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JAN - 8 2002

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

January 3, 2002

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Bernie C. Morris***
PCB No. 02-13

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Elizabeth Ann Pitrolo
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

EAP/pp
Enclosures

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JAN - 8 2002

STATE OF ILLINOIS
Pollution Control Board

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT
MOULTRIE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

BERNIE C. MORRIS,)

Respondent.)

No. 02-73
(Enforcement-Water)

NOTICE OF FILING

To: Bernie C. Morris
23404 Illinois Highway 1
Chrisman, IL 61924

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General of the
State of Illinois

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

BY: 
ELIZABETH A. PITROLO
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 3, 2002

CERTIFICATE OF SERVICE

I hereby certify that I did on January 3, 2002, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Bernie C. Morris
23404 Illinois Highway 1
Chrisman, IL 61924

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Steven C. Langhoff
Hearing Officer
Illinois Pollution Control Board
600 South Second Street, Ste. 402
Springfield, IL 62704



Elizabeth A. Pitrolo
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN - 8 2002

EDGAR COUNTY, ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 02-73
)	(Enforcement-Water)
)	
BERNIE C. MORRIS,)	
)	
Respondent.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2)(2000), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1)(2000). In support of this motion, Complainant states as follows:

1. On December 11, 2001, the State filed a Complaint alleging that the Respondent violated Sections 12(a), (b), (c) and (f) of the Act, 415 ILCS 5/12(a), (b), (c) and (f)(2000), and Section 309.102(a) and 309.202(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.202(a)(1996).
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.

4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby request that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1)(2000).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

JAMES E. RYAN,
Attorney General, State of Illinois

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

BY: 
ELIZABETH ANN PITROLO
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 2, 2002

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
EDGAR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.) PCB No. 02-73
) (Enforcement-Water)
)
BERNIE C. MORRIS,)
)
Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, BERNIE C. MORRIS, and hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties agree that this Settlement is a compromise of a disputed claim. The parties further stipulate that this statement of facts is made and agreed upon for the purposes of settlement only and that neither the fact that a party has entered into the Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future enforcement action as evidence of a past adjudication of violation, as provided in Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2000). This agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the Settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 *et seq.* (2000). The Complaint states a cause of action upon which relief may be granted.

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent and the Respondent's successors and assigns.

IV.

STATEMENT OF FACTS

1. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2000), and is charged, *inter alia*, with the duty of enforcing the Act.

2. At all times relevant to the allegations in the People's Complaint filed in this matter, the Respondent, Bernie C. Morris ("Morris"), was the developer of Wood Ridge Subdivision, a residential development north of the City of Chrisman, Illinois Highway 1, Edgar County, Illinois ("Wood Ridge Subdivision").

3. Complainant alleges Respondent constructed a sewer extension without the required construction permit, thereby violating Section 12(a), (b) and (c) of the Act 415 ILCS 5/12(a)(b)(c)(2000) and Section 309.202(a) of Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a)(1999).

4. Complainant alleges Respondent engaged in construction activities at Wood Ridge Subdivision which threatened or allowed offsite discharge of contaminants without an NPDES permit, thereby violating Section 12 (f) of the Act, 415 ILCS 5/12 (f) (2000) and Sections 309.102(a) and 304.141(b) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 304.141(b)(1999).

5. Respondent has subsequently obtained the required permits from the Illinois EPA, and is acting to resolve the circumstances which lead to the alleged violations.

V.

FUTURE PLANS OF COMPLIANCE

Respondent shall continue to diligently conform to the Act, 415 ILCS 5/1 *et seq.* (2000), and the Board's Water Pollution Regulations, 35 Ill. Adm. Code Subtitle C.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), provides;

- c. 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:
 - i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 - ii. the social and economic value of the pollution source;
 - iii. 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;

- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance.

In response to these factors, the parties state as follows:

1. Complainant contends that the injury to, or interference with, the protection of the health, general welfare, and physical property of the People would be characterized as a potential for water pollution and the degree of injury would be dependent upon the extent of the pollution and the degree of exposure to that pollution.
2. The parties agree that Respondent's activities are of social and economic benefit;
3. Respondent's subdivision development is located at a site which has been found suitable for such use;
4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable; and
5. Respondent has implemented measures subsequent to the alleged violations that are the subject of the People's Complaint in this matter in order to operate in compliance with the Act and the Board's Regulations.

VII.

CONSIDERATION OF SECTION 42(H) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2000), provides:

- h. in determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of 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 violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. The alleged violations were distinct in nature and occurred due to Respondent's failure to obtain the necessary permits;
2. In response to notices of noncompliance issued by the Illinois EPA, the Respondent subsequently worked with the Illinois EPA and obtained the permits required to comply with the Act;
3. The economic benefit of Respondent's alleged noncompliance is the savings, if any, realized by the delayed cost of permit application;
4. Complainant has determined, in this instance, that a penalty of two thousand five hundred dollars (\$2,500.00) will serve to deter further violations and aid in future voluntary enforcement of the Act and applicable regulations;
5. Respondent has no history of past noncompliance with the Act.


VIII.

TERMS OF SETTLEMENT

- A. Respondent admits the violations alleged in the People's Complaint;

B. The Respondent shall pay a penalty of two thousand five hundred dollars (\$2,500.00) into the Illinois Environmental Protection Trust Fund on or before November 30, 2002. Payment shall be made by certified check or money order, payable to "The Illinois Environmental Protection Agency, for deposit in the Environmental Protection Trust Fund," and be delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Respondent's Social Security Number ("SSN") shall be written upon the certified check or money order. Respondent's SSN is: 

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

C. Respondent recognizes its obligations under the Act to comply with the Board's Water Pollution Regulations, 35 Ill. Adm. Code Subtitle C. Respondent shall cease and desist from future violations of any federal, state and local environmental statutes and regulations, including, but not limited to, the Act, 415 ILCS 5/1 *et seq.* (2000) and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondent to comply with any federal, state, or local regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2000) and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

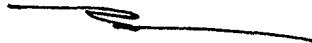
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

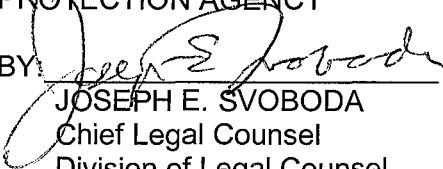
JAMES E. RYAN,
Attorney General
State of Illinois,

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

Dated: 1/02/02

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Dated: 12/14/01

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

Dated: 12-19-01

BY: 
BERNIE C. MORRIS