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APR 03 2009

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

Lisa Madigan  
ATTORNEY GENERAL

April 1, 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. Summer Ridge, L.L.C., et al.*  
PCB No. 09-73

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 Summer Ridge and Stipulation and Proposal for Settlement Stark Excavating 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,

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

RJC/pjk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
SUMMER RIDGE, L.L.C., an Illinois )  
limited liability company, and STARK )  
EXCAVATING, INC., an Illinois )  
corporation, )  
)  
Respondent. )

PCB No. 09-13  
(Enforcement)

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STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

To: Summer Ridge, L.L.C.  
an Illinois limited liability corporation  
c/o William A. Johnston, R.A.  
9 Heartland Drive, Unit C  
Bloomington, IL 61704

Stark Excavating, Inc.  
an Illinois corporation  
c/o David K. Stark, R.A.  
1805 W. Washington  
Bloomington, IL 61701

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 COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT SUMMER RIDGE and STIPULATION AND PROPOSAL FOR SETTLEMENT STARK EXCAVATING, 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: 

RAYMOND J. CALLERY  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: April 1, 2009

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CLERK'S OFFICE

APR 03 2009

STATE OF ILLINOIS  
Pollution Control Board

CERTIFICATE OF SERVICE

I hereby certify that I did on April 1, 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, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT SUMMER RIDGE and STIPULATION AND PROPOSAL FOR SETTLEMENT STARK EXCAVATING

To: Summer Ridge, L.L.C.  
an Illinois limited liability corporation  
c/o William A. Johnston, R.A.  
9 Heartland Drive, Unit C  
Bloomington, IL 61704

Stark Excavating, Inc.  
an Illinois corporation  
c/o David K. Stark, R.A.  
1805 W. Washington  
Bloomington, IL 61701

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

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601



RAYMOND J. CALLERY  
Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
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limited liability company, and STARK )  
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)  
Respondents. )

PCB No. 09-73  
(Enforcement)

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APR 03 2009

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).

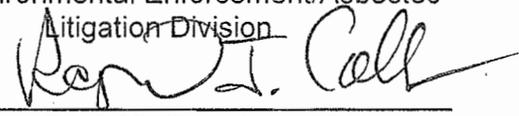
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

STATE OF ILLINOIS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF ASBESTOS  
CONTROL

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY: 

RAYMOND J. CALLERY  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: April 1, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 SUMMER RIDGE, L.L.C, an Illinois limited )  
 liability company and STARK )  
 EXCAVATING, INC., an Illinois corporation, )  
 )  
 Respondents. )

PCB No. 09-73  
(Water - Enforcement)

RECEIVED  
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APR 03 2009

COMPLAINT STATE OF ILLINOIS  
Pollution Control Board

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondents, SUMMER RIDGE, L.L.C., an Illinois limited liability company, and STARK EXCAVATING, INC., an Illinois corporation, as follows:

COUNT I  
WATER POLLUTION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent, Summer Ridge, L.L.C. ("Summer Ridge"), is an Illinois limited liability company whose registered agent is William A. Johnston, 9 Heartland Drive, Unit C,

Bloomington, Illinois, 61704. Summer Ridge owns and is developing a residential housing area known as Summer Ridge Subdivision (the "site") located at Alta Road (Route 174) and Radnor Road, in Peoria, Peoria County, Illinois.

5. The Respondent, Stark Excavating, Inc. ("Stark Excavating"), is an Illinois corporation whose registered agent is David K. Stark, 1805 W. Washington, Bloomington, Illinois, 61701. Stark Excavating is the construction contractor for the Summer Ridge Subdivision project.

6. The site totals 22.2 acres. The current development is to include 57 lots. A second phase of development is to increase the project size to 47 acres and 115 lots.

7. Storm water from the site discharges into an unnamed stream at the site and into Kickapoo Creek.

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

9. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

10. The unnamed steam at the site and Kickapoo Creek constitute "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), as follows:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

11. Sections 12(a), 12(d), and 12(f) of the Act, 415 ILCS 5/12(a), (d), and (f) (2006), provide:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

\* \* \*

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

\* \* \*

- f. Cause, threaten or allow the discharge of any contaminants into the waters of the State, as defined herein, including but not limited to, water to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

12. Section 309.102(a) of the Board’s Water Pollution Regulations, 35 Ill.

Admin. Code 309.102(a), provides:

- a. Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

\* \* \*

13. On July 31, 2006, Illinois EPA received from Respondent Summer Ridge a Notice of Intent ("NOI") for coverage under the National Pollutant Discharge Elimination System ("NPDES") general permit for construction site activities. On August 31, 2006, Illinois EPA issued NPDES permit no. ILR10G268 to Respondent Summer Ridge.

14. On October 27, 2006, Illinois EPA inspected the site at Summer Ridge Subdivision. Infrastructure construction was underway and the entire site was barren. The only erosion controls were silt fencing around storm sewer inlets which were above grade and unlikely to receive storm water, along with approximately 20 feet of silt fence in front of a culvert on the receiving stream which divides the site. The stream bed was filled with sediment and erosion was present on both embankment sides.

15. On November 1, 2006, Illinois EPA was informed by the design engineer for Summer Ridge Subdivision that construction work had commenced approximately six (6) weeks previous and that the sanitary sewer work was complete. The design engineer further stated that Respondent Stark Excavating would be contacted about the inadequate storm water controls.

16. On November 2, 2006, Illinois EPA reinspected the site and observed that the storm water controls were unchanged from the earlier inspection. The controls in place were substantially ineffective. Illinois EPA was informed that Respondent Stark Engineering would be installing additional controls as provided for in the storm water pollution prevention plan ("SWPPP") for the site.

17. On December 26, 2006, Illinois EPA received from Respondent Stark Engineering a report of an incidence of non-compliance ("ION"). The ION stated that Respondent Stark Engineering failed to properly implement and maintain proper sediment

control because ongoing earth moving operations prevented the initial installation of the entire sediment control system.

18. On July 16, 2007, Illinois EPA reinspected the site. Erosion control measures remained inadequate and included only silt fencing at street inlets and along the site receiving stream. Sediment was entering and discharging from the site retention pond.

19. On July 25, 2007, Illinois EPA again reinspected the site. Additional silt fencing had been installed and repair work had been done of pre-existing fencing. No source controls had been installed along the curbs at lot areas.

20. By failing to provide adequate storm water pollution controls Respondents caused, allowed or threatened to cause water pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

21. By failing to provide adequate storm water pollution controls Respondents deposited contaminants upon the land in such place and manner so as to create a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, SUMMER RIDGE, L.L.C. and STARK EXCAVATING, INC.:

A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

B. Finding the Respondents have violated the Act and the regulations as alleged herein;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006) impose a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board may deem appropriate.

**COUNT II**  
**NPDES PERMIT VIOLATIONS**

1-19. Complainant realleges and incorporates herein by reference paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of this Count II.

20. The storm water system at the site constitutes a "point source" as that term is defined in the federal Clean Water Act ("CWA"):

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

33 U.S.C.A. § 1362(14).

21. By failing to properly implement and maintain adequate storm water pollution controls Summer Ridge violated its NPDES permit and thereby violated 35 Ill. Adm. Code 309.102(a) and Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2006).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, SUMMER RIDGE, L.L.C. :

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006) impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

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:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel  
Raymond J. Callery  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

Dated: April 1, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
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limited liability company, and STARK )  
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PCB NO. 09-73  
(Water - Enforcement)

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STATE OF ILLINOIS  
Pollution Control Board

STIPULATION AND PROPOSAL FOR SETTLEMENT  
SUMMER RIDGE

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 SUMMER RIDGE, L.L.C., an Illinois limited liability company ("Summer Ridge" or "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. 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, Summer Ridge was and is an Illinois limited liability company that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Summer Ridge owned and was developing a residential housing area know as Summer Ridge Subdivision located at Alta Road (Route 174) and Radnor Road, in Peoria, Peoria County, Illinois (the "site").

4. At all times relevant to the Complaint, Stark Excavating, Inc. (Stark Excavating) was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Stark Excavating was the construction contractor for the site.

5. On July 31, 2006, Summer Ridge filed its Notice of Intent for coverage under the General NPDES Permit for construction site activity. On August 31, 2006, Illinois EPA notified Summer Ridge of its coverage under NPDES Permit No. ILR10G268.

6. On October 27, 2006, Illinois EPA inspected the site at Summer Ridge Subdivision. Infrastructure construction was underway and the entire site was barren. The only erosion controls

were silt fencing around storm sewer inlets which were above grade and unlikely to receive storm water, along with approximately 20 feet of silt fence in front of a culvert on the receiving stream which divides the site. The stream bed was filled with sediment and erosion was present on both embankment sides.

7. On November 1, 2006, Illinois EPA was informed by the design engineer for Summer Ridge Subdivision that construction work had commenced approximately six (6) weeks previous and that the sanitary sewer work was complete. The design engineer further stated that Stark Excavating would be contacted about the inadequate storm water controls.

8. On November 2, 2006, Illinois EPA reinspected the site and observed that the storm water controls were unchanged from the earlier inspection. The controls in place were substantially ineffective. Illinois EPA was informed that Stark Engineering would be installing additional controls as provided for in the storm water pollution prevention plan ("SWPPP") for the site.

9. On December 26, 2006, Illinois EPA received from Stark Engineering a report of an incidence of non-compliance ("ION"). The ION stated that Stark Engineering failed to properly implement and maintain proper sediment control because ongoing earth moving operations prevented the initial installation of the entire sediment control system.

10. On July 16, 2007, Illinois EPA reinspected the site. Erosion control measures remained inadequate and included only silt fencing at street inlets and along the site receiving stream. Sediment was entering and discharging from the site retention pond.

## **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: WATER POLLUTION, in violation of Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2006).

COUNT II: NPDES PERMIT VIOLATIONS, in violation of 35 Ill. Adm. Code 309.102(a) and Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2006).

**C. Admission of Violations**

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

**D. Compliance Activities to Date**

1. On July 25, 2007, Illinois EPA again reinspected the site. Additional silt fencing had been installed and repair work had been done on pre-existing fencing. No source controls had been installed along the curbs at lot areas.

2. On March 21, 2008, Illinois EPA again reinspected the site. Silt fencing was provided around Lot A. Beaver dams and dandy bags were provided at inlets. "Rolled socks" had been provided along the curbs at the three homes under construction although they did not appear to be completely effective. The required inspection reports were on site with the most recent one being for March 17, 2008.

**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 water quality of the unnamed stream at the site and Kickapoo Creek was adversely affected by the inadequate storm water pollution controls.
2. There is social and economic benefit in the construction of new homes at the site.
3. Construction activity at the site was suitable for the area in which it occurred.
4. Providing adequate storm water pollution controls and complying with the NPDES general storm water permit were 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. The NPDES general storm water permit violations by Summer Ridge and Stark Excavating, were observed during the Illinois EPA inspection on October 27, 2006. Construction work had reportedly commenced in mid-September 2006. The barren site lacked adequate storm water and erosion controls, and sediment was reaching a stream at the site. A follow-up inspection on July 16, 2007, indicated that improvements in controls were still needed.

2. After the Illinois EPA's inspection on October 27, 2006, Summer Ridge's contractor, Stark Excavating, took steps to improve the storm water and erosion controls. However, Illinois EPA observed continuing erosion when it inspected the site in July 2007.

3. Summer Ridge and Stark Excavating delayed the costs of implementing erosion control measures at the site and benefitted economically as a result of the non-compliance in this matter.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of TEN THOUSAND DOLLARS (\$10,000.00) on behalf of Summer Ridge, 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, Summer Ridge and Stark

Excavating have no previously adjudicated violations of the Act.

6. Summer Ridge and Stark Excavating did not voluntarily disclose the violations involved in this case.

7. The settlement of this matter does not include a supplemental environmental project.

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. The Respondent, Summer Ridge, shall pay a civil penalty in the sum of TEN THOUSAND DOLLARS (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### B. 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:

Raymond J. Callery  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Release from Liability**

In consideration of the Respondent's payment of the \$10,000.00 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. 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, 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**

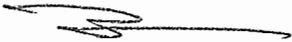
The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

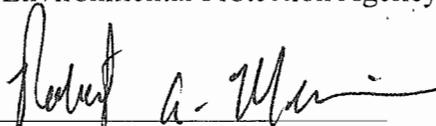
MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 4/01/09

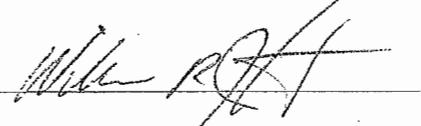
THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 3/30/09

SUMMER RIDGE, L.L.C.

BY: 

Name (print): William R Johnston

Title: Partner

DATE: 3/4/09

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
SUMMER RIDGE, L.L.C., an Illinois )  
limited liability company, and STARK )  
EXCAVATING, INC., an Illinois corporation, )  
)  
Respondents. )

PCB NO. 09-73  
(Water - Enforcement)

RECEIVED  
CLERK'S OFFICE

APR 03 2009

STATE OF ILLINOIS  
Pollution Control Board

STIPULATION AND PROPOSAL FOR SETTLEMENT  
STARK EXCAVATING

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 STARK EXCAVATING, INC. an Illinois corporation ("Stark Excavating" or "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. 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, Summer Ridge, L.L.C. ("Summer Ridge"), was and is an Illinois limited liability company that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Summer Ridge owned and was developing a residential housing area know as Summer Ridge Subdivision located at Alta Road (Route 174) and Radnor Road, in Peoria, Peoria County, Illinois (the "site").

4. At all times relevant to the Complaint, Stark Excavating was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Stark Excavating was the construction contractor for the site.

5. On July 31, 2006, Summer Ridge filed its Notice of Intent for coverage under the General NPDES Permit for construction site activity. On August 31, 2006, Illinois EPA notified Summer Ridge of its coverage under NPDES Permit No. ILR10G268.

6. On October 27, 2006, Illinois EPA inspected the site at Summer Ridge Subdivision. Infrastructure construction was underway and the entire site was barren. The only erosion controls were silt fencing around storm sewer inlets which were above grade and unlikely to receive storm

water, along with approximately 20 feet of silt fence in front of a culvert on the receiving stream which divides the site. The stream bed was filled with sediment and erosion was present on both embankment sides.

7. On November 1, 2006, Illinois EPA was informed by the design engineer for Summer Ridge Subdivision that construction work had commenced approximately six (6) weeks previous and that the sanitary sewer work was complete. The design engineer further stated that Stark Excavating would be contacted about the inadequate storm water controls.

8. On November 2, 2006, Illinois EPA reinspected the site and observed that the storm water controls were unchanged from the earlier inspection. The controls in place were substantially ineffective. Illinois EPA was informed that Stark Excavating would be installing additional controls as provided for in the storm water pollution prevention plan ("SWPPP") for the site.

9. On December 26, 2006, Illinois EPA received from Stark Excavating a report of an incidence of non-compliance ("ION"). The ION stated that Stark Excavating failed to properly implement and maintain proper sediment control because ongoing earth moving operations prevented the initial installation of the entire sediment control system.

10. On July 16, 2007, Illinois EPA reinspected the site. Erosion control measures remained inadequate and included only silt fencing at street inlets and along the site receiving stream. Sediment was entering and discharging from the site retention pond.

## **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: WATER POLLUTION, in violation of Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2006).

**C. Admission of Violations**

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

**D. Compliance Activities to Date**

1. On July 25, 2007, Illinois EPA again reinspected the site. Additional silt fencing had been installed and repair work had been done on pre-existing fencing. No source controls had been installed along the curbs at lot areas.

2. On March 21, 2008, Illinois EPA again reinspected the site. Silt fencing was provided around Lot A. Beaver dams and dandy bags were provided at inlets. "Rolled socks" had been provided along the curbs at the three homes under construction although they did not appear to be completely effective. The required inspection reports were on site with the most recent one being for March 17, 2008.

**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 water quality of the unnamed stream at the site and Kickapoo Creek was adversely affected by the inadequate storm water pollution controls.
2. There is social and economic benefit in the construction of new homes at the site.
3. Construction activity at the site was suitable for the area in which it occurred.

4. Providing adequate storm water pollution controls and complying with the NPDES general storm water permit were 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. The NPDES general storm water permit violations by Summer Ridge and Stark Excavating, were observed during the Illinois EPA inspection on October 27, 2006. Construction work had reportedly commenced in mid-September 2006. The barren site lacked adequate storm water and erosion controls, and sediment was reaching a stream at the site. A follow-up inspection on July 16, 2007, indicated that improvements in controls were still needed.
2. After the Illinois EPA's inspection on October 27, 2006, Summer Ridge's contractor, Stark Excavating, took steps to improve the storm water and erosion controls. However, Illinois EPA observed continuing erosion when it inspected the site in July 2007.
3. Summer Ridge and Stark Excavating delayed the costs of implementing erosion control measures at the site and benefitted economically as a result of the non-compliance in this matter.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of FIVE THOUSAND DOLLARS (\$5,000.00) on behalf of Stark Excavating, 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, Summer Ridge and Stark Excavating have no previously adjudicated violations of the Act.
6. Summer Ridge and Stark Excavating did not voluntarily disclose the violations involved in this case.
7. The settlement of this matter does not include a supplemental environmental project.

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. The Respondent, Stark Excavating, shall pay a civil penalty in the sum of FIVE THOUSAND DOLLARS (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### B. 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:

Raymond J. Callery  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Release from Liability**

In consideration of the Respondent's payment of the \$5,000.00 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. 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, 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 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.

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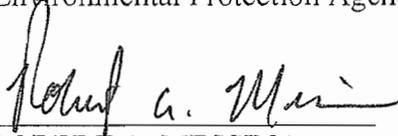
DATE:

4/6/09

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY:

  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE:

3/30/09

STARK EXCAVATING, INC.

BY:

  
Name (print): Joseph J. WEISLANDER

Title: CONTRACT MANAGER

DATE:

2/10/09