

BY: *Michael Germany*

Title: *President*

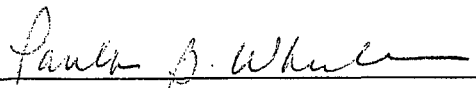
FEIN: *36-4057880*

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 22nd day of December, 2003, the foregoing Stipulation and Proposal for Settlement and Motion to Request Relief from Hearing Requirement and Notice of Filing, by U.S. Mail upon the following persons:

Mr. Mark LaRose
Attorney for Respondents
734 N. Wells
Chicago, IL. 60610

Mr. Bradley Halloran
Hearing Officer
100 West Randolph Street
11th Floor
Chicago, IL. 60601



PAULA BECKER WHEELER