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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 14 2004

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
VILLAGE OF POPLAR GROVE, an)
Illinois municipal corporation, and,)
R.H. BATTERMAN & COMPANY, INC.,)
a Wisconsin corporation,)
)
Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-142

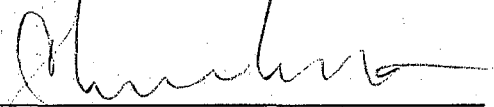
NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, June 14, 2004 filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine of the Stipulation and Proposal for Settlement, and Motion to Waive the Requirement of a Hearing, copies of which are attached herewith.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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-vs-)	PCB No. 04-142
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a Wisconsin corporation,)	
)	
Respondents.)	

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a Stipulation and Proposal for Settlement executed between Complainant and Respondents, VILLAGE OF POPLAR GROVE, and R.H. BATTERMAN & COMPANY, INC.

2. Section 31 of the Act, 415 ILCS 5/31 (2002), provides, in pertinent part, as follows:

* * *

(c) (2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held,

the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

* * *

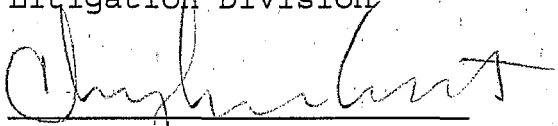
3. No hearing is now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., #2001
Chicago, Illinois 60601
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 14 2004

PEOPLE OF THE STATE OF ILLINOIS,)
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-vs-)
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VILLAGE OF POPLAR GROVE, an)
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R.H. BATTERMAN & COMPANY, INC.,)
a Wisconsin corporation,)
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STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-142

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondents, VILLAGE OF POPLAR GROVE, an Illinois municipal corporation, and R.H. BATTERMAN & COMPANY, INC., a Wisconsin corporation, do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). 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 further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms of 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 of the Illinois Environmental Protection Act ("Act") for purposes of Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2002).

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. (2002).

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 the Respondents, and each of them, and on any officer, director, agent, employee or servant of the Respondents, as well as Respondents' successors and assigns.

The Respondents shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of officers, directors, agents, servants, or employees of either Respondent to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brought this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, VILLAGE OF POPLAR GROVE ("Poplar Grove"), is an Illinois municipal corporation, located in Boone County, Illinois.

4. Respondent, R.H. BATTERMAN & COMPANY, INC., ("Batterman"), is a Wisconsin corporation.

B. Facility Description

Respondent Poplar Grove is the owner and operator of a potable water system, including water mains, storage tanks, and distribution lines. On or about September 15, 2002, Poplar Grove

began construction of a new above ground storage ("new water tower") to be connected to its potable water supply system.

On February 21, 2003, the Illinois EPA issued an 'as-built' approval letter for the now-completed new water tower.

Respondent Batterman provided engineering and construction oversight services for construction of the new water tower. Batterman's responsibilities included obtaining Illinois EPA construction permits.

C. Noncompliance

Complainant has alleged the following violations of the Act against the Respondents:

COUNT I: CONSTRUCTION WITHOUT A PERMIT,
violation of 415 ILCS 5/15 and 18(a) (2002),
and 35 Ill. Adm. Code 602.101.

D. Response to allegations

The Respondents admit to the violations alleged in the Complaint filed in this matter and referenced herein.

V.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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.

ANALYSIS:

The parties mutually state as follows:

1. *Character and Degree of Injury:*

The impact to the public from the alleged violations of the Act was to prevent Illinois EPA from reviewing plans for conformance with Board and Illinois EPA water main engineering requirements, and monitoring construction practices through spot inspections.

2. *Social and Economic Benefit:*

The parties agree that construction of the new water tower to improve Poplar Grove's public water supply is of social and economic benefit.

3. *Suitability to the Area:*

The new water tower is suitable to the area.

4. *Technical Practicability:*

Obtaining required permits prior to construction and operation of public water supply improvements is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondents cooperated with Illinois EPA and provided 'as-built' plans to obtain 'as built' approval for Poplar Grove's new water tower.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), 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 violator 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 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.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

The violations extended from approximately September 15, 2002 until February 21, 2003.

2. *Diligence of Respondent:*

Following notification of violations, the Respondents were diligent in providing "as-built" plans to Illinois EPA.

3. *Economic Benefit of Noncompliance:*

Complainant is not aware of any significant economic benefit from the alleged noncompliance.

4. *Deterrence:*

A penalty of One Thousand Dollars (\$1,000.00) against Respondent Poplar Grove, and a penalty of Three Thousand Dollars (\$3,000.00) against Respondent Batterman will deter future noncompliance by the Respondents and others.

5. *Compliance History:*

The Respondents have no previously adjudicated violations of the Act and Board Regulations.

VII.

TERMS OF SETTLEMENT

1. The Respondents shall pay the following penalties:

a. Respondent Poplar Grove shall pay the sum of One Thousand Dollars (\$1,000.00);

b. Respondent R.H. Batterman & Company, Inc. shall pay the sum of Three Thousand Dollars (\$3,000.00).

Each penalty shall be paid within thirty (30) days after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. Each payment shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

2. Each Respondent shall write its Federal Employer Identification ("FEIN") on its respective certified check or money order. For issues relating to the payment of the penalty, the Respondents may be reached at the following addresses:

Mr. Roger Day, Village President
Village Poplar Grove
100 S. State
Poplar Grove Illinois, 61065

Mr. Thomas Nee, President
R.H. Batterman & Company, Inc.
2857 Bartelis Drive
Beloit, Wisconsin 53511

A copy of each certified check or money order, and all related correspondence, shall be sent by first class mail to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

3. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g)

(2002), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

4. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

5. 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.

6. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN number shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Christopher Grant
Assistant Attorney General (or other designee)
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

VIII.

CEASE AND DESIST

Respondents shall cease and desist from future violations of the Act and Board regulations, including but not limited to,

those sections of the Act and Board regulations that were the subject matter of the complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects each Respondent's responsibility to comply with any other federal state or local regulations, including but not limited to the Act and Board regulations.

X.

Release from Liability

In consideration of the each Respondent's payment of penalty, as specified in Paragraph VII.1, and each Respondent's commitment to cease and desist from future violations, the Complainant releases, waives and discharges each Respondent from any further liability or penalties for 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. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against each 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 Respondents' 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), or entity other than the Respondents.


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

AGREED:

FOR THE COMPLAINANT:

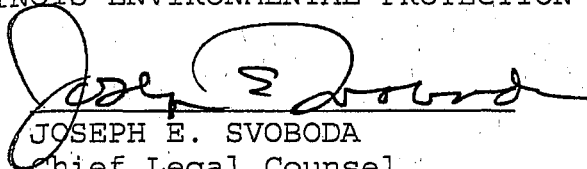
PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:  *Per*
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 2/6/04

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel


DATE: 2/3/04

AGREED:

FOR THE COMPLAINANT:

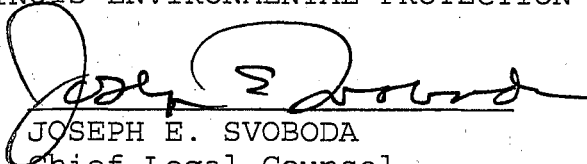
PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:  *per*
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 2/6/04

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 2/3/04

FOR THE RESPONDENTS:

VILLAGE OF POPLAR GROVE

BY:

Roger Day

Title:

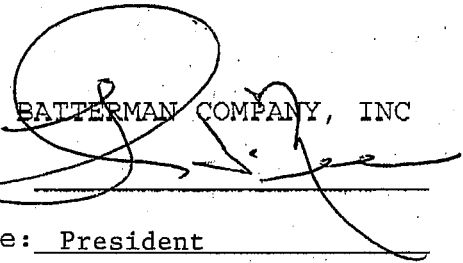
Village President

DATE:

April 12, 2004

R.H. BATTERMAN COMPANY, INC

BY:



Thomas H. Nee

Title: President

Date:

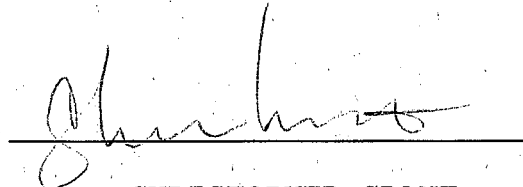
April 12, 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)
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-vs-) PCB No. 04-142
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VILLAGE OF POPLAR GROVE, an)
Illinois municipal corporation, and,)
R.H. BATTERMAN & COMPANY, INC.,)
a Wisconsin corporation,)
)
Respondents.)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 14th day of June, 2004, the Stipulation and Proposal for Settlement and Motion to Waive the Requirement of Hearing upon the persons listed below, by first class mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois and addressed to:


CHRISTOPHER GRANT

Service List:

Mr. Charles Thomas Sewell
Attorney at Law
Strom, Sewell Larson & Popp
215 South State Street
Belvidere, Illinois 61008

Hearing Officer Bradley P. Halloran
Illinois Pollution Control Board [hand delivery]