

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
v.) PCB 78-139
)
VICKERY MANOR SERVICE CORP., an)
Illinois Corporation,)
)
 Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Statement of Facts

1. Respondent VICKERY MANOR SERVICE CORPORATION (VMSC) is a corporation duly organized and existing under the laws of the State of Illinois until December, 1977, at which time it was involuntarily dissolved pursuant to the provisions of the then Illinois Business Corporation Act (Ill.Rev.Stat., 1975, ch. 32, Section 157.1, et seq.). Subsequently VMSC was issued a certificate of reinstatement effective May 31, 1978, which reinstated VMSC as a corporation retroactively to the date of its dissolution.

2. Since at least June 9, 1975, VMSC owned and operated a sewage treatment plant (STP) located on U.S. Route 45, two (2) miles north of the Village of Mundelein, County of Lake, Illinois.

3. On or about June 9, 1975, the Agency issued VMSC NPDES Permit No. IL 0032239, which authorized VMSC to discharge pollutants from its STP to a ditch tributary to Bull Creek, a water of the State of Illinois, in accordance with the terms and conditions set forth therein. Said Permit further set forth a compliance schedule for upgrading the STP to a proscribed operational level.

4. On May 10, 1978, the Agency filed a four count complaint against VMSC and one Harold Halpern, its President, alleging various violations of the Act, PCB Rules and Regulations, Ch. 3: Water Pollution Rules (WPR), and the NPDES Permit. With the reinstatement of VMSC as a corporation, Harold Halpern was dismissed as a Respondent (see Board Order dated October 4, 1978), and an Amended Complaint naming VMSC as the sole respondent was filed November 1, 1978; the Amended Complaint further added new violations against VMSC which were alleged to have occurred during the period between VMSC's dissolution and reinstatement as well as subsequent to the reinstatement.

5. The Amended Complaint alleged the following violations:

(a) Count I: failure to comply with the compliance schedule for upgrading its STP set forth in its NPDES Permit, thereby causing or allowing violations of its NPDES Permit, WPR 901, and Sections 12(a), (b), and (f) of the Act;

(b) Count II: failure to submit Discharge Monitoring Reports for its STP to the Agency, thereby causing or allowing

violations of its NPDES Permit, WPR 901, and Sections 12(a), (b), and (f) of the Act;

(c) Count III: exceeding certain effluent limitations for its STP, and failure to properly collect and analyze samples for other such limitations as well as not reporting such violations to the Agency, thereby causing or allowing violations of its NPDES Permit, WPR 901, and Sections 12(a), (b), and (f) of the Act; and

(d) Count IV: failure to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes from its STP, thereby causing or allowing violations of its NPDES Permit, WPR 901 and 601(a), and Sections 12(a), (b), and (f) of the Act.

(NOTE: Subsequent to the filing of the Amended Complaint, Section 12 of the Act has been amended, and the WPR are now codified and appear at 35 Ill. Adm. Code, Chapter I, Subtitle C, Section 301.101 et seq. (1984). For continuity, the parties will continue to refer to the provisions of the Act and the WPR as set forth in the Amended Complaint.)

6. Hearings were held on the Amended Complaint on February 24, March 4, and March 20, 1981, where at the Agency and VMSC presented evidence. Closing arguments were preserved for written briefs; on May 19, 1981, the Agency filed its Brief, and on June 23, 1981, VMSC filed its brief, a copy of each of which is attached hereto as Exhibits A and B respectively.

7. The Agency, on its behalf, presented evidence which tended to show that the actions of VMSC resulted in the violations alleged in the Amended Complaint.

8. VMSC, on its behalf, presented evidence which tended to show the economic impossibility of compliance due to such factors as the neglect of the STP by its independent contractor, and the failure of the developer whose development VMSC was to service to complete the development as originally proposed, which, in conjunction with certain alleged bad faith conduct by the Village of Mundelien, left VMSC without sufficient customers for its STP. VMSC also contested the sufficiency of Agency evidence on certain violations.

9. Prior to resolution of the matters alleged in the Amended Complaint, VMSC filed a Petition for Variance for its STP on July 23, 1981, seeking relief from certain requirements of its NPDES Permit. On October 28, 1981, the Agency filed its Recommendation, recommending that VMSC's Petition be denied. The Variance is docketed as PCB 81-122; to date, PCB 81-122 is pending, and no hearings have yet been held.

10. On December 21, 1981, VMSC petitioned the Illinois Commerce Commission (ICC) to permit it to abandon services. (ICC Docket No. 81-0866). Therefore, the Agency and a citizens group representing a number of VMSC customers intervened in the ICC proceeding. On January 26, 1983, the ICC issued an Interim Order

refusing to allow abandonment. Hearings before the ICC have subsequently continued on a number of other issues within the jurisdiction of the ICC.

11. In early 1985 it became apparent that resolution of the ICC proceeding and this action could be accomplished by a takeover of the VMSC STP by the customers of VMSC (who have formed an Illinois not-for-profit corporation entitled North Hills Mutual Sewer Association [NHMSA]). Representatives of both entities thereafter negotiated a Takeover Agreement, a draft copy of which is attached as Exhibit C.

12. Pursuant to Section 2., Consideration for Transfer of the Physical Assets, the NHMSA agrees to be substituted for VMSC in this proceeding and PCB 81-122 upon signing of the Takeover Agreement by the parties and correlatively, to be bound by any order(s) issued by the PCB thereunder (See Sections 2.2 and 2.3). The Takeover Agreement must be approved by the ICC before it becomes legally effective; however, the Agreement further provides that before submission for approval to the ICC the IPCB and the Agency must consent to the substitution of NHMSA for VMSC in this action and PCB 81-122, and that the PCB shall further approve a settlement agreement that terminates all liability of NHMSA and VMSC for all claims alleged in the complaint that accrued prior to the date of the Board Order approving the settlement agreement. (See Section 8.3).

Proposal for Settlement

A. Since VMSC believes that termination of this proceeding without further litigation is to all parties' best interest, VMSC admits to each of the allegations contained in Counts I to and including IV of the Amended Complaint, notwithstanding its evidence in mitigation and defense.

B. VMSC further agrees to pay a monetary penalty in the amount of \$250.00 for the said violations. VMSC and the Agency both agree that said penalty is necessary in this matter to promote enforcement of the Act.

The Penalty shall be paid within thirty (30) days of the order of the Board accepting this stipulation. Payment shall be made by certified check or money order payable to the Environmental Protection Trust Fund and delivered to:

Wayne Wiemerslage
Illinois Environmental
Protection Agency
Enforcement Programs
2200 Churchill Road
Springfield, Illinois 62706

C. NHMSA, by its attorney, hereby enters its appearance in this proceeding and PCB 81-122, and further moves that it be allowed to intervene as a party-respondent herein and party-petitioner in PCB 81-122. As of the date of the Board Order approving this settlement agreement, all liability of NHSC and VMSC will terminate for all claims alleged in the complaint that

accrued prior to the date of such Board Order approving the agreement.

D. In return for VMSC's admissions and agreement to pay a monetary penalty, and the appearance and intervention of NHMSA, the Agency agrees to consent to the substitution of NHMSA for VMSC in this proceeding and PCB 81-122.

E. On November 4, 1985, the Agency conducted an inspection of the NHMSA/VMSC STP. Based upon that inspection and prior negotiations between the Agency and NHMSA, NHMSA and the Agency agree that the items listed in Paragraph F are those that are necessary to bring the STP into compliance with the requirements of the Act. A copy of the inspection report is attached hereto as Exhibit D. At the Board hearing in this matter, the parties will report the results of an Agency site inspection conducted subsequent to the filing of this settlement agreement.

F. NHMSA agrees that it will undertake the following actions in accordance with the compliance schedule at the STP:

1. Within (14) days after entry of an Order by the PCB approving this document, NHMSA will apply to the Agency for an

NPDES Permit for the STP (or request the transfer of VMSC current permit if in force).

2. Within six months after the entry of an Order by the Board approving this document, NHMSA will have installed an effluent sampling manhole at the STP and will have taken representative effluent samples and forwarded same for analysis to a laboratory certified by the Agency for sampling analysis.

3. The sample analysis results shall be sent by NHMSA to the IEPA, Division of Water Pollution Control, 1701 S. First Avenue, Maywood, Illinois, 60153, Att: Theodore M. Denning, Region II Manager, immediately upon their receipt by NHMSA.

4. After its review of the sample analysis and consultation with NHMSA, the Agency by letter shall advise NHSC of the priority to be given to the following actions:

- A. Repairing the sludge collection system and air heads, and obtaining a blower or repairing the existing blower (On September 12, 1985 VMSC installed a new motor for the existing blower).
- B. Removing sludge from the lagoon (prior to the removal of any sludge, NHMSA shall apply and secure all necessary permits required under the Act.)

The Agency will determine the priority of completion of (A) and (B) based upon its review of the sampling analysis. That item

determined by the Agency as of a higher priority will be completed by NHMSA within ten months after the entry of an order by the Board approving this document; that which the Agency determines as a lower priority will be completed within 22 months after the entry of an order by the Board approving this document.

5. Overhanging trees around the lagoon must be removed within four months after the entry of an order by the Board approving this agreement.

F. NHMSA agrees to check the integrity of the berms around the lagoon every six months and repair them as necessary within 30 days of discovering need for repair.

G. NHMSA acknowledges that all provisions of this proposal for settlement are in addition to, and not in lieu of, all other requirements of the Act.

H. NHMSA hereby moves that PCB 81-122 be dismissed.

I. This proposal is submitted to the Board for approval under Section 103.180 as one integral package, and the parties respectfully request the Board to enter its final order approving the entire settlement. All admissions and statements made herein are void before any Judicial or Administrative body if the foregoing Proposal for Settlement agreed to by the parties is not approved by the Board or if VMSC and NHMSA fail to close on the Takeover Agreement. If the Board should reject any portion

thereof, the entire Stipulation and Settlement shall be terminated and be without legal effect, and the parties shall be restored to their prior position in this litigation as if no Settlement and Stipulation had been executed, without prejudice to any parties' position as to any issue or defense.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

DATE: May 22, 1986

BY: [Signature]
H. ALFRED RYAN, Chief
Assistant Attorney General
Environmental Control Division
100 W. Randolph St., 13th Fl.
Chicago, Illinois 60601
(312) 917-2512

VICKERY MANOR SERVICE CORPORATION

DATE: JUNE 4, 1986

BY: [Signature]
ROBERT A. KNUTI
Lord, Bissell & Brook
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NORTH HILLS MUTUAL SEWER ASSOCIATION

DATE: May 29, 1986

BY: [Signature]
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