

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

vs.)

PCB No. 2010-20
(Enforcement - Water)

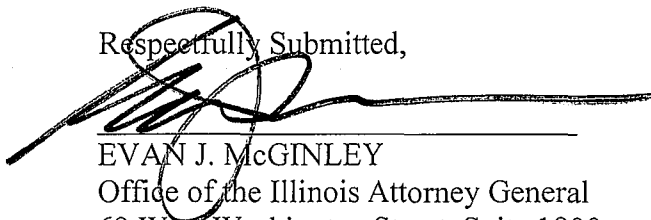
MONTALBANO BUILDERS, INC.,)
an Illinois corporation, CORTLAND-I-88, LLC,)
an Illinois limited liability company,)
MBX XIV, LLC, a revoked Delaware limited)
liability company, and RB RESOLUTION)
PROPERTIES, LLC, an Illinois limited liability)
company,)

Respondents.)

NOTICE OF FILING

PLEASE TAKE NOTICE that today, August 19, 2015, I filed with the Office of the Clerk of the Illinois Pollution Control Board, Complainant's, People of the State of Illinois, Motion for Leave to Waive Hearing Requirement, as well as the Stipulation and Proposal for Settlement With Cortland-I-88, copies of which is attached hereto and hereby served on you.

Respectfully Submitted,



EVAN J. MCGINLEY
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312.814.3153
emcginley@atg.state.il.us

THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, EVAN J. MCGINLEY, do hereby certify that, on August 19, 2015, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached motion and notice of filing.

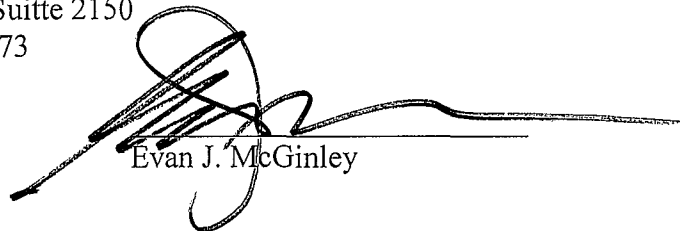
John Therriault
Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Gina Krol
105 W. Madison Street
Suite 1100
Chicago, Illinois 60602

Tina Solis
Jamie Robinson
Nixon Peabody
Three First National Plaza
70 West Madison, Suite 3500
Chicago, Illinois 60602

Norman Berger
Varga Berger Ledsky Hayes & Casey
125 South Wacker Drive, Suite 2150
Chicago, Illinois 60606-4473



Evan J. McGinley

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MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a Stipulation and Proposal for Settlement executed between Complainant and Respondent Cortland-I-88, LLC.

2. Section 31 of the Act, 415 ILCS 5/31 (2014), provides, in pertinent part, as follows:

* * *

(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).

* * *

3. No hearing is now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2014).

Respectfully submitted,

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

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

BY: 

EVAN J. MCGINLEY
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312.814.3153
emcginley@atg.state.il.us

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STIPULATION AND PROPOSAL FOR SETTLEMENT WITH CORTLAND I-88

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois (“Complainant”), the Illinois Environmental Protection Agency (“Illinois EPA”), and Respondent, CORTLAND I-88, LLC, an Illinois limited liability company (“Respondent” or “Cortland”), 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.* (2014), and the Board Regulations, alleged in the Second Amended 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. This Stipulation resolves the State of Illinois' case against Respondent Cortland I-88, only, and does not resolve the State of Illinois' case against any of the other Respondents in this action.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

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 (2014).

2. On October 15, 2009, 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 (2014), against the Respondent concerning activities at the Site.

3. On June 6, 2013, the Board accepted Complainant's Second Amended Complaint for filing, in which the Attorney General, on her own motion, named Respondent Cortland as a party to that action.

4. At all times relevant to the Second Amended Complaint, Respondent Cortland was and has been an Illinois limited liability company in good standing and which has been authorized by the Illinois Secretary of State to transact business in the State of Illinois.

5. At times relevant to the Complaint, Respondent Cortland has owned certain real property within the Chestnut Grove subdivision, which is located near the south side of Route 38 East near the intersection of Route 38 and Hahn Drive, in the town of Cortland, DeKalb County, Illinois, specifically parcels 0933100007, 0928351013, 0928351006, 0928351011, and 0928351003. ("Site").

B. Allegations of Non-Compliance at the Site

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

Count I: Cause, Threaten or Allow Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), and 35 Ill. Adm. Code 302.203.

C. Non-Admission of Violations

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

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and Respondent Cortland, 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.

Respondent Cortland shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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. Sediment run-off from the Site poses a potential threat of water pollution to waters of the State.
2. The social and economic benefit of Respondent Cortland's efforts to develop the Site are not an issue.
3. Efforts to ultimately develop some portions of the Site as commercial property are suitable activities to be conducted at the Site.
4. Complying with the requirements of the Act is both technically practicable, as well as economically reasonable.

5. Respondent has sought to implement better site stabilization and erosion controls at the Site, including maintaining all storm water inlets above grade, maintaining the ground surface level below the curbs at the Site, removing all existing silt fencing from the Site, and fertilizing and spot seeding all barren areas within the Site.

IV. TERMS OF SETTLEMENT

A. Stipulated Penalties, Interest and Default

1. If Respondent Cortland fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$250.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. If Respondent Cortland 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.

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 (AEPTF@). 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 and case 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:

Evan J. McGinley
Assistant Attorney General
Illinois Attorney General's Office
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

C. Future Compliance

1. Immediately upon entry of this Stipulation and continuing thereafter, Respondent Cortland shall:

- a. Periodically remove all woody plants and mow the Site; and,
- b. Fertilize and spot seed all barren areas within the Site, as needed.

2. Respondent Cortland shall continue to ensure compliance with the requirements of Paragraphs IV.C.1.a-b until such time as the vegetative cover at the Site has taken root.

3. Within thirty (30) days after Respondent Cortland believes that vegetative cover has been established at the Site, Respondent shall submit to Complainant a certification by a

responsible corporate official, under penalty of perjury, specifying that it has satisfied the requirements of Paragraph IV.C.2 of this Stipulation ("Certification").

4. 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 Site 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.

5. 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.

6. The Respondent shall cease and desist from future violations of the Act that were the subject matter of the Second Amended Complaint.

D. Release from Liability

In consideration of Respondent Cortland I-88's commitment to cease and desist from any further violations of the Act, as set forth in Paragraph IV.C.6, above, its completion of the compliance measures described in Section IV.C.1-3, above, and the payment of any specified costs and accrued interest, 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 Second Amended Complaint filed on June 6, 2013. 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 (2014), or entity other than the Respondent.

E. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Evan J. McGinley
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

Charles Gunnarson
Acting Deputy Chief Legal Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Tina Solis
Jamie Robinson
Ungaretti & Harris, LLP
3500 Three First National Plaza
Chicago, Illinois

Cortland I88 LLC
Attention: Wayne Moretti
1731 N. Marcey Street, Suite 200
Chicago, Illinois 60614

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.

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

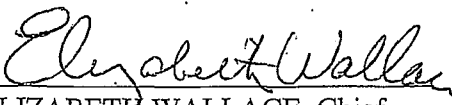
PEOPLE OF THE STATE OF ILLINOIS


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

LISA BONNETT, Director
Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 7/27/15

DATE: 7/20/15

CORTLAND I-88, LLC

BY: _____

Print Name: _____

Title: _____

DATE: _____

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

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

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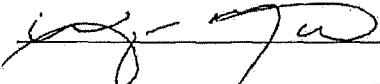
BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

CORTLAND I-88, LLC

BY:  _____

Print Name: Wayne Moretti

Title: _____

DATE: _____