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MAR 19 2009
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 17, 2009

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Carri Scharf Materials Company***
PCB No. 08-62

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Andrew J. Nicholas".

Andrew J. Nicholas
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

AJN/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CARRI SCHARF MATERIALS COMPANY,)
d/b/a FARMDALE SAND & GRAVEL PIT,)
an Illinois corporation,)
)
Respondents.)

PCB No. 08-62
(Enforcement - Water)

NOTICE OF FILING

To: Clayton Moushon
Attorney at Law
1009 Illini Drive
East Peoria, IL 61611

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STATE OF ILLINOIS
Pollution Control Board

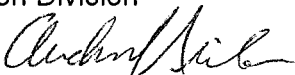
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
ANDREW J. NICHOLAS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 17, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on March 17, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

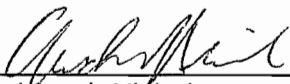
To: Clayton Moushon
Attorney at Law
1009 Illini Drive
East Peoria, IL 61611

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therrault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



Andrew J. Nicholas
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CARRI SCHARF MATERIALS COMPANY,)
d/b/a FARMDALE SAND & GRAVEL PIT,)
an Illinois corporation,)
)
Respondents.)

PCB No. 08-62
(Enforcement)

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STATE OF ILLINOIS
Pollution Control Board

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006). In support of this motion, Complainant states as follows:

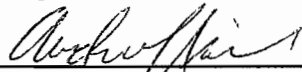
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
ANDREW J. NICHOLAS
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 17, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
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 v.)
)
 CARRI SCHARF MATERIALS COMPANY,)
 d/b/a FARMDALE SAND & GRAVEL PIT)
 an Illinois corporation,)
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 Respondent.)

PCB NO. 08-62
Enforcement - Water

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MAR 19 2009

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, the Illinois Environmental Protection Agency ("Illinois EPA"), and CARRI SCHARF MATERIALS COMPANY ("Respondent"), 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.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On April 7, 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 the Respondent.

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, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a sand and gravel facility located in East Peoria, Tazewell County, Illinois ("site").

4. On June 16, 2006, the Illinois EPA inspected the site and observed that the settling pond and filtration pit on-site was discharging waste water to an unnamed stream that is a tributary to Farm Creek. The settling pond was discharging through one of three breached areas in the berm that separates the pond from the streambed. The Illinois EPA further noted that the filtration pit was discharging waste water down the site entrance road to the receiving stream. The water discharging from the pit was turbid and the streambed at that location was covered in sand and gravel. Although the breach of the berm was caused by an unusually heavy rainfall, the Respondent remains liable under the Act.

5. During the June 16, 2006 inspection, it was also noted that dredged material from the pond was being dumped at the outlet of the pond, along the edge of the stream. Leachate from the material was draining into the receiving stream.

6. On June 16, 2006, the Respondent was operating under Operating Permit #2006-MO-2133. Special Condition of Operating Permit #2006-MO-2133 does not allow discharge of storm water or waste water unless an NPDES Permit is obtained.

7. On June 16, 2006, the Respondent did not have an NPDES Permit.

B. Allegations of Non-Compliance

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

Count I: By causing or allowing or threatening the discharge of contaminants into the waters of the state, the Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006). By depositing contaminants upon the land in such place and manner so as to create a water pollution hazard, the Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

Count II: By causing or allowing the discharge of waste water and storm water without an NPDES Permit, the Respondent violated its Operating Permit and violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006) and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) (2005).

Count III: By causing or allowing the discharge of waste water into the receiving stream without an NPDES Permit, the Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006) and Sections 309.102(a) and 404.101(a)(1) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), 404.101(a)(1) (2005).

C. Admission of Violations

The Respondent 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 the violations within the Complaint and referenced within Section 1.B. herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

The Respondent is utilizing the following best management practices to eliminate discharges and reach compliance:

1. Modified the berm on the settling pond to prevent future discharges;
2. Added rip rap to the berm to minimize erosion and to maintain the integrity of the berm;
3. Inspects the berm and modifies as necessary to direct runoff to existing settling pond;
4. Performed site grading to direct water to ponds and away from the on site stream;
5. Relocated settling pond dredged material stockpiles farther away from the onsite stream;
6. Installed rip rap in the outlet of the sediment pond;
7. Installed ditch checks in its road ditch;
8. Place topsoil and seed on all disturbed areas of facility; and
9. Installed silt fencing at the perimeter of areas to be final graded.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent 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 the Respondent 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 42 (2006).

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 waters of the State were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the Respondent's facility.

3. Operation of the facility was suitable for the area in which it occurred.
4. Obtaining a permit prior to discharge of contaminants at the site and compliance with its terms is both technically practicable and economically reasonable.
5. Respondent has 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 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. Violations were observed at the site during an inspection on June 16, 2006 and the violations continued until at least June 18, 2007. The Respondent retained an outside third party engineer to address the erosion control problems identified by the Illinois Environmental Protection Agency. The engineer subsequently implemented an erosion control plan. The facilities, as engineered also failed to adequately control and operate in accordance with the terms and conditions of the facilities operating permit causing discharge to the waters of the state.
2. The Respondent has demonstrated due diligence in attempting to correct the violations.
3. There is no economic benefit of noncompliance in this matter.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of \$7,000.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's and the Illinois EPA's knowledge, Respondent has no previously adjudicated violations of the Act.
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. The Respondent shall pay a civil penalty in the sum of Seven Thousand Dollars (\$7,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent 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, interest shall accrue on any penalty amount owed by the Respondent 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 name, case number and the Respondent's federal tax identification 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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. In addition to any other authorities, 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 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, her 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 \$7,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent 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 7, 2008. 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 3.315 of the Act, 415 ILCS 5/3.315 (2006), or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

1. 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.

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,

LISA MADIGAN
Attorney General
State of Illinois

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

CARRI SCHARF MATERIALS
COMPANY

BY: Carri Scharf

Name: Carri Scharf

Title: President

DATE: 1-28-09

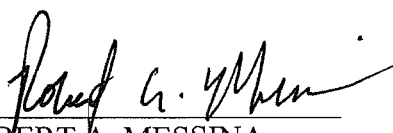
BY: [Signature]

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 3/13/09

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 3/11/09

