

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 11-68
)	(Enforcement)
TRADITION INVESTMENTS, LLC,)	
an Illinois limited liability corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on November 7, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, 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: 
Jane E. McBride
Sr. Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 7, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on November 7, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.


Jane E. McBride
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Donald Q. Manning
McGreevy Williams, P.C.
6735 Vistagreen Way
P.O. Box 2903
Rockford, IL 61132-2903

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street
Chicago, IL 60601

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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) (2010), 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) (2010). In support of this motion, Complainant states as follows:


1. A Complaint was filed on April 20, 2011 with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
Jane E. McBride
Environmental Bureau
Sr. Assistant Attorney General

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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 Tradition Investments, LLC ("Tradition" or "Respondent") (collectively "Parties to the Stipulation"), 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 5/1et seq., 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 20, 2011, 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 against Tradition.

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.

3. At all times relevant to the Complaint, Tradition was and remains a limited liability company organized and existing under the laws of the state of Illinois and in good standing with the Illinois Secretary of State's Office.

4. The Complainant alleges as follows in its Complaint:

A. On October 1, 2010, the Illinois EPA investigated a complaint that a tributary to South Fork of Apple River that exists on the south side of East Canyon Road exhibited a pink/purple coloration. The Illinois EPA inspector observed that the entire west branch of the tributary had the pink/purple coloration to the point where a field tile discharged into the tributary. The tile discharge was located approximately 75 feet from the tip of a wooded ditch area leading to the northwest. The location of the tile discharge and ditch is part of the Tradition South facility owned by Tradition;

B. At the time of the October 1, 2010 inspection, the Illinois EPA contacted Respondent Tradition's contract land applicator Justin Peterson who informed the Illinois EPA that he had land applied approximately 320,000 gallons from the contents of the silage leachate holding cell on a five acre land application site within the Tradition South facility boundary for Tradition on the previous day. The Illinois EPA inspector observed that at the time of the application, soil conditions were dry. The dry, cracked condition of the soil allowed for rapid movement of the liquid waste through the soil;

C. On February 1, 2011, Tradition submitted an investigation report to the Complainant concerning its evaluation of the discharge. In the report Tradition

indicates that based on its investigation, review of the contractor's land application log and interviews it had conducted with the contractor, 172,500 gallons of silage leachate were applied on the land application site on September 30, 2010 over a period of 10.75 hours and 112,500 gallons of silage leachate were applied on October 1, 2010 over a 5 hour period. In its report, Tradition indicated the subject land application site is "about 9 acres more or less";

- D. At the time of the October 1, 2010 inspection, upon reaching the area where Tradition had land applied liquid from the silage leachate holding cell, the Illinois EPA inspector observed pink/purple wastewater pooled in tire tracks on the application field. An Illinois EPA inspector collected a sample of the pooled pink/purple wastewater;
- E. On October 4, 2010, the Illinois EPA conducted a follow-up inspection at the Tradition South facility. The contents of the silage leachate holding cell, the same cell from which Tradition removed liquid for land application that resulted in the October 1, 2010 discharge, was pink/purple in color;
- F. At the time of the October 4, 2010 inspection, the Illinois EPA inspector observed that pink/purple liquid remained in tire tracks on the land application field that was the source of the October 1, 2010 discharge; and
- G. On October 6, 2010, the Illinois EPA conducted a follow-up inspection. At the time of the October 6, 2010 inspection, Tradition's personnel excavated a three foot wide trench on the downstream side of the application field and located a single five to six inch clay tile line extending into the leachate application area. The trench extended 400 - 500 feet north and south along the east side of the application field. At the time of the October 6, 2010 inspection, some purple

colored water was seeping into the trench. The excavation procedure produced blocks of compacted soil that was apparently caused by multiple 2010 leachate applications.

5. Tradition's contentions are that any discharge did not result in any harm to the environment or to any person or property, that any conditions giving rise to the alleged discharge arose from construction activities, and further, that any conditions which might or could have resulted in the alleged discharge have been and are stabilized and remedied.

B. Allegations of Non-Compliance

Complainant contends that Tradition has violated the following provisions of the Act and Board regulations:

Count I Water Pollution

1. By causing and allowing the discharge of silage leachate, a contaminant, from a land application field into waters of the State so as to create or likely create a nuisance, Tradition has caused or tended to cause water pollution in Illinois in violation of Section 12(a) of the Act, 415 ILCS 5/12(a).

2. By causing or allowing the discharge of silage leachate with an obvious unnatural color and BOD₅ and TSS levels that exceed the State's effluent limits from a land application field into a tributary of the South Fork of the Apple River, Tradition has violated Sections 12(a) of the Act, 415 ILCS 5/12(a).

Count II Water Pollution Hazard

3. By causing or allowing silage leachate to remain pooled on the land consisting of a very obvious unnatural color and with BOD₅ and TSS levels that exceeded the State's effluent limits on October 1, October 4, and October 6, 2010, in a manner that allowed it to continually discharge from the land application field and thus exist as a water pollution hazard on the land,

Tradition has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

Count III NPDES Violation

4. By causing or allowing the discharge of silage leachate from a land application field without NPDES permit coverage, Tradition has violated Section 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

Count IV Offensive Conditions

5. By applying silage leachate wastewater in such a manner to land that contained a field tile so as to allow a discharge and cause unnaturally pink/purple coloration in waters in a tributary of the South Fork of the Apple River, Tradition has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

Count V Offensive Discharge

6. By causing or allowing a point source discharge exhibiting a very obvious pink/purple color that resulted in the entire receiving body of water exhibiting the same color, Tradition has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106.

C. Non-Admission of Violations

Tradition denies the allegations of the Complaint, however, it 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, Tradition does not affirmatively admit the allegations of the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

Immediately upon notice of the alleged discharge, Tradition engaged third party contractors and consultants to identify possible sources of the discharge and to mitigate the same. Tradition contends it has resolved the temporary construction site practices which allegedly resulted in the alleged discharge. In addition, Tradition has removed old field tile and does not land apply on the acreage where the discharge allegedly occurred.

On February 1, 2011, Respondent submitted an investigation report and management plan that addressed the subject release of silage leachate from a land application field. Silage has been removed from the site.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation and any officer, member, director, manager, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. Tradition 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 Tradition 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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c), 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 Complainant alleges but Tradition denies that the environment was threatened. The parties agree that the Illinois EPA's information gathering responsibilities were not hindered by Tradition's violations.

2. There is social and economic benefit to the facility.

3. The Complainant contends that the land application of 285,000 gallons of silage leachate on less than 9 acres that contained a field tile was not suitable for the area in which is occurred.

Tradition contends that activities at the site are suitable for the area in which it occurred.

4. Performing compliance measures at the site and maintaining compliance is both technically practicable and economically reasonable.

5. Tradition 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. The violations were first noted on October 1, 2010. Tradition immediately addressed and resolved the alleged violations over the next several days. Complainant acknowledges and agrees that compliance has been achieved at the site.
2. Tradition has been diligent in attempting to comply and in complying with the requirements of the Act.
3. Complainant contends that the release resulted in nominal economic benefit and that Tradition would have prevented the release if it would have conducted a more thorough investigation of the location of field tile fragments at its land application site.

Tradition contends it has not received any economic benefit due to delays in complying with the Act.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of One Thousand Dollars (\$1,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Tradition 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. Tradition shall pay a civil penalty in the sum of One Thousand Dollars (\$1,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. NPDES Permit

1. Respondent agrees to abandon the contemplated dairy operation which forms the subject matter of Complainant's allegations.

2. Respondent's commitment to land apply all liquid remaining in the site's concrete basin and adjoining earthen basin and the digester excavation on agricultural land in compliance with applicable environmental laws and regulations and abandon the dairy operation that is the subject of Complainant's allegations renders Complainant's prayer for relief seeking future CAFO NPDES coverage for the subject site moot.

C. Stipulated Penalties, Interest and Default

1. If Tradition fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Tradition 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 Tradition 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.

D. 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 Tradition's federal tax identification numbers 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

E. Future Compliance

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

2. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

F. Release from Liability

In consideration of Tradition's payment of the \$1,000.00 penalty, its commitment to cease and desist as contained herein, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Tradition and its members, managers, officers, agents and employees 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 20, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Tradition 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 Tradition.

Upon the Board's approval of this Stipulation, Tradition, its officers and directors, its successors, assigns and affiliates, agree to release, and hereby releases and forever discharges the Complainant, the State of Illinois, the Illinois Environmental Protection Agency, the Illinois Department of Agriculture, the Illinois Department of Natural Resources, the Illinois Department of Transportation, the Illinois Attorney General's Office, their officers, agents, and employees, their successors, heirs and assigns (hereinafter "Releasees") from all actions, claims, demands, setoffs, suits, causes of action, controversies, disputes, equitable relief, compensatory and punitive damages, costs and expenses which arose or could have arisen from the ownership or operation of the Tradition South facility, which Tradition owns, has or may have against the Releasees, whether known or unknown, from the beginning of time, including but not limited to those at law, in tort (including actions under 42 U.S.C. Section 1983) or in equity.

G. 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.

H. Execution of Stipulation

The undersigned representatives for the Parties 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,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

BY:



JOHN J. KIM
Interim Director

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

DATE:

11/5/12

BY:



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

11/07/12

TRADITION INVESTMENT, LLC

BY:



Name: AJ Bos

Title: MEMBER

DATE:

10.17.12