

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

CITY OF LASALLE, an Illinois municipal
corporation,

Respondent.

PCB 24-33
(Enforcement – Water)

NOTICE OF FILING

Please take note that on April 24, 2024, I filed Post-Hearing Brief on behalf of the City of LaSalle, a copy of which is attached and served upon you.

Respectfully submitted,

City of LaSalle, an Illinois municipal corporation

By: James A. McPhedran
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Bruno, McPhedran & Herrmann, LLC, a/k/a
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PROOF OF SERVICE

I, James A. McPhedran, an attorney, do hereby certify that on April 24, 2024, I caused to be served on the individuals listed below by electronic mail, a true and correct copy of the attached Post-Hearing Brief on behalf of the City of LaSalle.

City of LaSalle, an Illinois municipal corporation

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POST-HEARING BRIEF ON BEHALF OF THE CITY OF LASALLE

Now comes the City of LaSalle, an Illinois Municipal Corporation, pursuant to Illinois Pollution Control Board (hereinafter “Board”) Rules and Procedures (hereinafter “Rules), including, but not limited to, Section 101.612, and in furtherance of the Hearing Officer, the Honorable Bradley P. Halloran’s direction at the hearing (transcript, hereinafter “T”), p.91-92; see also Hearing Officer Report Order entered 03/11/2024), respectfully submits the following:

INTRODUCTION

At the outset, it is respectfully suggested that the record in the instant case factually and legally supports the appropriateness and justness of the City of LaSalle (“City”), the Illinois Environmental Protection Agency (“Agency”), and the Illinois Attorney General (collectively “People”) entering into the stipulation that was filed of record in the instant case originally on November 13, 2023. (hereinafter “Settlement Stipulation and/or Ex.1”) Further, the record developed at hearing further in totality supports and corroborates the fairness, justness, and appropriate factual and legal basis for said stipulation and for this Pollution Control Board’s approval of the Stipulation pursuant to Rules Sections 103.302, 103.304 and 103.306. There were also many questions and comments presented at the 02/29/2024, hearing. However, no party present at the hearing stated that they objected to the approval of the Settlement Stipulation by the Pollution Control Board. It is additionally respectfully suggested

that there was no cogent, competent basis provided by any question and/or comment by the Public that would provide a basis to deny approval of the just Settlement Stipulation that was entered into in this case. Additionally, pursuant to the Rules, including, but not limited to 101.628, and also the Hearing Officer's 03/11/2024 Order, which also recognized the admitted Exhibits, the Public was also provided a further opportunity post-hearing to make public comments. No additional public comments were filed.

As the People acknowledged in opening statement, in the eyes of the State, any issues raised by the three-count complaint filed simultaneously with the Stipulation would be resolved by the Settlement Stipulation. (T-7) The "People" also acknowledged amongst other points that the Settlement Stipulation was fair, that it fully addressed all issues raised in the four corners of the complaint about the wastewater treatment plant that were at issue. (T-9) The People also acknowledged that the determination in regard to the penalty was the determination was made in appropriate consideration of Section 42(h) of the Act, that the civil penalty was fair and considered amongst other factors LaSalle's diligence in returning to compliance. (T-9-10) Additionally, the "People" acknowledged that this case was not unusual or novel. (T-11)

Similarly, in opening, the City acknowledged as had the People (T-6) that as had also been ordered by the Hearing Officer on 02/15/2024, and was reiterated by the Hearing Officer towards the beginning of the Hearing, (T-15) that the only relevant matter to be considered in regard to the case was contained within the four corners of the Stipulation and Proposal for Settlement (hereinafter "Settlement") filed 11/13/2023. (T-13-15) It was also acknowledged that the City similarly maintained considering the statutory factors in Section 42(h) that the Settlement Stipulation is fair and reasonable and should be approved by the Pollution Control Board. (T-18-19)

The hearing in the instant case was appropriately requested pursuant to law, including, but not necessarily limited to 415 ILCS 5/31(c)(2) (2022), 35 Ill. Adm. Code 103.300(b)(c), by three residents/participants, namely Ms. Dawn Hicks, Mr. Martin Schneider, and Ms. Brianne Hicks. (See

Docket Sheet, Exhibit A hereto)

The City thanked all of the participants (i.e. the public) for coming and also thanked them for their comments; further stated that the City welcomes them. (T-12) The City recognized that from the City's standpoint that the City's audience in regard to the hearing process included not only the Pollution Control Board, but also the participants, the public as well, (i.e., the People) and that the City was sensitive to both of those. (T-13)

The City was also sensitive to the point that there would be other areas of interest potentially to the public but that per the Order of the Hearing Officer on 02/15/2024 and the rules of the Pollution Control Board, the only relevant evidence for purposes of this case was evidence related to the fairness, appropriateness, and justness of the Settlement Stipulation. See also Rule 101.626(a). (T-13-15)

The City was mindful of a point that the Board may not be aware of that since a substantial explosion occurred on 01/11/2023 at the Carus Chemical plant within LaSalle, a number of environmental issues of concern to a number of residents have been raised by the public. However, per rules of the Pollution Control Board, and the Order of the Hearing Officer on 02/15/2024, the relevant evidence factually and legally to this case are related only to the issues relevant to the proposed Settlement regarding the 2021 alleged violations, and whether that Settlement should be approved by the Pollution Control Board. (T-13-15) The people acknowledged this as well in opening. (T-6)

FURTHER FACTUAL AND PROCEDURAL BACKGROUND

As part of providing wastewater discharge services to the citizens of LaSalle and the public, the City owns and operates LaSalle Wastewater Treatment Plant South ("WWTP-South") located at 400 River Street, LaSalle, Illinois, which collects and treats wastewater for residents and businesses. (See Settlement Stipulation Ex1, p.2 par 4) The issues that were the subject of the People's Complaint in this case related to two instances of alleged effluent discharge on 06/30/2021 and 08/31/2021, which caused an exceedance of weekly and monthly discharge of total suspended solids and BOD for June and August 2021, as well the City's failure to timely file certain reports related to long-term control

plan, bio-monitoring reports and failing to timely file a progress status report regarding phosphorous discharge optimization plan in a timely manner. (See also Ex.1, p.3 and Ex.2, p.7-11).

In support of the City's position both in regard to its Response way back in 2022 to the Agency's concerns raised in November of 2021, as also evidenced within the Complaint filed by the People and referenced within the Stipulation (Settlement, Ex.1, p.3), the City submitted its detailed written response that had been prepared by registered professional engineer Terry Boyer, and which seventy-four page response had been submitted to the Agency on 02/23/2022. (Ex.2) The City also presented at the hearing the testimony of Mr. Boyer on the pertinent issues. Mr. Boyer has been a professional engineer since 1992 and has been registered with the State of Illinois since 2000. The focus of his work has included wastewater treatment plants, which is the subject of this case, and also water. (T-21-22) Mr. Boyer has worked for a number of years as a consultant engineer and contractual engineer with the City of LaSalle going back to 2008. Mr. Boyer testified that he was familiar with the effluent and operation of the wastewater treatment plant at issue on River Street referenced as the south plant. (T-22-23) Mr. Boyer also testified that he was familiar with the alleged violations in the instant case having been brought in to assist in regard to compliance and response back in the fall of 2021. (T-23) Mr. Boyer also testified that in his opinion the settlement was fair. (T-24) The written report signed by then Superintendent of Public Works Patrick Watson on behalf of the City in February of 2022 was actually prepared by Mr. Boyer who provided cogent testimony in direct and cross examination explaining what had occurred, why, and how the City appropriately and promptly responded. (See Ex.2 and T-20-76)

First of all in regard to the effluent discharge, which was the subject of Count I and II (Settlement Ex.1, p.3) that occurred as Mr. Boyer testified during two dates of extremely high rainfall when the treatment plant was from a practical standpoint overrun and when the Illinois River was also in a flood stage. (Ex.2, T-28, 29) The evidence also demonstrated those events did not recur and the City has remained in compliance thereafter through the time of the filing of the People's Stipulation in

the instant case over two years later on issues related to this case.(T-11, Ex.1, p.4, Article III, Par.5) Additionally, Mr. Boyer provided evidence that though the concentration level of BOD and TSS was exceeded on the two months, the pounds per day limit of BOD and TSS were well below what was permitted by the EPA limits even in June and August 2021. (See e.g., “Settlement Ex.2, p.2, 23, T-28-30) Mr. Boyer also opined that he does not believe those two isolated events in regard to the exceedance of the concentration limit adversely impacted wastewater discharge and environment. (T-30)

In regard to the question in regard to the non-timeliness of reporting in regard to reports concerning the long-term control plan and also bio monitoring reports, it cannot be denied by the City that there is not evidence that those reports were timely filed with the Illinois Environmental Protection Agency (hereinafter the “Agency”) by the City.

However, from a substantive standpoint the impact on the environment and the public, it is significant to note that in regard to the long-term control plan, even though reports were not being filed, that the substantial work that the City was to do in furtherance of an appropriate long-term control plan was indeed being done and performed on a timely basis. It should be noted that nowhere within the People’s Complaint, nor within the Settlement Stipulation (Ex.1) was there an allegation that the long-term control plan was not appropriately being worked on from a substantive standpoint. Nor is there an allegation that the bio-monitoring record keeping was not being done even though it was also not filed. (Ex.1)

Indeed, Ex.2, specifically p.30-32, and as the testimony included, substantial work being done by the City and the expenditure of hundreds of thousands of dollars by the City in regard to the Long Term Control Plan. For example, and not be means of limitation, there were pump station upgrades and separation projects in the Hegeler Park area and in the area of Tonti Street, LaHarpe Street, Walnut and Porter, amongst other Long Term Control Plan activities. (Ex.2, p.30, and T36-37)

Further, in regard to the collection of the bio-monitoring data, while it must be acknowledged that the reports were not timely sent in, but the data was being regularly collected as testified to by Mr.

Boyer (T-39) and is further evidenced within the detailed data collected with time of collection indicated in regard thereto from 2019 through 2021 on pages 33-73 of Settlement Stipulation. (Ex.2)

There were certain questions and comments at the public hearing as to whether data was actually collected timely or for example just done afterwards, and made to look as if it were timely, but in review, the evidence is clear from the data (Ex.2, p.33-73) and as testified to by Mr. Boyer, the data was timely collected, though unfortunately it was not timely reported. (T-36, 38-39, 48-49)

Indeed, it should also be again emphasized that there was no suggestion back in 2021 (Ex.2, p.7-11) by the Agency and/or by the People in this case that the data was not collected as represented by the City within its February 2022 report and the attachments thereto. (Ex.2) Indeed, the Agency and the Illinois Attorney General within the Stipulation acknowledged that in regard to the process of the investigation, etc., the City cooperated and was diligent in coming back into compliance. (Ex.1, p.4, Art.III, par.5, p.6, par.2, T-51) There is no allegation as to a failure to collect the data itself, and only in regard to not timely reporting the data collected.

Further in regard to the concern raised by Mr. Schneider as part of his pre-hearing request for hearing as to whether the City had been reporting phosphorous levels appropriately, which is a reasonable question to raise, the actual allegation of concern of the Agency in regard to phosphorous was not in regard to reporting phosphorous levels, but rather in not timely submitting a phosphorous discharge optimization plan status report, which is totally different. It is respectfully suggested that it can be emphasized as was testified to Mr. Boyer, and it is not believed disputed by the People, data in regard to phosphorous discharge was regularly collected and regularly sent into the Agency on the City's monthly reports. (T-41-43) The concern as to whether there was a failure in regard to sending in a report in regard to any further optimization plan had nothing to do with reporting the level of phosphorous, which was done on a timely basis. (T-41-43) It is significant to note on this point that the Agency also acknowledges that the City's quick return to compliance and status report in February of 2022, due diligence in that regard and remaining in compliance thereafter on issues that are relevant

to this case is further corroborative of the point that there was no issue in regard to reporting phosphorous levels discharge themselves.

In regard to the allegations within the People's Complaint, the Settlement Stipulation (Ex.1) has a provision that while the Respondent entered into the Stipulation for the purpose of settling and compromising disputed claims, Respondent was not affirmatively admitting the allegations of the violation. However, on behalf of the City it cannot be denied that for whatever reason, which is not absolutely certain, the City does not have evidence that certain reports were timely filed and that is part of the reason that the City agreed to the Stipulation and the imposition of a fine. It had been noted on page 4 of the Settlement Stipulation (Ex.1, p.4, Art.III, Par.5) in regard to the impact on the public that the City subsequent to the November 2021 notification had subsequently complied with the Act and the Board and the Illinois EPA regulations. Also, in regard to the factors under Section 42(h), on behalf of the City, it should again be emphasized that as indicated within page 6 of the Stipulation that the City "was diligent in attempting to come back into compliance with the Act, board regulations and applicable regulations, once the Illinois EPA notified it of its non-compliance". (Ex.1, p.6, par.2) It should also be emphasized in regard to the effluent violations that the violation that began in June, which would also be inclusive of August, was resolved by September of 2021. (Ex.1, p.5, par.1)

The City of LaSalle respects and considers very important environmental concerns. It is further respectfully suggested that the City's detailed report in February of 2022, and the detailed presentation of expert testimony related to the issues that are relevant to the Stipulation and that which is respectfully suggested to have been the good faith nature of the presentation at the hearing demonstrates the City's good faith and serious consideration of and respect for environmental concerns.

The record in this case is again respectfully suggested to provide an appropriate foundation for the Board to approve the Stipulation for Settlement, which is fair, just, and reasonable, comports with the Rules, including 103.302, and also concerning which there was not on close scrutiny even a specific objection at the time of the Pollution Control Board hearing to approve the settlement.

Further Discussion, Questions and Public Comment

The public, including the participants, and other members of the public present, were allowed to cross-examine Mr. Boyer and to make additional public comments. Additionally, the record supports in the instant case that both the City and the People cooperated and did not object to having the hearing videotaped and photographed. Also, an additional party appeared at the hearing that had not requested in advance permission to videotape (T-5-6) and that was not objected to by either the City or the People all in the spirit of transparency and communication with the public. See also certain of these record references are set forth within the docket sheet, which is attached as Exhibit A hereto.

In regard to questions by the public and public comment at the hearing, first of all again, no member of the public at the hearing stated that they objected to approval of the settlement by the Pollution Control Board.

Mr. Jamie Hicks first questioned trying to blame a representative who was no longer working for the City as a reason not to get the reports timely submitted and as to whether the report forms on dates were really timely collected, as opposed to filling in forms later. (T-47) The City responded that it was here to be responsive and inquired again of Mr. Boyer as to being based on his investigation and in further emphasizing that the City was not certain that it was Mr. Bumgarner, but that it did not matter as the City had missed the dates and that the City was not quarreling with that. (T-48) There was no evidence that they were sent in, but the City also again inquired of Mr. Boyer as to whether he was confident that based upon his investigation that these reports were prepared contemporaneously and not picked up and gotten later.

Mr. Boyer responded that the long-term control efforts have been ongoing but that the reports were not done contemporaneously because they were missed. So, they were done afterwards and documented, but the actual Long Term Control Plan efforts were done in a timely manner. Mr. Boyer further indicated that the bio-monitoring reports were done at the time they were required. They were just not reported to the Agency in a timely manner. (T-48-49, Ex.2, p.33-73)

Mr. Boyer further when questioned as to whether the City fully cooperated with the State EPA in regard to their investigation, the response was yes, and further that nothing to his knowledge had been withheld from the State. (T-51-52)

It is respectfully suggested that the record in this case is strong on the point that the City's efforts in regard to working to protect the public on the Long Term Control Plan to endeavor to work on separation of sanitary and storm sewer that were built fifty and a hundred years ago were ongoing. The record is also strong on the point that the City was appropriately collecting the bio monitoring data on a timely basis in regard to bio-monitoring reports. (Ex.2, p.33-73), T-48-49)

Ms. Brianna Hicks raised the point that the Stipulation provides the EPA's information gathering had been hindered by the failure to report. The City acknowledged the timely reporting was important, that it was not done, and that was part of the reason why the City agreed to the Stipulation that the reports were not sent in on a timely basis. (T-54-57)

The People also pointed out that the language of the Stipulation speaks for itself. (T-57) Ms. Brianna Hicks followed up with an additional question on how one converts milligrams per liter as referenced in the chart (in Ex.2, p.2) into milligrams per deciliter. (T-58) Mr. Boyer responded that there is a formula in the graphs contained within the City chart in regard to pounds per day that the City was compliant in Mr. Boyer's opinion for the entire year of 2021, the City had been protective of water quality going into the Illinois River and that thus, in Mr. Boyer's opinion, the City was on top of what they are supposed to be doing with wastewater treatment to the Illinois River. (T-59)

Ms. Shauna Wilcox further inquired into the formula and in regard to the extrapolation and inquired as to how many times per day is the data collected. Mr. Boyer responded that it is collected everyday on a daily basis, three times a week for concentration, every day they are measuring flow, so it is flow on that day, concentration on that day and conversion factor per pounds. The follow-up question was do you think that the milligrams per liter to pounds per day is accurate, and Mr. Boyer responded that it was a standard engineering formula. (T-61)

The People pointed out that it was getting into a relevance problem, that there was not an allegation in regard to pounds per day but rather an alleged violation in regard to concentration as far as milligrams per liter, and that there could be no dispute but that the milligrams per liter were violated. The City acknowledged that it had no issue with what the People were suggesting in that regard, but that a point in regard to raising the pounds per day was that it is another measure of measuring what affect BOD and TSS can have on the environment because while the concentration limits were acknowledged to be over, the pounds per day was not. (T62-63)

On further questioning, Ms. Brianne Hicks had additional questions, including why there was not a reference to an average in regard to TSS in June and the People acknowledged that in June the only overage in violation was in regard to BOD in June. (T-71) Further questioning as to whether the overage in June and August was reported to anyone. (T-73) The City responded that it was reported to the Agency and that was most likely how the notice in November occurred. There was not evidence that it was reported to the public at that time in 2021. (T-73-74) Mr. Boyer also pointed out that one would not necessarily even know whether there was a BOD violation on the same day. (T-74-75) Mr. Boyer asked if Ms. Hicks if that answered her question, and she indicated yes. (T-75) The City did reiterate that the City would report any issue with overages to the Agency in a monthly report. (T-76)

Ms. Dawn Hicks then asked certain questions primarily related to Water Treatment Plant primary related to drinking water quality. The City objected on the basis of relevance and the Hearing Officer's Order. Ms. Dawn Hicks maintained that the City had opened the door by inquiring of the engineer about the quality of drinking water. (T-77-79) The Hearing Officer indicated the record will reflect [what the testimony was] then granted latitude. Ms. Hicks referenced a website of EWG.org wherein Ms. Hicks stated the City was over EWG.org guidelines. (T79-80) The People inquired as to whether that website stated that the City was in compliance with all State and Federal regulations (T-80), and Ms. Hicks was not aware as to whether that was correct or not. (T-81)

Indeed, reference to the EWG.org website, which this Board can take judicial notice of, which it does state that the City was in compliance with all Federal drinking water standards regarding water as of the time water would leave the LaSalle water treatment plant. (See www.ewg.org/topwater/system.php?pws=IL0990);

It is respectfully suggested that the City based upon the transcript we now have available could move to strike the entirety of Ms. Hicks questions on drinking water quality as clearly not being relevant to the Stipulation. A review of the transcript demonstrates that Ms. Hicks must have misrecalled the earlier questioning (which is understandable given she would not at the time had the transcript available) in that there is no question in the earlier testimony of Mr. Boyer related to asking Mr. Boyer in this hearing to opine on the quality of LaSalle drinking water. Indeed, the City was very careful at several portions of the hearing to emphasize that this case was not about the quality of drinking water. (See e.g., T-14-15, 22, 31, and 32) Nonetheless, in the spirit of transparency and freedom of speech, the City is not going to seek that this irrelevant questioning be stricken from the record. It was also brought forward that in the spirit of transparency and because the City expected that questions would come up in regard to drinking water, even though it was not relevant to the case, that the City had copies of its monthly reports regarding drinking water quality as of the time the water leaves the LaSalle water treatment plant that it submits to the EPA available for anyone who wished them at the hearing. (T-83-84) The City had those available and was willing to submit them to the Pollution Control Board if deemed relevant. The Hearing Officer indicated later that we could submit them with our final submission. (T-85)

Given that those reports are clearly not relevant to the Stipulation and proposed settlement, but also recognizing a definite interest in drinking water quality by everyone, the Board and the public can take judicial notice of the point that the City had begun posting certain water quality reports on its website and presently has not only current water quality reports on its website, but reports going back to 2022 and 2023. Presently those reports are available for viewing on the first page of the City of

LaSalle's website (www.lasalle-il.gov). In the event that they should be moved to a different portion of the website, the City's present intention is that those reports will still be able to be located on the City's website. For the foreseeable future, the City intends to keep those reports on its website. If not on the front page, they are planned to be available for review by looking under the section of the website under News and Events.

Additionally, though it is respectfully suggested to be clearly not relevant to the instant case, the City candidly acknowledges that there are other public concerns in regard to drinking water, as it reaches public homes, including, but not limited to, in regard to lead in a small percentage of certain resident's homes, and needed further infrastructure improvements to the water distribution system, including in regard to backup generators. The City is in the process of working through endeavoring to resolve those issues with the Illinois Environmental Protection Agency and the public, but the City again respectfully suggests that though those issues are acknowledged in the spirit of full transparency, that those issues are respectfully suggested to be wholly unrelated to the instant case.

The Hearing Officer then asked Mr. Schneider who was one of the parties filing a request for the hearing, and who had also participated in the pre-hearing matters, Mr. Schneider was asked as to whether he had any other questions at that time. At that point, Mr. Schneider deferred his questions until after Mr. Jamie Hicks asked his additional questions. (T-85)

Further additional questions by Mr. Jamie Hicks included as to whether certain of the additional work that was being done by the City on its water treatment plant had anything to do with the settlement agreement in the instant case. The People (T-86) clarified that the proposed Settlement Stipulation is the entire agreement in regard to this case. (T-85-89)

Mr. Schneider was then again if he had any additional questions. Mr. Schneider replied "I'm okay", and asked no further questions. It should be noted that Mr. Schneider in his request for hearing filed 12/13/2023, had in his pre-hearing request for hearing also questioned whether the Pollution Control Board should approve the Stipulation and Proposal for Settlement. Mr. Schneider was also a

party who had participated in certain of the pre-hearing pre-trial discussions and was a party who had made certain of the arrangements for the videotaping of the proceeding that had been authorized by the Hearing Officer without objection by the People or the City, which request for videotaping was originally filed by Ms. Karen (Karry) King. (See the docket sheet, attached as Exhibit A, and Hearing Officer Orders entered, for example on 02/15/2024, attached as Exhibit B) The City as acknowledged by the Hearing Officer had also assisted in facilitating the use of a courtroom at the LaSalle County Courthouse, and the allowance of videotaping in the courtroom, for purposes of the Pollution Control Board Hearing in order to assist in providing an appropriate, dignified setting for the hearing. (See also T-91-92) In any event, as set forth above, following presentation of the detailed evidence, at the point as indicated towards the end of the hearing, when Mr. Schneider was asked if he had any question at that time, his response was as indicated above.

That concluded the areas of the public questions and comments at the hearing. Again, there was no objection stated at the hearing to the approval by the Pollution Control Board of the Settlement Stipulation as between the People and the City.

It is respectfully suggested that considering the totality of the evidence in the instant case and the law applicable thereto that all of the same corroborates the justness, reasonableness, and appropriateness of the Settlement Stipulation. The City's prompt response back in 2021 and 2022 with the detailed seventy-four page report prepared by the registered professional engineer, Mr. Boyer, and signed off on by an appropriate City representative, together with the evidence presented at the hearing, including the expert testimony of Mr. Boyer, clearly indicates that the settlement is fair, just and reasonable. The record indicates that the People appropriately through the Agency investigated the environmental concerns, cited the City with alleged violations, and further demonstrates that once cited, the City responded promptly and diligently coming back into compliance. The evidence further indicates that the alleged effluent discharge in June and August 2021 were related to isolated events in very high rainfall that was resolved by September of 2021. The evidence further indicates that in regard

to the failure to file certain reports timely that those reports once it was called to the attention of the City were promptly filed. Additionally, and very pertinently as well, the evidence clearly indicates that the substantive work in regard to the matter that was to be contained within those reports was ongoing appropriately by the City of LaSalle and that the environment and the Public were being appropriately respected and protected in regard to doing the substantive work in regard to the both the Long Term Control Plan and additionally compiling the data in regard to the bio monitoring reports. The evidence and the law, we respectfully suggest, clearly supports the approval of the Settlement Stipulation.

Clarification as to Certain Procedure

In the spirit of full transparency, even though the City was not aware of any requirement that it do so, the City tendered to the People and to all participants who are of record in the case, copies of all exhibits that the City at that time intended to tender at the hearing but acknowledges that certain of them might need redacting, with the knowledge that there could be additional exhibits that would be needed depending on what came up such as the questions in regard to drinking water quality. Exhibits tendered in advance included unredacted copies of all of the exhibits that were admitted either in full form and/or redacted being 1-7 per the Hearing Officer's 03/11/2024 Order, a copy of which is attached hereto for ease of reference as Exhibit C. See also the City's 02/27/2024 pre-hearing correspondence with copies of then potential exhibits. (Exhibit G hereto)

The City also handed out on the morning of the hearing to all members of the public in attendance to any member of the public who wished to have one, copies of all of these exhibits. The point that there had been handouts was also referenced at certain parts of the transcript. (See e.g., T-7, 25-26)

Reasons for the submission of exhibits other than the Stipulation were to provide responses to and clarification to certain questions that were raised in certain of the original members of the public's request for hearing as to the manner in which the Stipulation was approved by the City. There were suggestions that included that the Stipulation and Proposed Settlement was not a City Council agenda

item, that the same may have been passed by only a straw poll, that the public was not aware that there was a fine, amongst other questions.

The City, certainly, of course, respects the right of the public to comment, to raise questions, and to request a hearing. Indeed, as indicated above, the City thanked the public for attending and indicated their comment was welcome. The City again respects very much the First Amendment and Freedom of Speech.

However, it is respectfully suggested that the evidence and the totality of this record clearly demonstrates that the above suggested concerns are totally unfounded, and without merit.

Pertinent exhibits on this aspect, include the following:

- Exhibit 4- City of LaSalle's agenda for its 10/02/2023 meeting, which must be published and was available at least forty-eight hours prior to the 10/02/2023 meeting.

The Board will notice that the published Agenda clearly includes the following:

“An Ordinance authorizing and approving Stipulation and Proposal for Settlement with the Illinois Environmental Protection Agency and Illinois Attorney General (regarding Wastewater Treatment Plant Reporting and Related Matters”.

- Exhibit 5-Complete copy of Ordinance Number 3035 of the City of LaSalle entitled “Ordinance Authorizing and Approving Stipulation and Proposal for Settlement with the Illinois Environmental Protection Agency and Illinois Attorney General (Regarding Wastewater Treatment Plan Reporting and Related Matters), which ordinance includes a copy of the approved Stipulation that was approved in open session at the 10/02/2023 meeting.
- Exhibit 6-Consists of redacted copies of minutes of the 10/02/2023 regular meeting of the LaSalle City Council. The redacted minutes indicate that certain of the same

members of the public who were present and raised questions at the time of the Pollution Control Board hearing, which, of course, they have a right to do and was respected by all involved and remains respected, were also present at that 10/02/2023 meeting. The public comment portion of the meeting, including any comment made by those individuals was redacted because the public comment itself at the 10/02/2023 Council meeting when the Ordinance was passed, had no question or comment at the time in regard to the Ordinance Approving the Stipulation and Proposal for Settlement with the Illinois Environmental Protection Agency. Had there been a question at the public comment time, the City would likely have provided an even more in-depth summary of the Ordinance and Stipulation when the Ordinance was raised as an agenda item that night.

- Exhibit 7-Includes a redacted portion of a transcript of certain of the audio tape at the 10/02/2023 meeting that includes a brief summary of the ordinance, most
- pertinently including the point of letting the public know that there was a fine of \$5,740 as part of a proposed Stipulation and Settlement Agreement.

It should be noted for the record that the proposed draft of the ordinance had been pre-submitted to the People during the week prior to and in advance of the 10/02/2023 meeting, as evidenced by copies of email communications dated 09/28/2023 and 09/29/2023 from counsel for the City to counsel for the Attorney General. (Exhibits D and E hereto) Additionally, a full copy of the ordinance as passed on 10/2/2023, including the signed Stipulation was thereafter provided to counsel for the People following passage and approval on 10/20/2023. (Exhibit F hereto)

It is expected that the People will concur there is no competent basis to dispute the point that as referenced in paragraph H of the Stipulation that the parties to the Stipulation, including the City

were and are fully authorized to enter into the terms and conditions of the Stipulation and to be legally bound by them. (Settlement Ex.1, Section H, p.11)

Another question raised in the pre-hearing requests for hearing by Mr. Schneider related to a question involving a discharge from a different pipe wholly independent to and having nothing to do with outfall 1. As indicated towards the beginning of the hearing (T-14) the discharge from that pipe of Carus Chemical has nothing to do without outfall 1 or the subject matter of the instant case. That point was clarified for the public as indicated at the outset of the hearing (T-14) and by Mr. Boyer in his testimony. (T-32) Nor is there any allegation by the People in the Complaint that the City has violated any EPA regulation related to discharge by Carus from that pipe.

Another question raised in the pre-hearing requests that the hearing take place was in regard to looking into the permit process. There is no allegation in the Complaint related to the City and the permitting process, and while the inquiry is respected, and while the City of LaSalle certainly respects the permitting process, it is respectfully suggested that questions in regard to the permitting process are not relevant to this case. (See Pollution Control Board Rules, including, but not limited to, 101.628 and Hearing Officer Halloran's 02/15/2024 Order.)

The Stipulation and Proposal for Settlement in This Matter Properly Considers All Relevant and Required Factors, Meets the Content Requirements of 35 Ill. Adm. Code 103.302, takes into Consideration Pertinent Statutory Sections, including, but not limited to, Section 42(g) and 42(h), 459 ILCS 45/42(g)(h), is fair, just and reasonable, was entered into in good faith, and should be approved by the Illinois Pollution Control Board

As the People acknowledged in opening statement towards the beginning of the hearing in the instant case, this Board has been considering Stipulations for over fifty years. This is a very common practice since the Act was passed. Further, the proposed settlement fully resolves all relevant issues in dispute, further that the Stipulation is fair and fully addresses the issues in the Complaint and is made in furtherance and pursuant to Section 42(h) of the Act. The point that Stipulations and Settlements are an appropriate, just and made in good faith as to the one in the instant case, are fair, just and approval and

are given strong consideration by the Courts as further evidenced by the case law, includes, but not limited to, People ex Rel. Scott v. Janson, 57 Ill.2d 451 at 460-461 (1974). The Stipulation and Proposed Settlement Agreement (Ex.1) that was entered into in good faith in the instant case is once again suggested to be fair, just, reasonable, and is respectfully suggested to comport with the requirements of law, including law of the Pollution Control Board Rules, including Section 103.302. It is once again respectfully suggested that the proposed Settlement Stipulation should be approved by this Illinois Pollution Control Board.

Wherefore, the City of LaSalle respectfully requests that for the reasons set forth within the Stipulation and Proposal for Settlement filed with the Pollution Control Board in these proceedings on 11/13/2023; additionally, for the reasons demonstrated at the time of hearing, including the testimony, public comment, and evidentiary exhibits presented in connection therewith, and for the reasons set forth herein, the City respectfully suggests that the Stipulation and Proposal for Settlement in the instant case should again additionally be approved as meeting all of the content requirements of law, including, but not limited to, 35 Illinois Administrative Code 103.302, and it is respectfully suggested the Stipulation and Proposal for Settlement should be approved by the Illinois Pollution Control Board in exercise of this Board's appropriate discretion, and in furtherance of the appropriate administration of justice for the City of LaSalle, the People, and the Public, and in furtherance and pursuant to Rules of the Illinois Pollution Control Board, including, but not limited to Section 103.302, 304 and 306.

Respectfully submitted,

City of LaSalle, an Illinois Municipal Corporation

By: James A. McPhedran

James A. McPhedran

Illinois ARDC Number 1868977

Meyers, Flowers, Bruno, McPhedran & Herrmann, LLC

a/k/a Meyers & Flowers, LLC

1200 Maple Drive

Peru, Illinois 61354

Phone: 815-223-0230 / Facsimile: 815-223-0233

jim@meyers-flowers.com

**Table of Contents to Exhibits Presented with
City of LaSalle Post-Hearing Submission:**

- Exhibit A - Docket Sheet of Illinois Pollution Control Board Case Number 24-33.
- Exhibit B - Hearing Officer Order of 02/15/2024;
- Exhibit C - Hearing Officer Order of 03/11/2024.
- Exhibit D - Copy of 09/28/2023 communication from counsel for the City of LaSalle to counsel for the Attorney General.
- Exhibit E - Copy of 09/29/2023 communication from counsel for the City of LaSalle to counsel for the Attorney General.
- Exhibit F - Copy of 10/20/2023 communication from counsel for the City of LaSalle to counsel for the Attorney General.
- Exhibit G - Copy of 02/27/2024 communication from counsel for the City of LaSalle to Hearing Officer Bradley P. Halloran, Don Brown-clerk of the Board, Cara W. Sayer, Assistant Attorney General, Christopher J. Grant, Senior Counsel, Office of the Illinois Attorney General, Marcia Cacaccio, Paralegal to the Office of the Illinois Attorney General, Martin Schneider, Brianne Hicks, Dawn Hicks, Lindsay Jones, and Karry King.

Docket Sheet

Case No: PCB 2024-033	Case Name: People of the State of Illinois v. City of LaSalle
Case Type: Enforcement	Board Member: Gibson, M.N.
Media Type: Water	Hearing Officer: Halloran, B.;Brad Halloran
County: La Salle	Statutory Decision Due Date:
Status:	

Case Activity

Date	Activity Type	Activity Notes
3/15/2024	Other	Certificate of publication; published in the News Tribune, on 23rd day of January 2024
3/11/2024	Hearing Officer Order/Correspondence	*Hearing Report: An agreed post-hearing briefing schedule is as follows: Simultaneous post-hearing briefs are due to be filed on or before April 25, 2024. Public Comment due to be filed March 14, 2024
3/8/2024	Exhibits Submitted	Additional Exhibits from February 29, 2024 hearing (Electronic Filing)
3/6/2024	Transcript	Transcript of February 29, 2024 hearing (Electronic Filing)
2/15/2024	Hearing Officer Order/Correspondence	*Hearing Officer Order: February 15, 2024, a telephonic status conference was held; Discussions first centered on the hearing scheduled for February 29, 2024, and the request for recording the hearing by the one of the Public Commentators. After having reviewed the request and responses filed by the complainant and the City of LaSalle, I will allow the recording pursuant to Section 101.606 of the Board's procedural rules.
2/2/2024	Proof of Service	Certificate of Service of Response to the Motion for Extended Media Coverage (electronic filing)
2/1/2024	Appearance	Appearances of Christopher Grant; On behalf of the Complainant, the Illinois Attorney General (electronic filing)
2/1/2024	Response to Motion	Response to Request/Motion for Extended Media Coverage (electronic filing)
2/1/2024	Response to Motion	Response to the Motion for Extended Media Coverage (electronic filing)
1/25/2024	Motion	Motion for Extended Media Coverage (electronic filing)
1/22/2024	Hearing Officer Order/Correspondence	*Hearing Officer Order; Hearing in this matter has been scheduled for February 29, 2024, beginning at 10:00 a.m. at the LaSalle County Courthouse, Courtroom 206, 119 W. Madison Street, Ottawa
1/18/2024	Hearing Officer Order/Correspondence	*Hearing Officer Order; Telephonic Status Conference January 18, 2024, parties and participants participated in a telephonic status conference: Discussions centered on a hearing date, time, and location. Telephonic Status Conference set for February 15, 2024, at 12:30 p.m.
1/11/2024	Hearing Officer Order/Correspondence	*Hearing Officer Order; Hearing officer assigned, from this date any document filed with the Clerk of the Board must also be served on hearing officer, electronic service is sufficient; Telephonic Status Conference set for January 18, 2024, at 12:00 p.m.



Electronic Filing: Received, Clerk's Office 04/24/2024

1/5/2024	Other	Correspondence submitted by James A. McPhedran (City of LaSalle) directed to the Clerk to confirm prior conversation (electronic filing)
12/15/2023	Other	Request for public hearing submitted by Brianne Hicks
12/13/2023	Other	Request for public hearing submitted by Martin Schneider. (electronic filing)
12/12/2023	Other	Request for public hearing submitted by Dawn Hicks.
12/6/2023	Other	Certificate of publication; published in the News Tribune on November 18, 2023
11/16/2023	Order	Order of the Board B.F. Currie: Board accepted complaint: Directed Clerk to cause notice of stipulation, proposed settlement, and request for relief from hearing requirement
11/13/2023	Initial Filing	Complaint, Stipulation, Proposal for Settlement, and Motion for Relief from Hearing Requirement (electronic filing)

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ILLINOIS POLLUTION CONTROL BOARD
February 15, 2024

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	PCB 24-33
CITY OF LASALLE, an Illinois municipal)	(Enforcement – Water)
corporation,)	
)	
Respondent.)	

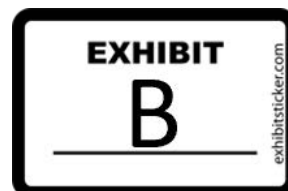
HEARING OFFICER ORDER

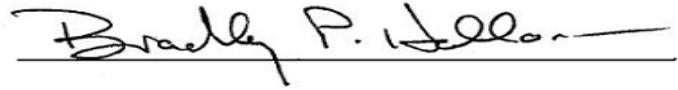
On February 15, 2024, a telephonic status conference was held. The complainant and the respondent appeared. Only 2 of the 5 of the potential Public Commentators who are on the service list for today’s telephonic call-in number appeared, Ms. Brianne Hicks and Ms. Dawn Hicks.

Discussions first centered on the hearing scheduled for February 29, 2024, and the request for recording the hearing by the one of the Public Commentators. After having reviewed the request and responses filed by the complainant and the City of LaSalle, I will allow the recording pursuant to Section 101.606 of the Board’s procedural rules. My granting of the request, however, is subject to the concerns/rules of the Circuit Court. The Court needs to know the name of the person(s) doing the recording and the equipment being used. Ms. Brianne Hicks stated that she will forward the name(s) and type of equipment, by email, to the City of LaSalle’s attorney, Mr. McPhedran, counsel for the complainant and myself by no later than February 26, 2024. Failure to receive that information in a timely fashion may result in denied access to the Court House.

The parties were informed that any public comment must be relevant to the Stipulation and Proposal for Settlement filed in this matter on November 13, 2023. *See* Section 101.628 of the Board’s procedural rules. The two potential Public Commentators who were present at the conference call stated that their comments should be approximately 5-10 minutes each.

IT IS SO ORDERED.



A handwritten signature in black ink, reading "Bradley P. Halloran", is positioned above a solid horizontal line.

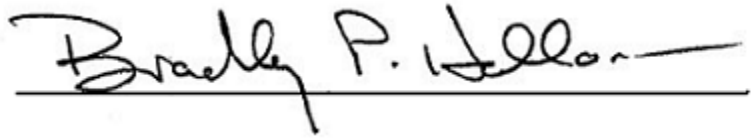
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street Suite 630
Chicago, Illinois 60605
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on February 15, 2024, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on February 15, 2024:

Don Brown
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, Illinois 60605



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, Illinois 60605
312.814.8917

@ Consents to electronic service

SERVICE LIST

PCB 2024-033@
Cara Sawyer
Office of the Attorney General
69 W. Washington Street
Suite 1800
Chicago, IL 60602

PCB 2024-033@
James McPhedran
Meyer and Flowers
1200 Maple Drive
Peru, IL 61354

PCB 2024-033@
Martin Schneider
1522 Lharpe
LaSalle, IL 61301

PCB 2024-033@
Brienne Hicks
1513 Zinc St.
LaSalle, IL 61301

PCB 2024-033@
Dawn Hicks
823 Seventh Street
LaSalle, IL 61301

PCB 2024-033@
Karry King
2150 NE 175th St. Rd.
Citra, FL 32113

PCB 2024-033@
Lyndsay Jones
WGLT-FM, Illinois State University
8901 Illinois State University – WGLT-FM
Normal, IL 61790

ILLINOIS POLLUTION CONTROL BOARD
March 11, 2024

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 24-33
)	(Enforcement – Water)
CITY OF LASALLE, an Illinois municipal)	
corporation,)	
)	
Respondent.)	

HEARING REPORT

On February 29, 2024, a hearing was held in the above-captioned matter at the LaSalle County Courthouse, Court Room 206, 119 W. Madison Street, Ottawa, Illinois 61350.

Attorneys James McPhedran and Patrick Herrmann appeared of respondent, City of LaSalle. Assistant Attorneys General, Cara Sawyer and Christopher Grant appeared on behalf of the complainant. Victor Lavieri, Jamie Hicks, Marty Schneider, Brianne Hicks, Shawana Wilcox gave public comment and/or asked questions of the City of LaSalle witness, Terrence Boyer.

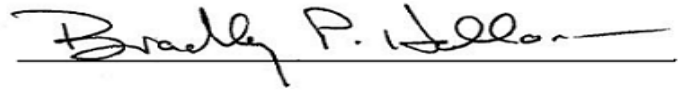
Exhibits

Exhibits were offered into evidence at the hearing and filed with the Board on March 8, 2024. An exhibit list itemizing the offered exhibits and summarizing their status is attached to this order. Exhibits 4, 5, 6 and 7 offered at the hearing were redacted by agreement and submitted on March 8, 2024, as agreed exhibits.

Briefing Schedule

An agreed post-hearing briefing schedule is as follows: Simultaneous post-hearing briefs are due to be filed on or before April 25, 2024. Public Comment due to be filed March 14, 2024.

IT IS SO ORDERED



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, Illinois 60605
312.814.8917
Brad.Halloran@illinois.gov

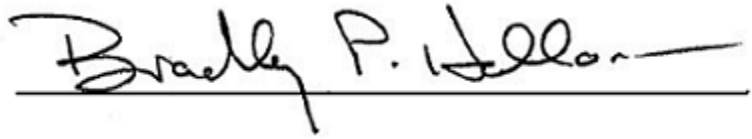


CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on March 11, 2024, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on March 11, 2024:

Don Brown
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, Illinois 60605



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, Illinois 60605
312.814.8917

@ Consents to electronic service

SERVICE LIST

PCB 2024-033@
Cara Sawyer
Office of the Attorney General
69 W. Washington Street
Suite 1800
Chicago, IL 60602

PCB 2024-033@
James McPhedran
Meyer and Flowers
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Peru, IL 61354

PCB 2024-033@
Martin Schneider
1522 Lharpe
LaSalle, IL 61301

PCB 2024-033@
Brienne Hicks
1513 Zinc St.
LaSalle, IL 61301

PCB 2024-033@
Dawn Hicks
823 Seventh Street
LaSalle, IL 61301

PCB 2024-033@
Karry King
2150 NE 175th St. Rd.
Citra, FL 32113

PCB 2024-033@
Lyndsay Jones
WGLT-FM, Illinois State University
8901 Illinois State University – WGLT-FM
Normal, IL 61790

PCB 2024-033
Christopher J. Grant
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69 W. Washington Street
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Chicago, IL 60602

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CHICAGO OFFICE
225 W. WACKER DRIVE
SUITE 1515
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(312) 214-1017

Via email @ cara.sawyer@ilag.gov

September 28, 2023

Cara V. Sawyer
Office of the Attorney General
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

Re: City of LaSalle/Illinois EPA/Wastewater Treatment Plant Reporting and Related Matters

Dear Ms. Sawyer:

In regard to the proposed Stipulation and Proposal for Settlement as involving the City of LaSalle and Illinois EPA, find enclosed herein a draft of a proposed ordinance that I expect would be acted upon at the LaSalle City Council meeting this upcoming Monday, October 2, 2023.

Please advise in the event you have any question and/or issue at your earliest opportunity.

Thank you for your anticipated prompt, professional attention.

Respectfully submitted,

James A. McPhedran

James A. McPhedran
MEYERS & FLOWERS, LLC

JAM:csg

Enclosure



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(312) 214-1017

Via email @ cara.sawyer@ilag.gov

September 29, 2023

Cara V. Sawyer
Office of the Attorney General
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

Re: City of LaSalle/Illinois EPA/Wastewater Treatment Plant Reporting and Related Matters

Dear Ms. Sawyer:

In regard to the above matter, find enclosed the ordinance revised per your request. I presume this is now satisfactory in regard to form. If not, I also expect you will advise right away.

We also thank you for your usual anticipated prompt, professional attention.

Respectfully submitted,

James A. McPhedran

James A. McPhedran
MEYERS & FLOWERS, LLC

JAM:csg

Enclosure



MEYERS & FLOWERS LLC
TRIAL ATTORNEYS

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(312) 214-1017

Via US Mail and Email @ cara.sawyer@ilag.gov

October 20, 2023

Cara V. Sawyer
Office of the Attorney General
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

Re: City of LaSalle/Illinois EPA/Wastewater Treatment Plant Reporting and Related Matters

Dear Ms. Sawyer:

In furtherance of our understanding and the City's commitment to move forward with the proposed settlement, etc., find enclosed herein the ordinance authorizing the entering into of the Stipulation and Proposal for Settlement.

Respectfully submitted,

James A. McPhedran

James A. McPhedran
MEYERS & FLOWERS, LLC

JAM:csg

Enclosure



MEYERS & FLOWERS LLC
TRIAL ATTORNEYS

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February 27, 2024

Brad Halloran-Hearing Officer-Illinois Pollution Control Board @ brad.halloran@illinois.gov
Don Brown-Clerk of the Board-Illinois Pollution Control Board @ don.brown@illinois.gov
Cara V. Sawyer-Assistant Attorney General-Office of the Attorney General @ cara.sawyer@ilag.gov
Christopher J. Grant-Senior Counsel-Office of the Illinois Attorney General @ christopher.grant@ilag.gov
Maria Cacaccio-Paralegal 1-Office of the Illinois Attorney General @ maria.cacaccio@ilag.gov
Martin Schneider @ martyschneider20@yahoo.com
Brienne Hicks @ bhicks171@gmail.com
Dawn Hicks @ lighted_dawn@yahoo.com
Lindsay Jones @ ljone3@ilstu.edu
Karry King @ kanning16@gmail.com

Re: Pollution Control Board Matter
Case Number: PCB 2024-033
Illinois EPA-City of LaSalle

Dear All:

In the interest of potential expediency, full disclosure and transparency, find enclosed herein a list of certain potential exhibits that may be tendered as relevant to the stipulation and proposal for settlement that is at issue in regard to the upcoming hearing, together with a copy of certain exhibits. Quite naturally, depending on what occurs at the hearing, there could be changes, and there could also be other exhibits tendered as well.

Respectfully submitted,

Very truly yours,

James A. McPhedran

James A. McPhedran
MEYERS & FLOWERS, LLC

JAM:csg

Enclosure



LIST OF POTENTIAL EXHIBITS

1. Copy of Court filed stipulation in PCB 24-33.
2. City of LaSalle Response-February 2022 to Illinois EPA'S 11/21/2021 Notice of Alleged Violation Notice Regarding LaSalle Wastewater Treatment Plant South-IL0029424-W0990300007.
3. RESERVED.
4. City of LaSalle agenda notice regarding regular meeting of City Council 10/02/2023, which includes discussion of potential action on the agenda the following: An Ordinance authorizing and approving Stipulation and Proposal for Settlement with the Illinois Environmental Protection Agency and Illinois Attorney General (regarding Wastewater Treatment Plant Reporting and related matters).
5. A copy Ordinance authorizing and approving Stipulation and Proposal for Settlement with the Illinois Environmental Protection Agency and Illinois Attorney General (regarding Wastewater Treatment Plant Reporting and related matters) passed and adopted at a regular meeting 10/02/2023 by unanimous roll call vote on 10/02/2023.
6. A copy of minutes of the regular meeting of the LaSalle City Council dated 10/02/2023.
7. A copy of a transcription of portion of audio of 10/02/2023 LaSalle City Council meeting including regarding vote and certain summary discussion regarding stipulation and proposal for settlement, amongst certain other topics. A copy of an actual audio file of the 10/02/2023 LaSalle City Council meeting, including at least the pertinent portion of the meeting will also be either sent in a separate email and/or brought to the hearing on February 29, 2024.