



**CERTIFICATE OF SERVICE**

I, ARLENE R. HAAS, an Assistant Attorney General, do certify that I caused to be mailed this 15<sup>th</sup> day of December 2020, the foregoing Complaint, Motion for Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing with Respondent, City of Colona, by electronic mail with receipt notification requested to the person listed on the Notice of Filing on December 15, 2020.

*/s/ Arlene R. Haas* \_\_\_\_\_  
ARLENE R. HAAS  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
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(312) 814-3153



3. The City of Colona (“Respondent” or “Colona”) is an Illinois municipal corporation, organized and operating under the laws of the State of Illinois, located in Henry County, Illinois, with a population of approximately 5,100 people.

4. Colona owns and operates the Colona-Green Rock Regional Sewage Treatment Plant (“STP”), located at 4356 Poppy Garden Rock, Colona, Illinois, which collects and treats wastewater from Colona’s residents and businesses.

5. Colona discharges wastewater from its STP through Outfall 001 into the Green River.

6. Section 402 of the federal Clean Water Act (“CWA”), 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (“NPDES”) program to address water pollution by regulating point sources that discharge pollutants to the waters of the United States.

7. Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), provides as follows:

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.

8. Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), provides as follows:

No person shall:

\* \* \*

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters 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.

9. Section 309.102(a) of the Illinois Pollution Control Board (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

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.

10. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides the following definition:

“Person” means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

11. Respondent, a municipal corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

12. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides the following definition:

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

13. The wastewater discharged from Colona’s STP is a “contaminant,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

14. Section 3.550 of the Act, 415 ILCS 5/3.550 (2018), provides the following definition:

“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 the State.

15. The Green River constitutes “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2018).

16. In Illinois, the Illinois EPA is the delegated responsible agency for implementation of the NPDES program and federal regulations promulgated thereunder.

17. Section 401.11(d) of the Code of Federal Regulations (“C.F.R.”), 40 C.F.R. 401.11(d), provides as follows:

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.

18. Colona’s STP Outfall 001 is a “point source” within the meaning of 40 C.F.R. 401.11(d).

19. Colona is required to have an NPDES permit for wastewater discharges from its STP pursuant to Section 12(f) of the Act, 415 ILCS 5/12(f) (2018).

20. On May 12, 2015, Illinois EPA issued to Colona NPDES permit No. IL0059757 (“NPDES Permit”), for discharges of wastewater from its STP, with an effective date of June 1, 2015, and expiration date of May 31, 2020.

21. Respondent’s NPDES Permit required Respondent to take samples on a periodic basis in compliance with the permit’s effluent monitoring requirements.

22. Special Condition No. 6 of the NPDES Permit provides as follows:

The Permittee shall record monitoring results on Discharge Monitoring Report (DMR) Forms using one such form for each outfall each month.

In the event that an outfall does not discharge during a monthly reporting period, the DMR Form shall be submitted with no discharge indicated.

\* \* \*

The completed Discharge Monitoring Report forms shall be submitted to IEPA no later than the 25<sup>th</sup> day of the following month, unless otherwise specified by the permitting authority.

23. NPDES Permit Special Condition No. 6 requires Respondent to submit DMRs to Illinois EPA for each month no later than the 25<sup>th</sup> day of the following month even if no discharge occurred in a given month.

24. On December 17, 2019, a minimum of approximately five months late, Colona submitted to Illinois EPA DMRs for (1) Outfall 001 – the December 2018 through July 2019 monitoring periods; (2) Outfall 001-S – the March 2019 monitoring period; and (3) Influent Monitoring – December 2018 through July 2019 monitoring periods, required by NPDES Permit Special Condition No. 6, thereby violating NPDES Permit Special Condition No. 6.

25. Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), provides, in pertinent part, as follows:

Every holder of an NPDES... permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.

26. By failing to timely comply with the reporting requirements set forth in Special Condition No. 6 of the NPDES Permit, Respondent violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), and thereby also violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an Order against Respondent, CITY OF COLONA, with respect to Count I:

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

2. Finding that Respondent has violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), and NPDES Permit Special Condition No. 6;

3. Ordering the Respondent to cease and desist from any further violations of Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), and NPDES Permit Special Condition No.6;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and an additional Ten Thousand Dollars (\$10,000) per day that each violation continued to occur;

5. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018);

6. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting such other relief as the Board deems appropriate and just.

**COUNT II**  
**VIOLATION OF NPDES PERMIT SPECIAL CONDITIONS**  
**NUMBERS 14, 15, 16, AND 21**

1-22. Complainant realleges and incorporates herein paragraphs 1 through 21 and paragraph 25 of Count I as paragraphs 1- 22 of this Count II.

23. Special Condition No. 14 of Respondent's NPDES Permit provides, in pertinent part, as follows:

During January of each year the Permittee shall submit annual fiscal data regarding sewerage system operations to the Illinois Environmental



Protection Agency/Division of Water Pollution Control/Compliance Assurance Section. The Permittee may use any fiscal year period provided the period ends within twelve (12) months of the submission date.

Submission shall be on forms provided by IEPA titled "Fiscal Report Form for NPDES Permittees".

24. NPDES Permit Special Condition No. 14 requires Respondent to submit its Annual Fiscal Report to Illinois EPA during January for the prior fiscal year, and Respondent was therefore required to submit the Annual Fiscal Report for fiscal year 2018 by January 31, 2019.

25. On February 27, 2020, Colona submitted to Illinois EPA its 2018 Annual Fiscal Report, approximately one year and one month late, thereby violating NPDES Permit Special Condition No. 14.

26. Special Condition No. 15 of Respondent's NPDES Permit provides, in pertinent part, as follows:

The Permittee shall conduct biomonitoring of the effluent from Discharge Number (s) 001.

Biomonitoring

\* \* \*

2. Testing Frequency – The above tests shall be conducted using 24-hour composite samples unless otherwise authorized by the IEPA. Samples must be collected in the 18<sup>th</sup>, 15<sup>th</sup>, 12<sup>th</sup> and 9<sup>th</sup> month prior to the expiration date of this Permit.
3. Reporting – Results shall be reported according to EPA/B21-R-02-021, Section 12, Report Preparation, and shall be submitted to IEPA, Bureau of Water, Compliance Assurance Section within one week of the receipt from the laboratory. Reports are due to the IEPA no later than the 16<sup>th</sup>, 13<sup>th</sup>, 10<sup>th</sup>, and 7<sup>th</sup> month prior to the expiration date of this Permit.

27. NPDES Special Condition No. 15 requires Respondent to submit to Illinois EPA its biomonitoring reports in January, April, July, and October 2019, the 16<sup>th</sup>, 13<sup>th</sup>, 10<sup>th</sup>, and 7<sup>th</sup> months prior to the May 31, 2020, expiration date of Respondent's Permit.

28. Respondent failed to submit to Illinois EPA biomonitoring reports for January and April 2019, thereby violating NPDES Permit Special Condition No. 15.

29. Special Condition No. 16 of Respondent's NPDES Permit provides, in pertinent part, as follows:

For the duration of this Permit, the Permittee shall determine the quantity of sludge produced by the treatment facility in dry tons or gallons with average percent total solids analysis.

\* \* \*

The Permittee shall submit to IEPA, at a minimum, a semi-annual summary report of the quantities of sludge generated and disposed of . . .

\* \* \*

Said reports shall be submitted to the IEPA by January 31 and July 31 of each year reporting the preceding January through June and July through December interval of sludge disposal operations.

30. NPDES Permit Special Condition No. 16 requires Respondent to submit to Illinois EPA by January 31 and July 31 of each year Biosolids Program Reports for the preceding January through June and July through December.

31. On February 27, 2020, Respondent submitted the Biosolid Program Report to Illinois EPA required to be submitted by January 31, 2019, thereby violating NPDES Permit Special Condition No. 16.

32. Special Condition No. 21 of Respondent's NPDES Permit provides, in pertinent part, as follows:

The Permittee shall develop and submit to the Agency a Phosphorus Discharge Optimization Plan within eighteen (18) months of the effective

date of this permit. The plan shall include a schedule for the implementation of these optimization measures. Annual progress reports on the optimization of the existing treatment facilities shall be submitted to the Agency by March 31 of each year.

33. NPDES Permit Special Condition No. 21 requires Respondent to submit to Illinois EPA Phosphorus Optimization Status Reports by March 31 of each year, including March 31, 2017, March 31, 2019, and March 31, 2020.

34. On February 27, 2020, Respondent submitted to Illinois EPA the Phosphorus Optimization Status Reports due by March 31, 2017 and March 31, 2019, almost three years and one year late respectively, thereby violating NPDES Permit Special Condition No. 21.

35. Respondent failed to submit to Illinois EPA the Phosphorus Optimization Status Reports due by March 31, 2020 and has not submitted the report as of the date of the filing of this Complaint, thereby violating NPDES Permit Special Condition No. 21.

36. By failing to comply with the reporting requirements set forth in NPDES Permit Special Conditions Nos. 14, 15, 16, and 21, Respondent violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), and thereby also violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an Order against Respondent, CITY OF COLONA, with respect to Count II:

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

2. Finding that Respondent has violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 305.102(b) and 309.102(a) of the Board Water Pollution

Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), and NPDES Permit Special Conditions Nos. 14, 15, 16, and 21;

3. Ordering the Respondent to cease and desist from any further violations of Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f)(2018), Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), and NPDES Permit Special Conditions Nos. Nos. 14, 15, 16, and 21;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and an additional Ten Thousand Dollars (\$10,000) per day that each violation continued to occur;

5. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018);

6. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting such other relief as the Board deems appropriate and just.

### COUNT III

#### **FAILURE TO COMPLY WITH THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT RENEWAL REQUIREMENTS**

1-20. Complainant realleges and incorporates herein paragraphs 1 through 20 of Count I as paragraphs 1- 20 of this Count III.

21. Section 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.104(a), provides as follows:

a) Any permittee who wishes to continue to discharge after the expiration date of the NPDES Permit must timely apply for reissuance of the permit.

1) A permittee has submitted a timely application for a new permit when:

A) The permittee submits:

i) an application 180 days prior to the expiration date of the existing permit...

22. Standard Condition No. 2 of the NPDES Permit provides as follows:

Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. If the permittee submits a proper application as required by the Agency no later than 180 days prior to the expiration date, this permit shall continue in full force and effect until the final Agency decision on the application has been made.

23. In accordance with Section 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.104(a), and NPDES Permit Standard Condition No. 2, Respondent was required to apply for its NPDES Permit renewal by December 3, 2019, 180 days prior to the NPDES Permit expiration date of May 31, 2020.

24. Respondent failed to submit its application to renew its NPDES Permit to Illinois EPA by December 3, 2019 and has not applied to renew its NPDES Permit as of the date of the filing of this Complaint.

25. By failing to timely apply for reissuance of its NPDES Permit, Respondent has violated Section 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.104(a), and NPDES Permit Standard Condition No. 2.

26. By violating 35 Ill. Adm. Code 309.104(a), a regulation adopted by the Board and NPDES Permit Standard Condition No. 2, Respondent thereby violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

27. By discharging contaminants without a NPDES permit from June 1, 2020, the day after the NPDES Permit expired, to the date of the filing of this Complaint, Respondent

discharged wastewater from its STP without an NPDES Permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondent, CITY OF COLONA, with respect to Count III:

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

2. Finding that Respondent has violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 309.102(a) and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and NPDES Permit Standard Condition No. 2;

3. Ordering Respondent to cease and desist from any further violations of Section 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 309.102(a) and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and NPDES Permit Standard Condition No. 2;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), Sections 309.102(a) and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and NPDES Permit Standard Condition No. 2, and an additional civil penalty of Thousand Dollars (\$10,000.00) for each day of violation;

5. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018);

6. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as the Board deems appropriate and just

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

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

BY:   
MATTHEW J. DUNN, Chief

*Of Counsel*

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by KWAME RAOUL, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. _____
	)	(Enforcement – Water)
CITY OF COLONA, an Illinois	)	
municipal corporation ,	)	
	)	
Respondent.	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT  
AND NOTICE OF ELECTRONIC SERVICE**

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)(2018), moves that the Illinois Pollution Control Board (“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) (2018). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Section 12(a) & 12(f) of the Act, 415 ILCS 5/12(a) & 12(f) (2018), and Sections 305.102(b), 309.102(a), and 309.104(a) of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 309.102(a) and 309.104(a).
2. Complainant is filing the Complaint with the Board simultaneous with this Motion and a Stipulation and Proposal for Settlement.
3. The Respondent agrees to accept service of the Complaint via electronic mail.
4. The parties have reached agreement on all outstanding issues in this matter.



5. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

6. 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) (2018).

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) (2018).

Respectfully submitted,

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

BY: /s/ Arlene R. Haas  
Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
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DATE: December 15, 2020



**I. STATEMENT OF FACTS**

**A. Parties**

1. On December 15, 2020, a Complaint was filed 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(2018), against the Respondent (the “Complaint”).

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 (2018).

3. At all times relevant to the Complaint, Respondent was an Illinois municipal corporation, organized and operating under the laws of Illinois, located in Henry County, Illinois, with a population of approximately 5,100 people.

4. Colona owns and operates the Colona-Green Rock Regional Sewage Treatment Plant (“STP”), located at 4356 Poppy Garden Rock, Colona, Illinois, which collects and treats wastewater from Colona’s residents and businesses.

5. Colona discharges wastewater from its STP through Outfall 001 into the Green River.

6. On May 12, 2015, Illinois EPA issued to Colona NPDES permit No. IL0059757 (“NPDES Permit”), for discharges of wastewater from its STP, with an effective date of June 1, 2015, and expiration date of May 31, 2020.

7. The NPDES Permit included requirements regarding, among others, the submission of: (i) Discharge Monitoring Reports (“DMR”), (ii) Annual Fiscal Reports, (iii) Biomonitoring Reports, (iv) Biosolid Program Reports, and (v) Phosphorus Optimization Status Reports.

8. Colona was required to apply for its NPDES Permit renewal, by December 3, 2019, 180 days prior to the NPDES Permit expiration.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent violated the following provisions of the Act, Board regulations, and Respondent's NPDES Permit:

- Count I: Failure to timely file Discharge Monitoring Reports in violation of Sections 12(a) & 12(f) of the Illinois Environmental Protection Act, 415 ILCS 5/12(a) & 12(f) (2018), Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305102(b) and 309.102(a), and National Pollutant Discharge Elimination System ("NPDES") Permit Special Condition No. 6.
  
- Count II: Failure to timely file Annual Fiscal Reports, Biomonitoring Reports, Biosolids Program Reports, and Phosphorus Optimization Status Reports in violation of Sections 12(a) & 12(f) of the Illinois Environmental Protection Act, 415 ILCS 5/12(a) & 12(f) (2018), Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305102(b) and 309.102(a), and NPDES Permit Special Conditions No. 14, 15, 16, and 21.
  
- Count III: Failure to comply with the NPDES Permit Renewal Requirements in Sections 12(a) & 12(f) of the Illinois Environmental Protection Act, 415 ILCS 5/12(a) & 12(f) (2018), Sections 309.102(a) and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and NPDES Permit Standard Condition No. 2.

**C. Admission of Violations**

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

**D. Compliance Activities to Date**

1. On December 17, 2019, Colona submitted DMRs to Illinois EPA for (i) Outfall 001 – the December 2018 through July 2019 monitoring periods; (ii) Outfall 001-S – the March

2019 monitoring period; and (iii) Influent Monitoring – December 2018 through July 2019 monitoring periods, as required by NPDES Permit Special Condition No. 6.

2. On February 27, 2020, Colona submitted to Illinois EPA its: (i) 2018 Annual Fiscal Report, (ii) Biosolid Program Report required to be submitted by January 31, 2019, and (iii) the Phosphorus Optimization Status Reports due by March 31, 2017 and March 31, 2019.

3. On September 8, 2020, the Respondent submitted to Illinois EPA its application to renew its NPDES Permit.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), 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 alleges that Respondent failed to submit various reports, including DMRs, required by its NPDES Permit. Complainant also alleges that the Respondent's failure to timely submit its application to renew its NPDES Permit resulted in Respondent operating an STP without an NPDES Permit. As a result, Complainant alleges that Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations and that human health and the environment were threatened.

2. There is social and economic benefit to the Facility.
3. Operation of the Facility was and is suitable for the area in which it is located.
4. The Respondent's NPDES Permit requirements to timely submit (i) DMRs, (ii) Annual Fiscal Reports, (iii) Biomonitoring Reports, (iv) Biosolid Program Reports, (v) Phosphorus Optimization Status Reports, and (vi) an NPDES Permit renewal application, were 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) (2018), 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;
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. Complainant alleges that Respondent first failed to submit DMRs and other reports required by the NPDES Permit that were due in January 2019. Respondent submitted most of these reports on February 27, 2020. Complainant also alleges that Respondent failed to timely submit its application for the NPDES Permit renewal that was due on December 3, 2019, and was ultimately submitted on September 8, 2020, 280 days late. The delay in reporting hindered Illinois EPA's information gathering responsibilities. Respondent's delay in renewing its NPDES Permit hindered Illinois EPA's responsibility to prevent unpermitted discharges to waters of the State.

2. The Respondent was diligent in attempting to come back into compliance with the Act and the Board regulations, once Illinois EPA notified the Respondent of its noncompliance.

3. The Respondent gained de minimis economic benefit as a result of its failure to renew its NPDES Permit and failure to submit the DMRs and other reports required by the NPDES Permit.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of four thousand, nine hundred, and fourteen dollars (\$4,914.00) will serve to deter further violations and aid in future voluntary compliance with the Act and the Board regulations.

5. To Complainant's knowledge, the Respondent has 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 not at issue in this matter.

## V. TERMS OF SETTLEMENT

### A. **Penalty Payment**

The Respondent shall pay a civil penalty in the sum of four thousand, nine hundred, and fourteen dollars (\$4,914.00) 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**

1. 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, Illinois 62794-9276

2. The case 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:

Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. NPDES Permit

- a. Respondent shall timely respond to any Illinois EPA issued Notice of Incompleteness or requests for additional information relating to Respondent's NPDES Permit renewal application.
- b. Upon Illinois EPA's re-issuance of the NPDES Permit for Colona's STP, Respondent shall comply with the NPDES Permit's terms and conditions and shall timely submit to Illinois EPA applications for NPDES Permit renewal, as applicable.

2. Reports

- a. Within 30 days of entry of this Stipulation, Respondent shall submit to Illinois EPA, the Biomonitoring Reports that were required to be submitted January 31, 2019, April 30, 2019, July 31, 2019 and October 31, 2019.
- b. Upon entry of this Stipulation, Respondent shall timely submit to Illinois EPA, complete and accurate: (i) DMRs, (ii) Annual Fiscal Reports, (iii) Biomonitoring Reports, (iv) Biosolid Program Reports, and (v) Phosphorus Optimization Status Reports.

3. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his 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, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

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

**E. Release from Liability**

In consideration of the Respondent's payment of the four thousand, nine hundred, and fourteen dollars (\$4,914.00) penalty, its commitment to cease and desist as contained in Section V.D.5. above, 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 December 15, 2020. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

**F. Opportunity for Public Comment**

Pursuant to 35 Ill. Adm. Code 103.300(b)(2), the Board shall publish notice of this Stipulation for at least 30 days prior to the Board accepting the Stipulation. If public comments are submitted to the Board regarding this Stipulation, the Complainant reserves the right to withdraw its consent if the comments regarding the Stipulation disclose facts or considerations which indicate that the Stipulation is inappropriate, improper, or inadequate. Respondent consents to the entry of this Stipulation without further notice and agrees not to withdraw from or oppose acceptance of this Stipulation or to challenge any provision of the Stipulation, unless the Complainant has notified Respondent in writing that it withdraws or withholds its consent for the Stipulation. In the event the Complainant notifies the Respondent that it withdraws or withholds its consent for the Stipulation, then the terms of the agreement may not be used as evidence in any litigation between those entities.

**G. Enforcement 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.

**H. 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. This Stipulation may be executed by the parties in one

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or more counterparts, all of which taken together shall constitute one and the same instrument.

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

KWAME RAOUL  
Attorney General  
State of Illinois

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

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY: Matthew J. Dunn  
MATTHEW J. DUNN, Chief

BY: Charles W. Gunnarson  
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: 12/8/20

DATE: 12/02/2020

THE CITY OF COLONA

BY: Ronald E. Beck

ITS: Mayor

DATE: November 30, 2020