

Electronic Filing - Received, Clerk's Office, October 2, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 2008-044
)
) (Enforcement - Water)
PRAIRIE MATERIAL SALES, INC.,)
an Illinois corporation,)
)
Respondent.)

NOTICE OF FILING


TO: Jane K. Murphy
Jones Day
77 West Wacker
Chicago, IL 60601

(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that on the 2nd day of October, 2008, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement, and Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

By: 
REBECCA A. BURLINGHAM
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Fl.
Chicago, Illinois 60602
(312) 814-3776

Date: October 2, 2008

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
) PCB 2008-044
 v.)
) (Enforcement - Water)
 PRAIRIE MATERIAL SALES, INC.,)
 an Illinois corporation,)
)
 Respondent.)

**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 February 13, 2008, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On October 2, 2008, 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 August 1, 1996, 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

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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).

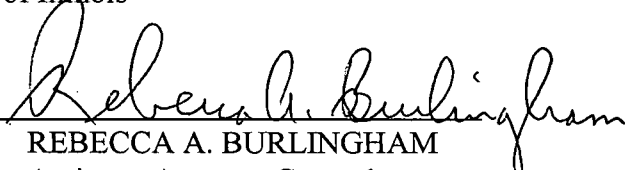
3. No hearing is currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

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 August 1, 1996.

Respectfully submitted,

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

By: _____


REBECCA A. BURLINGHAM
Assistant Attorney General

Environmental Bureau
69 W. Randolph St., 18th Fl.
Chicago, Illinois 60602
(312) 814-3776

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	PCB No. 2008-044
)	
v.)	(Enforcement – Water)
)	
PRAIRIE MATERIAL SALES, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), Respondent PRAIRIE MATERIAL SALES, INC., now known as Southfield Corporation, an Illinois corporation (“Southfield”), and VCNA Prairie Illinois Building Materials, LLC, a Delaware limited liability company (“VCNA”), 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.* (2006), and the Board’s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

By entering into this Stipulation, VCNA submits itself to the Board's jurisdiction.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On February 13, 2008, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against Southfield.

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 (2006).

3. At all times relevant to the Complaint, Southfield was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, until February 1, 2008, Southfield owned and operated a concrete production facility in its Yard 1014 located at 799 South Route 53 in the Village of Addison, DuPage County, Illinois. ("Facility" or "Site").

4. At the Facility, Southfield formerly engaged in the batching of aggregate and cementitious materials to produce ready-mix concrete.

5. On February 1, 2008, VCNA purchased certain assets of Southfield including, but not limited to, the Facility. VCNA currently engages in the batching of aggregate and cementitious materials to produce ready-mix concrete at the Facility.

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B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that Southfield has violated the following provisions of the Act and Board regulations:

- Count I: Water Pollution
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006)
- Count II Offensive Discharges
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), and Sections 304.105 and 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105 and 304.106
- Count III Water Pollution Hazard
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d)(2006)
- Count IV Discharge of Process Wastewaters Without An NPDES Permit
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a)

Additionally, Complainant contends that Southfield has violated the following provisions of the Act and the Board regulations, as observed during an April 25, 2008 inspection of the Facility by the Illinois EPA:

- Violation I: Failure to Comply With the Terms of NPDES Permit ILR005566
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a)
- Violation II: Failure to Employ Site Stabilization Practices as Required by NPDES Permit ILR10H169
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a)

C. Non-Admission of Violations

Southfield neither admits nor denies the violations alleged in the Complaint filed in this matter or observed by the Illinois EPA during its April 25, 2008 inspection of the Facility and referenced within Section I.B, above.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA Southfield and VCNA, and any officer, director, agent, employee or member of Southfield or VCNA, as well as any successors or assigns of Southfield or VCNA. Southfield or VCNA 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, members, or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 this Stipulation state the following:

1. The environment was threatened and the Illinois EPA's information gathering responsibilities hindered by Southfield's violations.
2. There is social and economic benefit to the Facility.
3. The operation of the Facility was suitable for the area in which it occurred.
4. Preventing water pollution at the Site, and obtaining coverage under the general stormwater permit and compliance with its terms, are both technically practicable and economically reasonable.
5. Southfield and VCNA have subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in

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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.

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

1. On November 17, 2006, the Illinois EPA confirmed the presence of sediments in the drainage ditch outside the Facility. In November 2006, there was sedimentation in the ditch for approximately ½ mile downstream of Southfield's discharge outfall, and total suspended solids concentrations were above regulatory effluent concentration limits. From the beginning of construction of a process wastewater recycling system until February 13, 2007, the Facility was not under the coverage of the General Storm Water NPDES Permit for Construction Activities ("the NPDES General Permit").

2. Upon notification of the need for coverage under the NPDES General Permit for its construction site activities, Southfield ceased further construction and applied to the Illinois EPA for coverage under that permit. Southfield resumed construction after it received notice from the Illinois EPA of coverage under the NPDES General Permit. Once the Illinois EPA

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notified Southfield that the solids in the drainage ditch were from the Facility, Southfield hired a cleanup contractor to remove sediments from the ditch.

3. The penalty obtained exceeds any economic benefit realized by Southfield as a result of its delay in obtaining coverage under the NPDES General Permit and constructing the process wastewater recycling system.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Fifty-Five Thousand Dollars (\$55,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. In 1993, the State and Southfield settled an air pollution enforcement case concerning a Southfield facility in Kane County for \$2,250.00. In 1998, the State and Dixon-Marquette Cement, Inc., a division of Southfield, settled a water pollution enforcement case for \$40,000.00 involving a quarry and cement kiln operation then owned by Southfield in Lee County.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Southfield and VCNA shall jointly and severally pay a civil penalty of Fifty-Five Thousand Dollars (\$55,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

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B. Interest and Default

1. If Southfield or VCNA fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Southfield and VCNA shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest at the rate specified in Section 42(g) of the Act, 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, interest shall accrue on any penalty amount owed by Southfield and VCNA 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

Southfield and VCNA shall jointly and severally pay the amount of Fifty-Five Thousand Dollars (\$55,000.00) to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payment shall be made by certified check or money order and 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 name, case number and either Southfield's or VCNA's federal tax identification number as

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applicable 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:

Rebecca A. Burlingham
Supervising Attorney
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602

D. Future Compliance

1. Pursuant to the terms of NPDES Permit No. ILR005566 (the "NPDES Permit"), VCNA shall keep the stormwater pollution plan ("SWPPP") for the Facility updated to reflect the current status of the Site.

2. Pursuant to the terms of the NPDES Permit, VCNA shall ensure that its employees at the Site are adequately trained as to the requirements of the NPDES Permit and the SWPPP.

3. Pursuant to the terms of the NPDES Permit, VCNA shall file annual inspection reports for the Facility with the Illinois EPA as required by the NPDES Permit.

4. Pursuant to the terms of NPDES Permit No. ILR10H169 (the "Construction Site Stormwater Permit"), VCNA shall implement stabilization measures as soon as practicable in areas of the Site where construction activity has temporarily or permanently ceased as required by the Construction Site Stormwater Permit.

5. In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Facility which is the subject of this Stipulation, at all reasonable

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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, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

6. This Stipulation in no way affects the responsibilities of Southfield or VCNA to comply with any other applicable federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

7. VCNA 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 Southfield's and VCNA's payment of a \$55,000.00 penalty, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Southfield and VCNA and their respective officers, directors, agents, employees and members from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein or that were observed by the Illinois EPA during its April 25, 2008 inspection of the Facility and that are described in Section I.B, above. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Southfield and VCNA 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 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Southfield or VCNA.

F. Enforcement and Modification 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 each party to this 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.

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WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

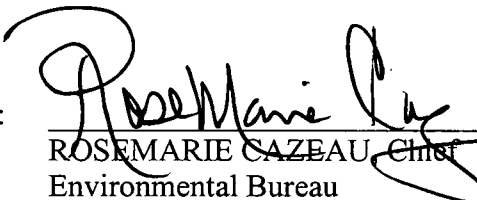
PEOPLE OF THE STATE OF ILLINOIS

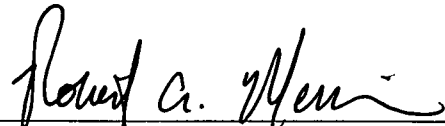
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

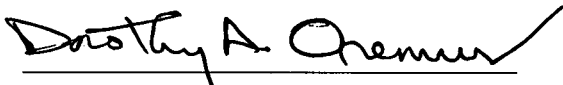
BY: 
ROBERT A. MESSINA
Chief Legal Counsel

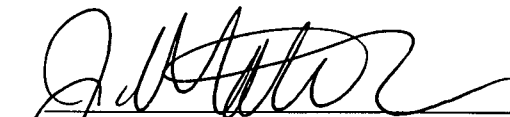
DATE: 9/15/08

DATE: 9/11/08

PRAIRIE MATERIAL SALES, INC.,
now known as SOUTHFIELD
CORPORATION, an Illinois corporation,

VCNA PRAIRIE ILLINOIS BUILDING
MATERIALS, LLC, a Delaware limited
liability company

BY: 
Name: Dorothy A. Oremus
Title: General Counsel

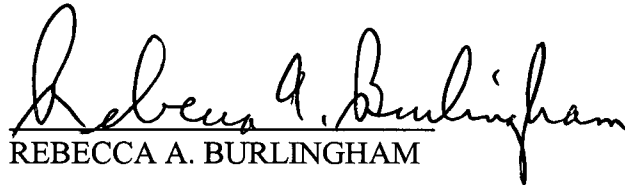
BY: 
Name: JOLANTA MALICKI
Title: GENERAL COUNSEL

DATE: 9/29/08

DATE: 9/24/08

CERTIFICATE OF SERVICE

I, REBECCA A. BURLINGHAM, an Assistant Attorney General in this case, do certify that I caused to be served this 2nd day of October, 2008, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the person listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


REBECCA A. BURLINGHAM