

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

**PCB No. 12-92
(Enforcement)**

S. A. LEWIS CONSTRUCTION, INC.,)
an Illinois corporation,)

Respondent.)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

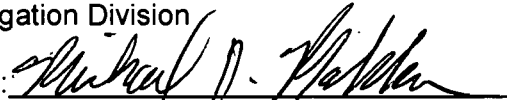
PLEASE TAKE NOTICE that on May 23, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT 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: 

MICHAEL D. MANKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 23, 2013

CERTIFICATE OF SERVICE

I hereby certify that I did on May 23, 2013, 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.



Michael D. Mankowski
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Edward F. Flynn
Featherstun, Gaumer, Postlewait,
Stocks, Flynn & Hubbard
225 North Water Street
Suite 200
Decatur, IL 62523

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 12-92
)	(Enforcement)
)	
S. A. LEWIS CONSTRUCTION, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

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. On December 1, 2011, a Complaint was filed 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:


MICHAEL D. MANKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 23, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<u>ex rel.</u> LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 12-92
)	(Enforcement)
S. A. LEWIS CONSTRUCTION, 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"), and S. A. LEWIS CONSTRUCTION, INC., an Illinois corporation ("Respondent"), the Parties to the Stipulation and Proposal for Settlement ("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 5/1 et seq. (2010), 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

1. On December 1, 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 and upon

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), 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 (2010).

3. At all times relevant to this Stipulation, Respondent was and is an Illinois corporation authorized to transact business in the State of Illinois.

B. Site Description

1. S. A. Lewis Construction, Inc., is the owner/developer of Summerfield Estates First Addition, a subdivision development located near the intersection of Long Creek Road and Camp Warren Lane, Long Creek, Macon County, Illinois.

2. S. A. Lewis Construction, Inc., is also the owner/developer of Carrington Estates, a subdivision located in Mt. Zion, Macon County, Illinois.

3. The two subdivisions are collectively referred to as the "Sites."

C. Complainant's Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations. The violations listed herein include violations alleged in Complainant's Complaint as well as additional violations which occurred after the filing of the Complaint.

Count I: Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);

Count II: Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Act, 415 ILCS 5/12(f) (2010);

Count III: Section 12(f) of the Act, 415 ILCS 5/12(f) (2010);

This Stipulation also resolves the violations listed in Illinois EPA Violation Notice W-2011-50411.

D. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

E. Compliance Activities to Date

The Respondent has installed additional storm water controls at the Sites and is in the process of updating its Storm Water Pollution Prevention Plans ("SWPPP") to reflect new storm water control measures at the Sites.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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 the Stipulation state the following:

1. Human health and the environment may have been threatened by the uncontrolled, sediment-laden storm water released from the Site and the Illinois EPA's permitting responsibilities were hindered by the Respondent's violations.
2. There is social and economic benefit to the Respondent's development activities.
3. Respondent's housing development was suitable for the area as long as Respondent's activities were properly permitted and adequate storm water controls were implemented prior to and during construction activities.
4. Waiting until Respondent's NDPES permit went into effect, was technically practicable and economically reasonable. It was also technically practicable and economically reasonable to install adequate erosion controls at the Site.

5. The Respondent has installed adequate storm water controls at the Site and updated the Site's Storm Water Pollution Prevention Plan ("SWPPP") to reflect the new storm water control measures.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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.
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

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

1. The Respondent at its site commenced construction on prior to the date its NPDES permit went into effect. Sediment laden discharges were observed at this site on two different occasions. Sediment was carried from the site by uncontrolled storm water. Sediment was discharged beyond the boundaries of the Respondent's site.
2. The Respondent did not initially notify the State of the alleged storm water violations. Following an Illinois EPA inspection, the Respondent was responsive in submitting Incidence of Noncompliance ("IONS") reports and a revised Notice of Intent ("NOI") following issuance of the Illinois EPA Violation Notice ("VN"). However, subsequent circumstances indicate that Respondent was not diligent in monitoring and maintaining the site.
3. Economic benefit is not an issue in this matter.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Five Hundred Dollars (\$10,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. The Respondent has no previously adjudicated violations.
6. There was no self-disclosure of the violations involved in this matter.
7. The settlement of this matter does not include a supplemental environmental project.
8. There was no Compliance Commitment Agreement for the violations alleged in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Ten Thousand Five Hundred Dollars (\$10,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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:

Michael D. Mankowski
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

C. Future Compliance

1. The Respondent shall update the SWPPPs for all of its ongoing construction sites to ensure that they reflect current site conditions and installed storm water control measures.

2. The Respondent will comply with all applicable permitting, recordkeeping, reporting and documentation requirements found in the Act, related regulations and Respondent's NPDES permit.

3. 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.

4. 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.

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

D. Release from Liability

In consideration of the Respondent's payment of the \$ 10,500.00 penalty, its commitment to cease and desist as contained in Section V.C. above, 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 and Illinois EPA VN W-2011-50411 listed herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on December 1, 2011, and Illinois EPA VN W-2011-50411. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

E. 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.

F. Execution of Stipulation

The undersigned representatives for the Parties to the 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 the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

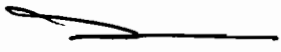
LISA MADIGAN
Attorney General
State of Illinois

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

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA BONNET, Director
Illinois Environmental Protection Agency

BY:



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

5/23/13

BY:



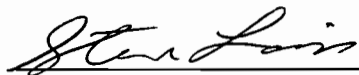
JOHN J. KIM
Chief Legal Counsel

DATE:

5/22/13

S. A. LEWIS CONSTRUCTION, INC.

BY:



DATE:

Name: Steve Lewis

Title: President