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SEP 10 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 THE FIELDS OF LONG GROVE HOME OWNER'S)
 ASSOCIATION, an Illinois corporation,)
)
 Respondent.)

No. PCB 04-164
(PWS - Enforcement)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 10rd day of September, 2004, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

By: Paula B. Wheeler
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Fl.
Chicago, IL 60601
312/814-1511

DATE: September 10, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Thomas Draths
Schulyer Roche & Zwirner
One Prudential Plaza
130 E. Randolph Drive
Suite 3800
Chicago, Il. 60601

Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

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STATE OF ILLINOIS
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 Respondent.)

No. PCB 04-164
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**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 hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On March 18, 2004, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On September 10, 2004, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

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 currently scheduled in the instant case.

4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

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

By: Paula B. Wheeler
PAULA BECKER WHEELER
Assistant Attorney General

Environmental Bureau
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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v.) PCB 04-164
) (Enforcement-PWS)
THE FIELDS OF LONG GROVE HOME)
OWNER'S ASSOCIATION, an Illinois)
corporation,)
)
Respondent.)

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 respondent, THE FIELDS OF LONG GROVE HOME OWNER'S ASSOCIATION, an Illinois 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 Respondent, and each of them, and on any officer, director, agent, employee or servant of Respondent, as well as Respondent's successors and assigns. The Respondent 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 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, THE FIELDS OF LONG GROVE HOME OWNER'S ASSOCIATION("FOLG"), is an Illinois corporation.

B. Facility Description

Respondent is a homeowners association that operates a public water supply located in south-central Lake County, northeast of Lake Zurich, Illinois. Respondent services approximately 267 consumers through 89 direct connections. The Respondent, who obtains water from three wells, disinfects the water with chlorine, passes it into two hydropneumatic storage tanks, and then sends the water through a distribution system. Its operation of the utility is subject to the Act and the Rules and Regulations promulgated by the Illinois Pollution Control

Board ("Board") and the Illinois EPA.

C. Noncompliance

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

COUNT I: FAILURE TO OBTAIN CONSTRUCTION PERMITS, violations of Sections 15(a) and 18(a) of the Act, 415 ILCS 5/15(a), 18(a)(2002), and Section 602.101(a) of the Board Regulations for Public Water Supplies, 35 Ill. Adm. Code 602.101(a);

COUNT II: FAILURE TO OBTAIN OPERATING PERMITS, violations of Sections 18(a) of the Act, 415 ILCS 5/18(a)(2002), and Section 602.102 of the Board Regulations for Public Water Supplies, 35 Ill. Adm. Code 602.102.

D. Response to allegations

Respondent neither admits nor denies the alleged violations.

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 and Board regulations was the threat of unsafe drinking water from equipment installed and operated without permits necessary to ensure compliance with applicable health and safety standards.

2. *Social and Economic Benefit:*

The parties agree that operation of Respondent's public water supply is of social and economic benefit.

3. *Suitability to the Area:*

Operation of Respondent's public water supply is suitable to the area.

4. *Technical Practicability:*

Proper application for permits and meeting the minimum design standards for construction are both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondent is currently in compliance.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (eff. 01/01/2004), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (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 respondent 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 respondent because of delay in compliance with requirements, ~~in which case the economic benefit 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; and
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.

ANALYSIS:

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

1. The violations that are the subject of the Complaint occurred over approximately a one-year period.

2. The Respondent was diligent in addressing the violations by meeting with the State on several occasions to discuss measures necessary to achieve compliance, and eventually dismantled the subject equipment to facilitate operating in compliance with the applicable environmental statutes and regulations.

3. The Respondent did accrue a minimal economic benefit by avoiding timely preparation of construction and operating permit applications, the exact amount of which, is difficult to determine. The civil penalty contained herein recovers any economic benefit obtained by Respondent from the alleged noncompliance.

4. The parties believe that a civil penalty of \$3,000.00 will deter Respondent from committing further violations, and will aid in enhancing voluntary compliance by Respondent and others similarly situated and subject to the Act.

5. The Complainant is not aware of any other adjudicated violations of the Act by Respondent.

6. Self-disclosure is not an issue in this matter.

7. No Supplemental Environmental Project has been recommended as described in Section VI.7 of this Stipulation.

VII.

TERMS OF SETTLEMENT

1. The Respondent shall pay a penalty of Three Thousand Dollars (\$3,000.00) within 30 days of the date the Board issues an Order accepting this Stipulation.

2. All Payments shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund("EPTF"), 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

3. Respondent's Federal Employer Identification Number must be on the certified check or money order. For issues relating to the payment of the penalty, the Respondent may be reached at the following address:

Karen Grant
The Fields of Long Grove
P.O. Box 4665 RFD
Long Grove, Illinois 60047

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

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, Illinois 60601

4. If the Respondent fails to make any payment specified

within Section VII of this Stipulation Order on or before the date upon which the payment is due, the Respondent will be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately.

5. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

VIII.
INTEREST ON PENALTIES

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

2. 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.

3. 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.

4. 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 Federal Employer Identification 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:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

IX.
RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents 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 carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

X.
CEASE AND DESIST

Respondent 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.

XI.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects

Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and Board regulations.

XII.

RELEASE FROM LIABILITY

In consideration of the Respondent's payment as described in paragraph VII above, and the Respondent's commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and regulations which were the subject matter of the Complaint herein, upon the payment of all monies owed. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undisclosed violations, or obtain penalties with respect thereto.

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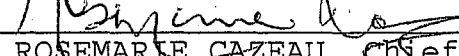
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT:

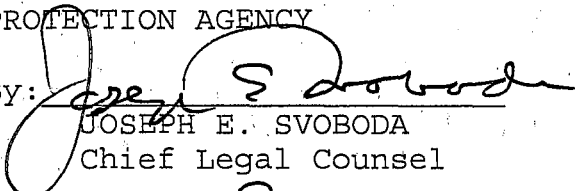
LISA MADIGAN
Attorney General
of the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 8/12/04

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 8-9-04

FOR THE RESPONDENT:

THE FIELDS OF LONG GROVE
HOMEOWNER'S ASSOCIATION

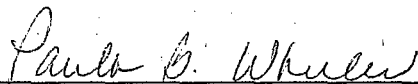
By: 

Title: PRESIDENT

Dated: 9-1-04

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an Assistant Attorney General in this case, do certify that I caused to be served this 10th day of September, 2004, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.



PAULA BECKER WHEELER

