

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 28 2009

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
LISA MADIGAN, Attorney General )  
of the State of Illinois, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
VILLAGE OF ROCKTON, )  
 )  
Respondent. )

PCB No. 09-104  
(Enforcement - Water)

ORIGINAL

NOTICE OF FILING

TO: Gregory E. Cox, Esq.  
Attorney for Village of Rockton  
Nicolosi & Associates, LLC  
363 Financial Court, Suite 100  
Rockford, Illinois 61107-6671

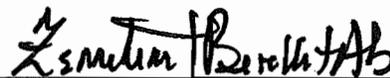
Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Ste. 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:   
ZEMEHERET BEREKET-AB  
Environmental Bureau  
Assistant Attorney General  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-3816

DATE: September 28, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )
LISA MADIGAN, Attorney General )
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AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT

In support of this Motion, the parties state as follows:

- 1. Today, the People of the State of Illinois, filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2008) provides:
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). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2008).

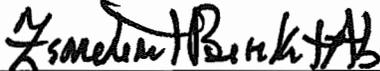
WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
\_\_\_\_\_  
ZEMEHERET BEREKET-AB  
Environmental Bureau  
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**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Village of Rockton ("Respondent") ("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.* (2008), 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. On April 30, 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 (2008), 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 (2008).

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

4. At all times relevant to the Complaint, Rockton owned and operated a waste water treatment plant (“WWTP”) located at 718 West Union Street, Rockton, Illinois, Winnebago County (“Site”), which operates under NPDES Permit No. IL0030791. The NPDES permit was issued on September 19, 2004, and will expire on September 30, 2009. The WWTP operations include a lift station—River Street lift station located along the Rock River in Rockton.

5. The River Street lift station pumps untreated sewage from local residents to Rockton’s WWTP. The receiving waters for Rockton’s effluent discharge is the Rock River.

6. On July 23, 2007, the Illinois EPA Bureau of Water, Rockford Regional Office received a complaint from an employee of the Rockton hydroelectric plant of a sewage discharge to the Rock River from the River Street lift station.

7. The Complainant had in turn received a discharge report from a fisherman who had been boating on the Rock River. The Illinois EPA also received a report about the discharge of sewage from the Chief Operator of the Rockton WWTP.

8. On July 23, 2007, the Illinois EPA inspected both the Rockton hydroelectric plant and the River Street lift station.

9. The Illinois EPA observed wet paper, fecal matter and other sewage debris below the 8-inch diameter bypass overflow on the bank of the Rock River at the base of the lift station overflow discharge point.

10. The Illinois EPA also observed that the pumps at the River Street lift station were plugged with discarded clothing that wound around the pump impellers making the pumps ineffective. The conduit for the telephone line for the automatic alarm dialer system had also been damaged and the line disconnected thereby making the telephone alarm system inoperable. The lift station had no fencing around it to limit access to the equipment.

11. On July 26, 2007, the Illinois EPA re-inspected the lift station and observed that the pumps had been cleaned and restored to full service and that the alarm system telephone line had been reinstalled in a heavy pipe conduit as was the conduit for the float pumps. All four lift station control floats were replaced with new floats.

12. The Illinois EPA also observed that the alarm light and horn were moved and reinstalled on a metal utility pole where they could be observed from the street and nearby residence.

13. On July 27, 2007, the Illinois EPA received a written notice of noncompliance from Rockton's engineers regarding the situation at the River Street lift station.

14. On September 13, 2007, the Illinois EPA sent to Rockton a Violation Notice ("VN") pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1) (2008).

15. On October 1, 2007, Rockton responded to the VN and proposed its Compliance Commitment Agreement ("CCA").

16. On November 21, 2007 the Illinois EPA rejected Rockton's CCA.

17. On April 21, 2008, the Illinois EPA sent to Rockton a Notice of Intent to Pursue Legal Action pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b) (2008).

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has 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) (2008);

Count II: Failure to Provide a Reliable Alarm System in violation of 35 Ill. Adm. Code 306.102(a) and Section 12(a) of the Act, 415 ILCS 5/12(a) (2008);

Count III: Failure to Control Overflow in violation of 35 Ill. Adm. Code 306.304 and Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

**C. Non -Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does 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 to Date**

Respondent has completed the following compliance activities to date:

1. Float switches were checked. One displayed an intermittent failure. It was determined that as long as the electrician was on site, all four float switches would be replaced. A new junction box for the float switches was located outside of the wet well in a buried location to prevent possible future tampering with float cables.

2. The pumper truck was utilized to remove all of the floating materials and settled grit from the wet well.

3. The telephone lines were reconnected and the conduit and junction box relocated to the electric service pole to minimize the potential for future damage. The conduit was replaced with rigid conduit.

4. Pumps and check valves were checked for foreign materials. Both pump impellers had significant amounts of rags and debris. It appeared that a pair of blue jeans was wrapped around one of the impellers. All debris was removed from the pumps. The check valves were disassembled and checked for debris. Both check valves had significant amounts of debris in the seat area and around the shaft. The debris was removed and while the valves were disassembled, new roll pins were installed. Pumping rates were checked and the pumps are pumping at normal rates.

5. The telephone dialer was checked and was functioning properly; it had simply not been able to notify staff with the telephone wires disconnected.

6. Visual (warning light) and audible (horn) alarms were reconnected and tested. Both are operational.

Respondent contends that it is uncertain that wastewater was discharged to the river, as no wastewater was observed being discharged and no one personally witnessed wastewater being discharged.

The pump station is now operating at full capacity, and all of the known problems have been addressed. The Village has spent \$29,850 in installing new security measures.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), 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. Complainant contends that human health and the environment were threatened by the discharge of untreated wastewater to the Rock River. Toilet paper and solid sewage debris were found at the base of the overflow outfall pipe. Respondent contends that it is uncertain a wastewater discharge occurred at the lift station to the Rock River.
2. There is social and economic benefit to the wastewater treatment plant.
3. Operation of the facility was suitable for the area in which it occurred.
4. Maintaining fencing around the lift station to prevent unauthorized access was both technically practicable and economically reasonable.
5. Respondent has subsequently corrected the operational deficiencies and constructed a fence around the lift station and replaced the conduit for the telephone line for the automatic alarm dialer system. Respondent maintains it had expended significant sums to implement the measures described herein.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2008), 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 the Stipulation state as follows:

1. Complainant contends that the overflow occurred at least on July 23, 2007, and involved the discharge of untreated wastewater to the Rock River. The discharge might have occurred on additional days as WWTP influent data recordings indicate a drop in overall influent flow volume immediately prior to July 23, 2007.

2. Respondent contends it is uncertain a wastewater discharge occurred at the lift station to the Rock River. Respondent promptly investigated the overflow the date it learned of it. Respondent repaired the telephone line and reinstalled the alarm light and horn at the lift station on July 23, 2007.

3. Economic benefits accrued by Respondent are believed to be minimal and are accounted for in the \$10,000.00 penalty agreed herein.

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) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Illinois EPA records indicate two previous enforcement actions against Rockton. In 1975 the Illinois Pollution Control Board ("PCB") ordered Rockton to cease and desist operating a landfill without a permit. There was no monetary penalty. On July 5, 2008 in People of the State of Illinois v. Village of Rockton, PCB 07 134, the Illinois PCB adopted the proposed Stipulation and Proposal for Settlement between the State of Illinois and Rockton for a lift station overflow incident at Rockton's Hawick Street lift station in June 2006. Rockton was ordered to pay a civil penalty of \$7,514.00 to resolve that matter.

6. Self-disclosure is not at issue in this matter.

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

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent 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. 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:

Zemeheret Bereket-Ab  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**C. Future Compliance**

1. 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.

2. 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.

3. 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 \$10,000.00 penalty, its commitment to cease and desist as contained in Section V.D. 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 herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on April 30, 2009. 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 (2008), 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

Zemeheret Bereket-Ab  
Assistant Attorney General  
Environmental Bureau North  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

Chuck Gunnarson  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Respondent

Attorney Gregory E. Cox  
363 Financial Court, Suite 100  
Rockford, Illinois 61107

**F. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Parties to the Stipulation may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.G. Any such request shall be made by separate document, and shall not be submitted within any other report

or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

**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.

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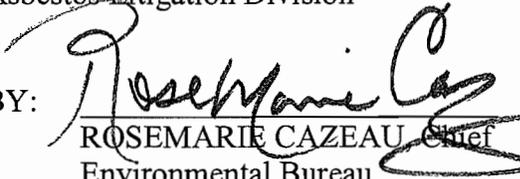
PEOPLE OF THE STATE OF ILLINOIS,

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

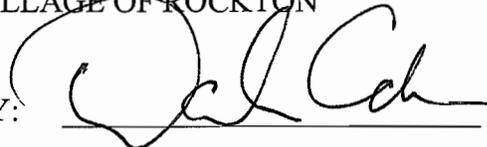
BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KUM  
Chief Legal Counsel

DATE: 8/27/09

DATE: 8/25/09

VILLAGE OF ROCKTON

BY: 

DATE: 9/14/09

Name: Dale Adams

Title: Village President

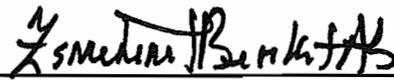
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SEP 28 2009

STATE OF ILLINOIS  
Pollution Control Board

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 28<sup>th</sup> day of September, 2009, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



\_\_\_\_\_  
ZEMEHERET BEREKET-AB