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CERTIFICATE OF SERVICE

I, Cara V. Sawyer, an Assistant Attorney General, certify that on the 25th day of April, 2024, I caused to be served the attached Notice of Filing and Post Hearing Brief on behalf of the People of the State of Illinois, upon the persons listed on the foregoing Service List by electronic mail.

/s/ Cara V. Sawyer

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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. 2024-33
)	
CITY OF LASALLE,)	
An Illinois municipal corporation,)	
)	
Respondent.)	

PEOPLE’S POST-HEARING BRIEF

On November 13, 2023, the parties filed a Stipulation and Proposal for Settlement (“Stipulation”) in this matter, along with a request for relief from the hearing requirement.¹ From December 12-15, 2023, the Illinois Pollution Control Board (“Board”) received requests for public hearing on the Stipulation. On February 29, 2024, the Board held a public hearing (“Hearing”). For the reasons below, as no public comment substantively questioned the appropriateness of the Stipulation in addressing the violations alleged in the Complaint, the People of the State of Illinois, by Kwame Raoul (“People”), respectfully request that the Board enter an Order accepting and adopting the Stipulation as filed.

I. FACTUAL BACKGROUND

LaSalle’s Wastewater Treatment Plant – South

During the relevant period, the City of LaSalle (“Respondent”) owned and operated the LaSalle Wastewater Treatment Plant – South (“WWTP-South”) located at 400 River Street, LaSalle, Illinois. Compl., p. 2 ¶5. At that time, Respondent was required to have a permit for

¹ As discussed more thoroughly *infra*, the People simultaneously filed a related Complaint. Complaint, motion, and Stipulation can be found in a single pdf, available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-109300> (last accessed April 25, 2024).

wastewater discharges from its WWTP-South. *Id.* p. 4 ¶18. The Illinois Environmental Protection Agency (“Illinois EPA”) issued National Pollutant Discharge Elimination System (“NPDES”) permit No. IL0029424 (“Permit”) to Respondent on November 23, 2015, for its WWTP-South. *Id.* p. 4 ¶19.

Among other things, the Permit required that total suspended solids (“TSS”) and five-day biochemical oxygen demand (“BOD₅”) levels in the effluent that the WWTP-South discharged remain within weekly average (“w.a.”) and monthly average (“m.a.”) discharge limitations. Compl., p. 4 ¶20.

The Permit also included reporting requirements. Compl., p. 8 ¶20. Respondent was required to submit, among other things, the following: semi-annual Combined Sewage Outfall, Long-Term Control Planning progress reports (“CSO-LTCP Reports”); biomonitoring reports on a complex schedule to monitor the toxicity impact of outflow on aquatic species (“Biomonitoring Reports”); and, annual progress reports for a Phosphorus Discharge Optimization Plan (“PDOP Reports”) (together, the “Permit Reports”). *Id.* p. 8 ¶¶20-22; p. 9 ¶¶24, 26.

Effluent Violations and Subsequent Compliance

In June 2021 and August 2021, the effluent that Respondent discharged violated the permitted w.a. and m.a. concentration limits for TSS and BOD₅. Compl., pp. 4-5 ¶¶20-21. The effluent violations were resolved by September 2021. Stipulation, p. 5. These steps were taken prior to the People filing the Complaint.

Permit Reporting Violations and Subsequent Compliance

From 2019 through 2021, Respondent failed to submit the Permit Reports. On February 23, 2022, Respondent submitted all Permit Reports to the Illinois EPA. Compl., pp. 8-9 ¶¶23, 25, 27. Such submissions resolved the reporting violations. Stipulation, pp. 5-6. These steps were

taken prior to the People filing the Complaint.

As of the date of filing of the Stipulation, Respondent had returned to compliance with the relevant sections of the Illinois Environmental Protection Act (“Act”), the Board and Illinois EPA Regulations, and its Permit relating to the violations alleged in the Complaint. Stipulation, p. 4.

Complaint and Stipulation

On November 13, 2023, the People filed a three-count Complaint against Respondent for failing to maintain its effluent contaminant levels within the parameters of its Permit, and for failure to comply with the Permit’s reporting requirements, as follows:

- Count I: Failure to maintain effluent contaminant limits within the parameters of its NPDES permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), Sections 304.141(a) and 309.102(a) of the Illinois Pollution Control Board (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 304.141(a) and 309.102(a), and the terms and conditions of its NPDES Permit.
- Count II: Failure to maintain effluent contaminant levels in such a way as to cause, threaten, or allow water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2022).
- Count III: Failure to comply with the reporting requirements of the NPDES Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and 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. 15, 17, and 21.

In general, the Board favors settlements involving penalty issues. *Illinois EPA v. Barry*, PCB 88-71, slip op. at 8 (May 10, 1990). The parties filed the Stipulation with the Board on November 13, 2023. Respondent completed all relevant compliance activities before the Stipulation was filed, thus, the only matter that remained for settlement in the Stipulation was the civil penalty. The parties to the Stipulation indeed agreed on a civil penalty of \$5,740.00. Settlement, §V.A. The Stipulation therefore resolves all issues alleged in the Complaint.

II. LEGAL SUMMARY

Under Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), the parties may file a stipulation and proposal for settlement with the Board. 415 ILCS 5/31(c)(2) (2022). “The Board will consider the proposed settlement and stipulation agreement and the hearing record, if any.” 35 Ill. Adm. Code 103.306. At its discretion, the Board “may accept, suggest revisions in, or reject the proposed settlement and stipulation agreement, or direct initial or further hearings as it deems appropriate.” *Id.*

Section 103.302 of the Board’s procedural rules, 35 Ill. Adm. Code 103.302, sets forth the required contents of stipulations and proposed settlements, which include:

- a) A full stipulation of all material facts pertaining to the nature, extent, and causes of the alleged violations proposed to be settled;
- b) The nature of the relevant parties’ operations and control equipment;
- c) *Facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved, including:*
 - 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.* [415 ILCS 5/33(c)] [emphasis original]
- d) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation, if any; and
- e) The proposed penalty, if any, supported by factors in mitigation or aggravation of penalty, including the factors set forth in Section 42(h) of the Act [415 ILCS 5/42(h)].

Accepting settlement by the terms of the Stipulation is appropriate here. Illinois case law supports adopting the Stipulation, the Stipulation meets the content requirements of Section 103.302, 35 Ill. Adm. Code 103.302, and the citizens’ comments do not provide any basis for the Board not to accept the Stipulation. Thus, the People respectfully request that the Board complete

the last step to settle this case and adopt the Stipulation as written.

III. THE BOARD SHOULD ACCEPT THE STIPULATION AND PROPOSAL FOR SETTLEMENT AS FILED

The Illinois Supreme Court has long recognized that the Attorney General, as the “... chief legal officer of this State, ... has the duty and authority to represent the interests of the People of the State to insure a healthful environment.” *Pioneer Processing, Inc. v. E.P.A.*, 102 Ill.2d 119, 38 (1984); *see also* Ill. Const. 1970, art. XI, § 2 (“[e]ach person has the right to a healthful environment”); *Envtl. Prot. Agency v. Pollution Control Bd.*, 69 Ill.2d 394, 398 (1977) (“... under both the 1870 and 1970 constitutions, [...] the Attorney General is the chief legal officer of the State; that is, he or she is ‘the law officer of the people, as represented in the State government, and its only legal representative in the courts’”) (quoting *Fergus v. Russel*, 270 Ill. 304, 337 (1915)).

Similarly, the General Assembly established Illinois EPA through Section 4 of the Act, from which it derives its authority. 415 ILCS 5/4 (2022). Illinois EPA is the designated water pollution, air pollution, solid waste, and pollution control agency for the State. 415 ILCS 5/4(l) (2022). Its duties under the Act include conducting investigations and inspections, administering permit and certification programs, and pursuing and supporting enforcement and administrative actions, 415 ILCS 5/4(b)-(k) (2022), so as to “restore, protect and enhance the quality of the environment,” 415 ILCS 5/2(b) (2022).

Together, the Attorney General and Illinois EPA serve to protect the environment in Illinois and its citizens’ health and welfare. In this case, the provisions of the Stipulation demonstrate that the Attorney General and Illinois EPA have enforced the Act and corresponding regulations for the benefit of Illinois’ environment and citizens.

A. Illinois Law Supports the Approval and Adoption of the Stipulation.

In *People ex rel. Scott v. Janson*, the Illinois Supreme Court stated, “...courts look with favor upon stipulations designed to simplify, shorten or settle litigation and save costs to parties, and will, when called upon in any appropriate manner, compel parties to observe such stipulations unless they are illegal or contrary to public policy.” 57 Ill.2d 451, 460 (1974) (quoting *People ex rel. Stead v. Spring Lake Drainage and Levee District*, 253 Ill. 479, 493 (1912)). Similarly, the Third District Appellate Court found that “...the public interest is better served by a procedure which encourages respondents to enter into settlement discussions and negotiations by which respondents may avoid the stigma of finding a violation, and assist the State in effectuating the goals of the Act.” *People v. Archer Daniels Midland Corp.*, 140 Ill. App. 3d 823, 825 (3d Dist. 1986). “By allowing the State and respondents to reason together, the result will conserve resources which would otherwise be expended in litigation.” *Id.* This is especially apropos in such a case as this, where both parties are government entities.

B. The Stipulation Meets the Content Requirements of 35 Ill. Adm. Code 103.302.

“The prompt resolution of enforcement actions is a matter of substantial significance to the Board.” *Illinois EPA v. Loeb*, PCB 91-123, slip op. at 1 (April 9, 1992). To achieve this end, the parties here negotiated and filed a Stipulation with the Board to resolve this enforcement action. The Stipulation addresses the five content requirements of Section 103.302 of the Board’s procedural rules, 35 Ill. Adm. Code 103.302, as well as the factors of Section 33(c) of the Act incorporated therein, 415 ILCS 5/33(c). Specifically, the Stipulation discusses the nature, extent, and cause of the effluent and reporting violations that are proposed to be settled. Stipulation, pp. 5-6. The Stipulation also addresses the nature of Respondent’s operations and control equipment. *Id.* pp. 2-4. It also addresses future compliance. *Id.* p. 8. Finally, the Stipulation includes a proposed

penalty, supported by a discussion of each of the factors of Section 42(h) of the Act. 415 ILCS 5/42(h) (2022); Stipulation, pp. 5-6.

The Stipulation is lawful, substantively fair and reasonable, sets forth the relief that the People would have sought through the litigation of this case without the attendant delay and uncertainty associated with litigation or the incurrence of significant costs, and requires Respondent to pay a civil penalty of \$5,740.00. It also requires Respondent to cease and desist from future violations. While the public comment process and hearing provided an opportunity for concerned citizens to express their views with respect to the Stipulation, as provided in the Board's rules, none of the public comments provide a basis for rejecting the Stipulation. Therefore, the People respectfully request that the Board enter a final order accepting the Stipulation.

C. Summary of Public Comments and Complainant's Responses.

Citizens made written and oral public comments via written requests for the hearing and/or orally at the hearing itself. No citizen submitted post-hearing written comments although leave was given to do so. The Board's procedural rules are clear regarding public comments: "All public comments must present arguments or comments based on evidence in the record." 35 Ill. Adm. Code 101.628(c)(2) (emphasis added). Further, the Hearing Officer ordered that "any public comment must be relevant to the Stipulation and Proposal for Stipulation filed in this matter on November 13, 2023. See Section 101.628 of the Board's procedural rules." Hearing Officer Order, PCB 24-33, Feb. 15, 2024 ("Order").²

Pursuant to Section 101.628 and the Order, the People provide responses below only to the citizen comments, whether oral or written, that were made based on evidence in the record. 35 Ill. Adm. Code 101.628. Therefore, the People's responses will only address comments relevant to

² Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-109722> (last accessed April 25, 2024).

the Complaint or Stipulation whose subject matter includes the WWTP-South effluent and/or reporting violations during the relevant time periods.

i. Comments by Mr. Jamie Hicks.

Mr. Jamie Hicks submitted no written comments but made oral comments at the Hearing. The People address Mr. Hicks's relevant comments in the sections below.

a. Observed repairs to Respondent city infrastructure at its water and wastewater treatment plants are not alleged in the Complaint or contemplated in the Stipulation.

At the Hearing, Mr. Hicks stated that he observed repairs to certain of Respondent's infrastructure and wanted to know their relevance to this matter. Tr., p. 86:6-18. As discussed at the Hearing, the terms of the Stipulation do not involve infrastructure improvements to the WWTP-South, or any other city infrastructure, but rather only require payment of a penalty and general future compliance with relevant Illinois law. Stipulation, pp. 6-9. Ongoing infrastructure improvements that Respondent may make to its water or wastewater treatment facilities were not the subject of the Complaint nor part of the resolution of the case in the Stipulation, and thus are not germane to the Board's consideration of the Stipulation.

b. The record does not support the conclusion that Respondent did not meet its burden to submit accurate Permit Reports to the Illinois EPA and to the Office of the Illinois Attorney General.

Mr. Hicks questions the accuracy of Respondent's self-reporting of the Permit Reports. Tr., p. 47:1-13. The Board has held that Illinois' environmental protection system relies on self-policing, and it is the duty of "companies doing business in Illinois to determine whether they are complying with Illinois' environmental laws." *People v. Panhandle E. Pipe Line Co.*, PCB 99-191, slip op. at 19-20 (Nov. 15, 1991).³ Respondent is an Illinois municipal corporation operating

³ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-15175> (last accessed April 24, 2024).

under Illinois law. Compl., p. 2 ¶3. It thus has the burden to accurately self-police, and therefore accurately self-report documents such as the Permit Reports to comply with Illinois's environmental laws and regulations.

There is nothing in the record indicating that Respondent failed to meet these burdens regarding the missing Permit Reports once Illinois EPA notified Respondent of such. Moreover, once Respondent submitted the Permit Reports, Illinois EPA deemed Respondent to have returned to compliance with the relevant provisions of the Act, Board regulations, and Permit. It is also worth observing that Respondent self-reported the effluent overages in other reports submitted to the Illinois EPA under the Permit, upon which Illinois EPA relied to determine its finding of TSS and BOD₅ effluent violations. Further, Mr. Terrance Boyer, a registered consultant engineer for Respondent, testified under oath that he himself prepared many of the reports and that Patrick Watson, Respondent's operator of record and superintendent of Public Works, signed said Permit Reports. Tr., pp. 36:18-22, 41:18-19.

Other factors indicate Mr. Hicks's concern is merely speculative. For example, certain of the Permit Reports that LaSalle submitted to Illinois EPA, and which Respondent also included in Additional Exhibit 2 in a post-hearing submission of seven exhibits,⁴ indicate that the data underlying the CSO-LTCP and Biomonitoring Reports were timely collected, though never reported. *Various data and reports submitted to IEPA by the City of LaSalle*, Additional Exhibit 2, pp. 33-73. Mr. Boyer testified the same under oath. Tr., pp. 21:21-22:1-11, 37:20-24, 39:14-40:5. Further, a third-party certified laboratory appears to have contemporaneously provided Respondent with analyzed data for the Biomonitoring Reports during the missed reporting periods. Additional Exhibit 2, pp. 33-73; Tr., pp. 63:21-64:7.

⁴ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-109840>.

As for the PDOP Report, it was completed on February 22, 2022, after the report was due and after Illinois EPA notified Respondent of its failure to report. Additional Exhibit 2, p. 74. However, it also appears that late completion did not impact the veracity of the report because the PDOP Report seems to provide only a summary of a past decision. *Id.* Mr. Boyer's testimony supports this analysis. Tr., pp. 49:23-50:10. Again, Illinois EPA accepted these results.

Since there no credible evidence was proffered to support any other conclusion, this comment should not sway the Board from adopting the Stipulation as written.

ii. Comments by Ms. Brianne Hicks

Ms. B. Hicks made comments at the Hearing. The People address Ms. B. Hicks's relevant comments in the section below.

a. The parties stipulated that there was a threat to human health and the environment due to Respondent's reporting violations.

Ms. B. Hicks perceived Mr. Boyer's opinion that no environmental harm resulted from Respondent's effluent violations due to a dilution effect in the receiving waters⁵ as a contradiction with the following language from the Stipulation: "The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment." Tr., pp. 30:9-121, 54:12-57:21; Stipulation, p. 4.

However, the statement in the Stipulation Ms. B. Hicks refers to is in response to Respondent's failure to submit the Permit Reports. Such failure hindered the Illinois EPA's information gathering responsibilities. When a permitted entity does not timely submit reports to

⁵ Mr. Boyer states that there was no harm to the environment from the TSS and BOD₅ violations "due to high level of rains at the time." Tr., p. 30:14-17. The People do not accept such a limited conclusion. "[T]he General Assembly has determined that any act contravening the statute constitutes a *per se* contribution to or cause of environmental damage." *Environmental Protection Agency v. Fitz-Mar, Inc.*, 178 Ill. App. 3d 555, 561 (1st Dist. 1988).

the Illinois EPA, it is always possible that such reports contain information on which Illinois EPA must act to prevent environmental harm. To the extent that Illinois EPA cannot act on information that it does not have, a failure to report, at a minimum, poses a threat to human health and the environment.

The People stand by the parties' agreed statements in the Stipulation, Stipulation, p. 4, with respect to Section 33(c)(1) of the Act, 415 ILCS 5/33(c)(1) (2022), and do not see any inconsistency, and thus respectfully request that the Board accept the Stipulation as written.

b. The People are unaware of any research or study completed after the effluent violations.

Ms. B. Hicks asked “[w]as there any research or studies done after the increased pollution in the water to see how this impacted human or wildlife health?” Tr., p. 73:3-5. The People are unaware of any such research or study completed in this area, nor was such an action required by the Stipulation.

iii. Comments by Ms. Shawna Wilcox

Ms. Shawna Wilcox made a comment at the Hearing. The People address Ms. Wilcox's comment in the section below.

a. The Complaint alleges and the Stipulation only resolves violations of permit conditions regarding milligrams per liter of TSS and BOD₅.

Ms. Wilcox asked about certain charts in Respondent's Exhibit 2 that discussed pounds per day of TSS and BOD₅. Tr., p. 61:4-21, *referencing charts in* Additional Exhibit 2, p. 2.⁶

Respondent provided irrelevant testimony that does not pertain to the allegations of the Complaint. Mr. Boyer testified that he created such charts to try and show Respondent's general

⁶ Ms. Brianne Hicks also discussed the charts in passing with Mr. Boyer. Tr., p. 58:8-59:17, *referencing charts in* Additional Exhibit 2, p. 2.

wastewater quality regarding daily allowances of TSS and BOD₅. Tr., p. 59:1-17. Reference to such charts, or any daily allowances of TSS or BOD₅ in pounds per day, are not at issue in the allegations of the Complaint and accordingly are not addressed in the Stipulation. The only violations contemplated in the Complaint and resolved through the Stipulation are weekly and monthly average TSS and BOD₅ discharges, measured in milligrams per liter, that Respondent was required by its Permit to report to Illinois EPA. Compl., p. 4 ¶¶20-21; Stipulation, p. 2. And Respondent does not dispute this fact. Tr., p. 62:1-16. Thus, this superfluous data which Respondent provided is not relevant to the violations and the Stipulation resolving them, and the People respectfully ask that the Board accept the Stipulation as filed.

iv. Comments by Ms. Dawn Hicks

On December 12, 2023, the Board received a public comment filed by Dawn Hicks (“PC1”).⁷ Ms. D. Hicks also spoke at the Hearing. The People address each of Ms. Hicks’s relevant comments in the sections below.

a. Drinking water quality is not at issue in the Complaint’s allegations or the Stipulation’s resolutions.

Ms. D. Hicks stated at the Hearing that drinking water was relevant because Respondent’s attorney, Mr. McPhedran, “asked the engineer about the quality of our drinking water” during the Hearing. Tr., pp. 78:5-79:1-2. However, Mr. McPhedran only raised the question of drinking water to point out that the question is not relevant, as there are no drinking water allegations contained in the Complaint or addressed in the Stipulation. Tr., pp. 14:15-18, 31:24-32:6. A review of both the Complaint and Stipulation demonstrates that there are no allegations in the Complaint concerning drinking water, and consequently, there is nothing in the Stipulation addressing

⁷ Ms. D. Hicks included written comments in her written request for hearing on this matter, filed with the Board on December 12, 2023. See PC1, PCB 24-33, available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-109441> (last visited Apr. 24, 2024).

drinking water. As Ms. D. Hicks's comments regarding drinking water were taken out of context and there are no drinking water violations at issue in this case, as the Board deliberates, the People ask that it give no weight to this comment and accept the Stipulation as written.

b. The Record demonstrates that the Stipulation has been properly executed.

Ms. D. Hicks contends, "[...] we first found out about [PCB 24-33] is [sic] through FOIA when looking into the EPA violations between the city of Respondent and Carus Chemical. The city of LaSalle did not acknowledged [sic] this until a member of the community brought it up during public comments on 10/16/2023." PC1.

On its face, the Stipulation states unequivocally that "[t]he 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.*" Stipulation, p. 11 §V.H (emphasis added). Respondent's Mayor signed the Stipulation on behalf of Respondent. Stipulation, p. 12. The People are not aware of any reason to find that Respondent's Mayor lacked the authority to sign the Stipulation on behalf of Respondent. Rather, the record demonstrates that the opposite is true.

Further, Respondent, by its attorney, represented in a letter to the Office of the Illinois Attorney General dated October 20, 2023, that it had passed Ordinance Number 3035 ("Ordinance") to authorize Respondent to agree to the Stipulation. *Letter from City Attorney McPhedran, Oct. 20, 2023* ("People's Exh. A"), p. 1. The contents of the Ordinance were included in the letter. *Id.* pp. 2-3. The same information appears present in Respondent's city council's October 2, 2023, meeting minutes, available on Respondent's website, and corroborates the contents of Respondent's October 20, 2023, letter. *Minutes of the Regular Meeting of the LaSalle City Council*, City of LaSalle, p. 8 (Oct. 2, 2023), available at <https://www.lasalle->

[il.gov/sites/default/files/agendas-minutes/2023-10/10-2-23_0.pdf](https://www.il.gov/sites/default/files/agendas-minutes/2023-10/10-2-23_0.pdf). As such, the People respectfully request that the Board enter an order adopting the Stipulation as written.

v. **Comments by Mr. Martin Schneider**

Mr. Martin Schneider made no substantive comments at the hearing but submitted written comments in his request for hearing (“PC2”).⁸ The People address each of Mr. Schneider’s relevant comments below.

a. **Neither the Complaint nor the Stipulation contain provisions for the Board to review Respondent’s or any other permit.**

Mr. Schneider requests “immediate and complete review and investigation of, not only [the City of LaSalle’s] permits, but also the Permits issued to other major pollution contributors in our town, Illinois Cement and Carus Corp.” PC2, p. 1. There are procedures under Illinois law for citizens to provide comments on and, if appropriate, challenge NPDES permits. If Mr. Schneider wishes to question Respondent’s Permit, he may do so at the appropriate time and in an appropriate proceeding, but this is not that time or case. Mr. Schneider’s attempts to challenge Respondent, and other community dischargers’ NPDES permits, in this proceeding are essentially an improper collateral attack on those Illinois EPA-issued NPDES permits. *See, e.g., City of Elgin v. County of Cook*, 169 Ill. 2d 53 (1995) (County’s allegations of environmental harm were premature and constituted an impermissible collateral attack on the Illinois EPA’s decision to issue a permit). Thus, the People recommend that the Board adopt the Stipulation as written, because it resolves the violations alleged in the Complaint.

⁸ Mr. Schneider included written comments in his written request for hearing on this matter, filed with the Board on December 13, 2023. *See* PC2, PCB 24-33, *available at* <https://pcb.illinois.gov/documents/dsweb/Get/Document-109443> (last visited Apr. 24, 2024).

b. The Record demonstrates that the Stipulation has been properly executed.

Like Ms. D. Hicks, Mr. Schneider expresses concern over Respondent's governmental processes and transparency. PC2, p. 1. As discussed at length *supra*, p 13, the record contains no evidence that Respondent improperly entered into the Stipulation. Thus, the People respectfully ask the Board to enter an Order adopting the Stipulation as written.

c. The WWTP-South's receiving waters are the Illinois River, not the Little Vermillion River.

Mr. Schneider next urges the Board to review attached test results from a pipe that allegedly discharges from the Carus Chemical plant into the Little Vermillion River. PC2, p. 1. These test results are not relevant to the allegations of violation in the Complaint and the resolution set forth in the Stipulation in this case. First, the WWTP-South discharges into the Illinois River, not the Little Vermillion. Compl., p. 2 ¶6. Further, Carus Chemical is not a Respondent in the People's Complaint. *See generally* Compl., p. 1. Any discharges from Carus Chemical that may be violative of the Act or Board Regulations are not relevant in this case. Since the discharges that Mr. Schneider references are not alleged in the Complaint and are not germane to the agreed resolution in the Stipulation, the People respectfully request that the Board enter an Order adopting the Stipulation as written.

d. The civil penalty in the Stipulation will deter further violations.

Mr. Schneider asks that the Board reconsider the penalty that the parties agreed to, because "fining the city will only hurt the tax payers" but also asks that "the penal[t]ies [be] more severe than a small fine." PC2, p. 2. The People urge the Board to retain the penalty agreed to in the Stipulation.

The Illinois Supreme Court has held that, in Board cases, "the severity of the penalty should bear some relationship to the seriousness of the infraction or conduct." *Southern Illinois Asphalt*

Co. v. PCB, 60 Ill.2d 204, 208 (1975). In addition, “[t]he primary reason for section 42’s authorization of civil penalties is to provide a method to aid in the enforcement of the Act.” *People v. Fiorini*, 143 Ill. 2d 318, 349 (1991). Here, the parties agreed to a stipulated penalty that appropriately addresses the Section 42(h) factors, which the Act requires the Board to consider, as listed and discussed in the Stipulation. Stipulation, pp. 5-6. These factors include Respondent’s diligence in returning to compliance with the Act once Illinois EPA notified it of its infractions, and the fact that Respondent had had no previously adjudicated violations of the Act. *Id.* Thus, the civil penalty is fair and reasonable, given the specific circumstances of this case, and the parties have agreed as such. To that end, the People respectfully request that the Board enter the Stipulation as written.

CONCLUSION

The People appreciate the citizens taking the time and effort to express their concerns about both their community and local government and that they have raised them in this public forum. However, the People urge the Board to accept the Stipulation as written.

The Stipulation meets the content requirements of 35 Ill. Adm. Code 103.302, and there is no further work stemming from the allegations of the Complaint to be performed. The Board encourages settlement in penalty-only cases, *Barry*, PCB 88-71 at 8, and promptly resolving enforcement actions such as this “is a matter of substantial significance to the Board,” *Loeb*, PCB 91-123 at 1. Plus, public policy as determined by Illinois case law also supports settling here, as doing so will “save costs,” *Janson*, 7 Ill.2d at 460, and “conserve resources which would otherwise be expanded in litigation,” *Archer Daniels Midland Corp.*, 140 Ill. App. at 825. Such a holding is especially germane here, considering that this case involves two government entities. Lastly, there is nothing in the record that provides a basis for rejecting the Stipulation or any part thereof.

The Stipulation is substantively fair and reasonable, and the proposed civil penalty is appropriate given the circumstances of this case. Therefore, in the interest of a prompt and fair resolution to the Complaint, the People respectfully request that the Board accept and adopt the Stipulation as filed.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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DATE: April 25, 2024

Electronic Filing: Received, Clerk's Office 04/25/2024



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CHICAGO, ILLINOIS 60606
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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

Ordinance Number 3035

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)

WHEREAS, the City Council of the City of LaSalle deems it to be in the best interest of the citizens of the City of LaSalle and the public in general that the City of LaSalle authorize, approve and confirm the entering into of a Stipulation and Proposal for Settlement with the Illinois Environmental Protection Agency and the Illinois Attorney General regarding Wastewater Treatment Plant Reporting and Related Matters; and

WHEREAS, the City Council of the City of LaSalle deems it to be an appropriate exercise of corporate authority of the City of LaSalle including, but not limited to, the power to prevent and abate nuisances, the power to promote and protect the public health, safety and welfare, and the home rule authority of the City of LaSalle that the City of LaSalle enter into from time to time agreements such as that involved within this ordinance with governmental agencies including but not limited to, the Illinois Environmental Protection Agency and the Illinois Attorney General, which Stipulation and Proposal for Settlement shall be consistent in general with attached Exhibit "A", a copy of which is hereby made a part hereof, subject to the remainder of the terms and provisions contained herein;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LASALLE, LASALLE COUNTY, ILLINOIS, AS FOLLOWS:

Section One: That the above referenced recitals are hereby made a part and portion of the ordained portion of this Ordinance.

Section Two: That the City of LaSalle hereby authorizes, approves and confirms the entering into of a certain Stipulation and Proposal for Settlement with the Illinois Environmental Protection Agency (hereinafter from time to time "Illinois EPA") and the Illinois Attorney General regarding Wastewater Treatment Plant reporting and related matters, consistent with the terms of the proposed agreement attached hereto and made a part hereof as Exhibit "A", subject only to such modifications as may be approved jointly by the Mayor and the Superintendent of Wastewater. The signature of the Mayor on any document shall be conclusive evidence of the joint agreement of both the Mayor and the Superintendent of Wastewater.

Section Three: That the Mayor, the City Clerk, the Superintendent of Public Works, Superintendent of Wastewater, and such other City officials as are appropriate in the circumstances are hereby authorized and empowered to do and perform such acts as are reasonable and appropriate in the circumstances, including, but not limited to, the signing of such documents as may be appropriate in the circumstances in furtherance of carrying out and effectuating the Stipulation and Proposed Settlement with Illinois Environmental Protection Agency and the Illinois Attorney General, attached hereto and made a part hereof as Exhibit "A". Additionally, all actions taken to date by the Mayor, Superintendent of Public Works, Superintendent of Wastewater, and other City officials and employees in furtherance of actions taken in furtherance

of effectuating and carrying out said Stipulation and Proposed Settlement are hereby ratified and approved in their entirety.

Section Four: That in the event that any provision and/or portion of a provision of this Ordinance should be declared invalid and/or unenforceable, the invalidity and/or unenforceability of any said provision shall not affect the remainder of this Ordinance.

Section Five: That this Ordinance shall become in effect upon its passage, approval and publication as provided by law.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of LaSalle, LaSalle County, Illinois, held on the 2nd day of October, 2023, by a roll call vote, with:

MAYOR AND ALDERMEN	AYE VOTE	NAY VOTE	ABSTAIN / ABSENT
James W. Bacidore	X		
Robert Thompson	X		
Tom Ptak	X		
Jerry Reynolds	X		
John Lavieri	X		
Joseph Jeppson	X		
Therold Herndon	X		
Jordan Crane	X		
Jeff Grove, Mayor			

APPROVED:



Jeff Grove, Mayor

ATTEST:



Amy Quinn, City Clerk



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 24-
)	
CITY OF LASALLE,)	
An Illinois municipal corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and CITY OF LASALLE (“City” or “Respondent”), (collectively “Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1, et seq. (2022), and the Board’s regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On X DATE, 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 (2022), against the

Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2022).

3. At all times relevant to the Complaint, Respondent has been an Illinois municipal corporation organized and operating under the laws of the State of Illinois.

4. At all times relevant to this Complaint, Respondent has owned and operated the LaSalle Wastewater Treatment Plant – South (“WWTP-South”) located at 400 River Street, LaSalle, Illinois, which collects and treats wastewater for its residents and businesses, which it discharges into the Illinois River through its Outfall 001.

5. On November 23, 2015, Illinois EPA issued Respondent NPDES permit No. IL0029424 (“NPDES Permit”) for discharges of wastewater from the LaSalle WWTP-South. The NPDES Permit was in effect at all times relevant to this Stipulation and Proposal for Settlement.

B. Allegations of Non-Compliance

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

- Count I: Failure to maintain effluent contaminant limits within the parameters of its NPDES permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), Sections 304.141(a) and 309.102(a) of the Illinois Pollution Control Board (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 304.141(a) and 309.102(a), and the terms and conditions of its NPDES Permit.
- Count II: Failure to maintain effluent contaminant levels in such a way as to cause, threaten, or allow water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2022).
- Count III: Failure to comply with the reporting requirements of the NPDES Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and 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. 15, 17, and 21.

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On February 23, 2022, LaSalle untimely submitted to Illinois EPA its semi-annual Combined Sewage Outfall ("CSO") Long-Term Control Planning ("LTCP") reports, which had been due as follows: (1) report due December 1, 2019; (2) report due June 1, 2020; (3) report due December 1, 2020; (4) report due June 1, 2021; and (5) report due December 1, 2021.

2. On February 23, 2022, LaSalle untimely submitted its biomonitoring reports required by Special Condition No. 17 as follows: (1) report due May 1, 2019; (2) report due August 1, 2019; (3) report due November 30, 2019; and (4) report due February 29, 2020.

3. On February 23, 2022, LaSalle untimely submitted to Illinois EPA Phosphorus Discharge Optimization Plan annual progress reports as follows: (1) the report due March 31, 2019; (2) the report due March 31, 2020; and (3) the report due March 31, 2021.

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 (2022).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), 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. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment.
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. Maintaining contaminants within NPDES Permit levels, and submitting timely reports, are both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board and Illinois EPA regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2022), 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. Respondent failed to stay within its permitted effluent limitations. The violation began in June, 2021 and was resolved by September, 2021. Respondent further failed to timely submit to Illinois EPA multiple reports required by its NPDES Permit. The violations began March

31, 2021 and were resolved on February 23, 2022.

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

3. The civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Thousand, Seven Hundred and Forty Dollars (\$5,740.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, 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 Five Thousand, Seven Hundred and Forty Dollars (\$5,740.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, 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.

3. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

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.

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

Cara V. Sawyer
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall comply with effluent permit limitations and timely file all future required reports.

2. 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.

3. 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.

4. 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 \$5,740.00 penalty, its commitment to cease and desist as contained in Section V.D.4 above, completion of all activities required

hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives, and discharges the Respondent from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on **X DATE**. 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. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

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As to the Complainant

Cara V. Sawyer
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
cara.sawyer@ilag.gov

Gabriel H. Neibergall
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Zane Austin
Illinois Environmental Protection Agency
Bureau of Water / Division of Water Pollution Control
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Paul Jungles
Illinois Environmental Protection Agency
Bureau of Water / Field Operations Section
Peoria Regional Office
412 SW Washington Street, Suite D
Peoria, Illinois

As to the Respondent

James A. McPhedran
City Attorney
Meyers & Flowers, LLC
1200 Maple Drive
Peru, Illinois 61354
jim@meyers-flowers.com
csg@meyers-flowers.com

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

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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: _____
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: _____

DATE: _____

CITY OF LASALLE

BY: Jeff Lane

ITS: Mayor

DATE: 10/11/23