

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 WESTERN WATERPROOFING COMPANY,)
 d/b/a WESTERN SPECIALTY CONTRACTORS,)
 a Missouri Corporation; and)
 SPRINGFIELD BRANCH, LLC,)
 a Missouri Corporation.)
)
 Respondents.)

PCB No. 21-46

NOTICE OF FILING

TO: See attached service list

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Notice of Filing, Stipulation and Proposal for Settlement, Motion for Relief from Filing Requirements and Certificate of Service, copies of which are attached and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
 KWAME RAOUL, ATTORNEY
 GENERAL

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

BY: s/Emma Hudspath
 Emma Hudspath
 Assistant Attorney General
 500 South Second Street
 Springfield, Illinois 62701
 (217)557-4635
 emma.hudspath@ilag.gov

Dated: October 1, 2021

Service List

For the Respondents

Western Waterproofing Company
d/b/a Western Specialty Contractors
National Registered Agents, Inc.
208 So LaSalle Street, Suite 814
Chicago, IL 60604

Springfield Branch, LLC
National Registered Agents, Inc.
208 So LaSalle Street, Suite 814
Chicago, IL 60604

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 Respondents.)

PCB No. 21-46

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Respondents WESTERN WATERPROOFING d/b/a WESTERN SPECIALTY CONTRACTORS, a Missouri corporation (“Western Waterproofing”), and SPRINGFIELD BRANCH, LLC, a Missouri corporation (“Springfield Branch”), (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 5/1 *et seq.* (2020), and the Board’s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. A Complaint was filed on December 28, 2020, on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2020), against the Respondents.

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 (2020).

3. At all times relevant to the Complaint, Western Waterproofing was and is a Missouri corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Springfield Branch was and is a Missouri limited liability company that is authorized to transact business in the State of Illinois.

5. At all times relevant to the Complaint, Western Waterproofing conducted business at a facility located at 2501 Colt Road, Springfield, Sangamon County, Illinois (the "facility"), which was owned by Springfield Branch at all times relevant to the Complaint.

B. Allegations of Non-Compliance

Complainant contends that the Respondent Western Waterproofing has violated the following provisions of the Act and Board regulations:

Count I: Failure to Maintain Permit for Hazardous Waste Management Facility

415 ILCS 5/21(f)(1)-(2) (2020)
35 Ill. Adm. Code 703.121

Count II: Failure to Conduct Hazardous Waste Determinations

415 ILCS 5/21(i) (2020)
35 Ill. Adm. Code 722.111

Count III: Failure to Conduct Special Waste Determinations

415 ILCS 5/21(e) (2020)
35 Ill. Adm. Code 808.121(a)

Complainant contends that the Respondent Springfield Branch has violated the following provisions of the Act and Board regulations:

Count I: Failure to Maintain Permit for Hazardous Waste Management Facility

415 ILCS 5/21(f)(1)-(2) (2020)
35 Ill. Adm. Code 703.121

C. Non-Admission of Violations

The Respondents, Western Waterproofing and Springfield Branch, represent that they have 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 Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B. herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities

1. A waste management company catalogued, organized and removed the waste present at the facility. Respondents represent that the waste management company was retained by Respondent Western Waterproofing in 2018, prior to Complainant's January 19, 2019 inspection, in order to assist Respondent with the proper handling of the materials that are the subject of this matter.

2. Western Waterproofing prepared a hazardous waste management plan, which was provided to Illinois EPA.

3. All of the alleged violations observed on January 9, 2019 were resolved prior to the follow-up inspection on June 18, 2019.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. Respondents 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 Respondents 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 (2020).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), 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. Material left over from projects, which included hazardous waste, was stored improperly at a facility owned by Springfield Branch after being brought to the facility by Western Waterproofing. Proper storage of hazardous waste is of significant importance to Illinois EPA.

2. There is social and economic benefit in the operation of Western Waterproofing's business which specializes in the restoration and preservation of masonry and concrete.

3. The facility where Western Waterproofing conducts its business activities is suitable for the area in which it is operated, so long as it is operated in compliance with applicable requirements of the Act and Board regulations.

4. Storing hazardous waste in a manner that complies with the Act and Board regulations was both technically practical and economically reasonable.

5. Respondents subsequently resolved the alleged violations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2020), 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 the 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 of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
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 1 of this Section, the non-compliance to the Agency;
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; and
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 alleged violations observed on January 9, 2019 were resolved by June 18, 2019.
2. Respondents were diligent in resolving the alleged violations once notified of their alleged non-compliance by Illinois EPA.
3. No calculable economic benefit has been derived from the alleged improper storage of the hazardous waste.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-six Thousand Five Hundred Dollars (\$26,500.00) will serve to deter violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant’s knowledge, Respondents have 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.
8. A Compliance Commitment Agreement was offered by Respondents, but not accepted by Illinois EPA.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondents shall jointly and severally pay a civil penalty in the sum of Twenty-six Thousand Five Hundred Dollars (\$26,500.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, Respondents 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, 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 Respondents not paid within the time prescribed herein. Interest on unpaid amounts 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 amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

C. Payment Procedures

1. All payments required by this Stipulation shall be made by certified check or money order payable to 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

2. The name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Emma L. Hudspath
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

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

2. Respondents 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 Respondents' payment of the \$26,500.00 penalty, their commitment to cease and desist as contained in Section V.D.2 above, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges Respondents from any further liability or penalties for the alleged 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. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondents 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 Respondents' 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 Respondents.

F. Enforcement

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 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.

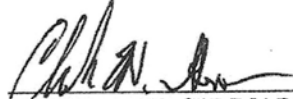
PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL
Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

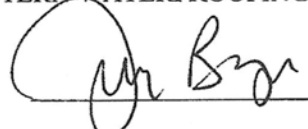
BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

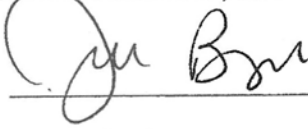
DATE: 09/28/2021

DATE: 9/21/21

WESTERN WATERPROOFING COMPANY

SPRINGFIELD BRANCH, LLC

BY: 

BY: 

DATE: 9/3/2021

DATE: 9/3/2021

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 Respondents.)

PCB No. 21-46

MOTION FOR RELIEF FROM HEARING

NOW COMES Complainant, People of the State of Illinois, by KWAME RAOUL, 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) (2020), moves that the Illinois Pollution Control Board grant the parties in the above-caption matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2020). In support thereof, Complainant states as follows:

1. On December 28, 2020, 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 with Western Waterproofing Company d/b/a Western Specialty Contractors and Springfield Branch, LLC, 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) (2020).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General of
the State of Illinois

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

BY: /s/ Emma L. Hudspath
EMMA L. HUDSPATH
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62701
(217)557-4635
emma.hudspath@ilag.gov

Dated: October 1, 2021

CERTIFICATE OF SERVICE

I, Emma L. Hudspath, an Assistant Attorney General, certify that on the 1st day of October, 2021, I caused to be served via certified mail, a copy of the foregoing Notice of Filing, Stipulation and Proposal for Settlement, Motion for Relief from Hearing, and Certificate of Service, to the following:

For the Respondents

Western Waterproofing Company
d/b/a Western Specialty Contractors
National Registered Agents, Inc.
208 So LaSalle Street, Suite 814
Chicago, IL 60604

Springfield Branch, LLC
National Registered Agents, Inc.
208 So LaSalle Street, Suite 814
Chicago, IL 60604

/s/Emma L. Hudspath
Emma L. Hudspath
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