

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUL 28 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 by LISA MADIGAN Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 vs.)
)
 ROYAL TRUCKING COMPANY, a)
 Mississippi Corporation)
)
 Respondent.)

PCB No. 04-67
(Enforcement - Water)

NOTICE OF FILING

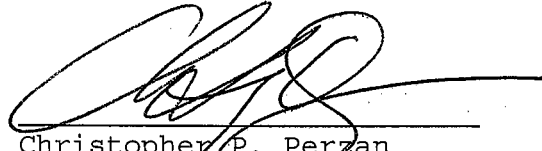
TO: Wayne Flippo
Royal Trucking Co.
P.O. Box 387
West Point, Mississippi 39773

PLEASE TAKE NOTICE that on July 28, 2004, we filed with the Illinois Pollution Control Board a STIPULATION AND PROPOSAL FOR SETTLEMENT and a MOTION FOR RELIEF FROM HEARING REQUIREMENT, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3532

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUL 28 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 ROYAL TRUCKING COMPANY, a)
 Mississippi corporation,)
)
 Respondent.)

PCB 04-67
(Enforcement-Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, ROYAL TRUCKING COMPANY ("Royal"), do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further state that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose 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 as evidence of a past adjudicated violation of the Act as alleged herein, pursuant to Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2002), in determining appropriate civil penalties for any future violations of the Act. This Stipulation may also be used

in any permitting action for the purposes of Sections 39(a) and (i) of the Act, 415 ILCS 5/39(a) and (i) (2002). This Stipulation and Proposal for Settlement 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. (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 Royal, and any officer, agent, employee or servant of Royal, as well as the Royal's successors and assigns. Royal 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 EPA is an administrative 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.

2. Respondent Royal, at all times relevant to the Complaint in this matter, was and is a Mississippi corporation in good standing.

3. Respondent Royal, at all times relevant to the Complaint in this matter, has owned and operated a trucking operation that does business nationally, including in the State of Illinois.

4. On or about December 30, 2002, Royal was hauling a load of sodium bisulfite on an entrance ramp leading to Interstate 94 in Chicago, Cook County, Illinois.

5. Royal's truck overturned on the ramp and sodium bisulfite was released. The sodium bisulfite flowed into areas within the Interstate 94 interchange and contaminated soils and pooled water.

6. PVS Chemical Solutions, the manufacturer from which the sodium bisulfite originated, hired a response contractor that performed removal, containerization and disposal of the spilled sodium bisulfite and contaminated soils, as well as aeration of impacted waters. Response actions took place from December 30, 2002 through January 8, 2003.

V.

VIOLATIONS

The Complaint alleges the following violations:

Count I: WATER POLLUTION; violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

Count II: CREATION OF A WATER POLLUTION HAZARD; violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

VI.

NATURE OF RESPONDENT'S OPERATIONS

Respondent owns and operates a trucking fleet that hauls commodities and other materials nationwide.

VII.

FUTURE PLANS OF COMPLIANCE

Royal shall comply with all requirements of the Act, 415 ILCS 5/1 *et seq.* (2002), and the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code Subtitles A through H. Royal will not, in the future, haul hazardous materials within the State of Illinois.

VIII.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

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 questions 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 state as follows:

1. Plaintiff contends that the impact to the public resulting from Royal's noncompliance was the spill and presence of sodium bisulfite in the environment and the resulting inconvenience to the public arising from the closing of a major interstate highway.

2. Royal's operations that are the subject of the Complaint have social and economic value.

3. The activity that is the subject of the Complaint, i.e., the hauling of chemicals, is suitable to the area in which it took place.

4. Compliance with the requirements of the Act and the Board Regulations is both technically practicable and economically reasonable.

5. Compliance was achieved by the removal of contaminated soils and liquids and the *in situ* treatment of impacted pooled waters through aeration.

IX.

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 subdivisions (a), (b) (1), (b) (3), or (b) (5) 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 respondent 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 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; and
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;
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.

In response to these factors, the parties state as follows:

1. Complainant contends that the violations that are the subject of the Complaint occurred over approximately ten (10) days. The gravity of the violation's environmental impact was moderate. However, the incident resulted in the closing of a major Interstate for several hours and necessitated remediation over a period of approximately ten (10) days.

2. Complainant contends that the Respondent did not exercise diligence in that it failed to operate the truck in a manner which would have prevented the spill.

3. Complainant and Respondent stipulate that the Respondent accrued no material economic benefit from noncompliance.

4. The parties stipulate that a civil penalty of \$5,000.00 will deter further violations and will aid in enhancing voluntary compliance by Royal and others similarly subject to the Act.

5. Complainant is not aware of any prior adjudicated violations by the Respondent.

6. Respondent did not meet the requirements of Section 42(h)(6) of the Act, 415 ILCS 5/42(h)(6)(2002).

7. Respondent is not performing a Supplemental Environmental Project pursuant to Section 42(h)(7) of the Act, 415 ILCS 5/42(h)(7)(2002).

X.

TERMS OF SETTLEMENT

1. The Respondent represents that it has entered into this Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

2. Royal shall pay a civil penalty of \$5,000.00 into the Environmental Protection Trust Fund within twenty-one (21) days after the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement. Payments shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

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

A copy of the check shall be sent to:

Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601

Royal shall write the case caption and number, and its Federal Employer Identification Number ("FEIN"), 640-702126 upon the certified check or money order.

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

Royal Trucking Company
c/o Mr. Wayne Flippo
P.O. 387
West Point, Mississippi 39773

4. Pursuant to Section 42(g) of the Act, 415 ILCS 4/42(g) (2002), interest shall accrue on any amount not paid within the time period prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

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

c. All interest on amounts owed the Complainant, shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI.2. herein.

5. If the Respondent is delinquent in any of the payments in paragraph 1, above, the entire unpaid amount shall accelerate and become due and owing in full immediately.

6. Complainant has agreed to the payment schedule in paragraph 1, above, upon the Respondent's providing information as to its financial ability to pay and Respondent's representation that payment of the penalty amount in one payment would constitute a financial hardship.

7. Royal 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 V of this Stipulation and Proposal for Settlement.

XII.

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 laws and regulations.

XIII.

RELEASE FROM LIABILITY

In consideration of the Respondent's payment of a \$5,000.00 civil penalty and its commitment to refrain from further violations of the Act and the Board Regulations, upon receipt by Complainant of the payment required by Section XI of this Stipulation, the Complainant

releases, waives and discharges Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties for violations which were the subject matter of the Complaint herein. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

[The remainder of this page is intentionally left blank.]

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
ex rel. LISA MADIGAN
Attorney General
State of Illinois

FOR THE RESPONDENT:

ROYAL TRUCKING COMPANY

By: Billy Nelson

Its: PRESIDENT

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

By: Rosemarie Cazeau

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 7/14/04

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: Joseph E. Svoboda

JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

Dated: 7-9-04

RECEIVED
CLERK'S OFFICE

JUL 28 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 by LISA MADIGAN Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 vs.)
)
 ROYAL TRUCKING COMPANY, a)
 Mississippi Corporation)
)
 Respondent.)

PCB No. 04-67
(Enforcement - Water)

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 this case pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), and Section 103.300 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 103.300. In support thereof, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

* * *

(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).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) 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 proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act [415 ILCS 5/31(c)(2)].

3. Simultaneously with this Motion, a Stipulation and Proposal for Settlement is being filed with the Board.

4. No hearing is currently scheduled in this case.

5. Complainant is, therefore, requesting relief from the hearing requirement.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

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

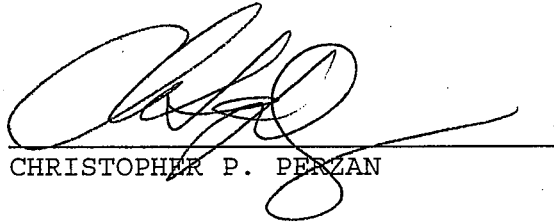
BY:



CHRISTOPHER P. PERZAN
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312)814-3532

CERTIFICATE OF SERVICE

I, CHRISTOPHER P. PERZAN, an Assistant Attorney General, certify that on the 25th day of July, 2004, I caused to be served by United States Mail, the foregoing STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



CHRISTOPHER P. PERZAN