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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**SEP 22 2004**

**STATE OF ILLINOIS  
Pollution Control Board**

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 ROGERS DEVELOPMENT COMPANY )  
 an Illinois Corporation, )  
 )  
 Respondent. )

*PCB* No. 04-227

**NOTICE OF FILING**

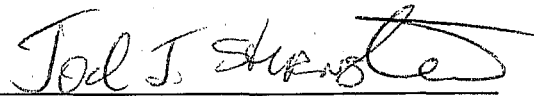
TO: See Attached Service List

PLEASE TAKE NOTICE that today we have filed with the Pollution Control Board the following Stipulation and Proposal for Settlement and Request for Relief from the Hearing Requirement on behalf of the People of the State of Illinois, a copy of which is attached and hereby served upon you.

Respectfully submitted,

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

BY:



JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

DATE: September 22, 2004

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

SERVICE LIST

Mr. Patrick W. Hayes, Esq.  
Guyer & Enichen  
2601 Reid Farm Road  
Rockford, IL 61114

Mr. Charles Gunnarson, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 22 2004

PEOPLE OF THE STATE OF ILLINOIS )  
Complainant, )  
v. )  
ROGERS DEVELOPMENT COMPANY )  
an Illinois Corporation, )  
Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

No. 04-227

MOTION FOR RELIEF FROM HEARING REQUIREMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), moves that the Illinois Pollution Control Board ("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) (2002). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002).
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement which is filed contemporaneously with this Motion.
5. 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) (2002).

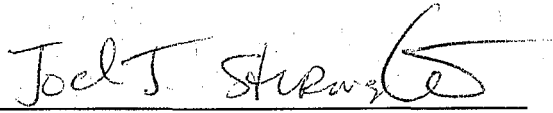
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,  
hereby requests that the Board grant this motion for relief from  
the hearing requirement set forth in Section 31(c)(1) of the Act,  
415 ILCS 5/31(c)(1) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

  
\_\_\_\_\_  
JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
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No. 04-227

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois and Respondent, ROGERS DEVELOPMENT COMPANY ("Rogers"), do hereby submit this Stipulation and Proposal for Settlement ("Stipulation") to the Illinois Pollution Control Board ("Board") for approval. The parties agree that Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. This Stipulation 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 Illinois Environmental Protection Act ("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 to legally bind them to it.

III.

STATEMENT OF FACTS

A. PARTIES

1. The subject Complaint was brought by the Attorney General pursuant to the terms and provisions of Section 31 of the Act, 415 ILCS 5/31 (2002).

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 (2002).

3. At all times relevant to the Complaint, Respondent Rogers was an Illinois corporation in good standing.

4. Respondent is a developer of residential homes at the Lyford Oaks subdivision, located on the west side of Lyford Road north of State Street in Rockford, Winnebago County, Illinois ("Site"). The Site is adjacent to a tributary of Manning Creek.

B. SOURCE DESCRIPTION

1. On December 12, 2001, pursuant to Respondent's application, Illinois EPA granted Respondent coverage under the

general National Pollutant Discharge Elimination System (NPDES) Storm Water Permit for construction activities at the Site effective until May 31, 2003.

2. The Site is approximately five acres in size.

3. On April 9, 2003, Respondent was found to be in violation of its NPDES permit. There was erosion of loose dirt, silt, and poor to nonexistent erosion control measures at the Site. Specifically, Respondent had stored large stockpiles of soil along the western side of the Site on a downward slope toward a tributary of Manning Creek. The piles buried silt fencing that had been installed at that part of the Site. Sheet erosion and/or grading activities buried other silt fencing on the western side of the Site. In addition, soil had been placed on or near Trowbridge Road at the Site without any erosion controls.

#### C. VIOLATIONS

This Stipulation is intended to resolve the allegations in the Complaint filed in this matter. The Complaint alleges

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violations of the Act as follows:

COUNT I Noncompliance with Respondent's NPDES permit in violation of Subsection 12(f) of the Act, 415 ILCS 12(f) (2002).

#### IV.

#### APPLICABILITY

This Stipulation shall apply to and be binding upon

Complainant and Respondent, and any agent, director, officer, employee or servant of Respondent, as well as Respondent's successors and assigns. Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of their agents, directors, officers, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

V.

ADMISSION OF VIOLATIONS

Respondent admits the allegations in the Complaint.

VI.

FUTURE PLANS OF COMPLIANCE

Respondent shall comply with the Act, the Board's regulations, and the terms of its NPDES stormwater permit for construction Site activities and its stormwater pollution prevention plan. Respondent shall maintain adequate stormwater control measures at the Site to prevent erosion at the Site until construction at the Site is complete and the Site is adequately stabilized.

VII.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Subsection 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.

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

1. The parties agree that the impact to the public as a result of the allegations against Respondent in the Complaint was that Respondent violated the terms of its NPDES permit.
2. The parties agree that the Site is of social and economic value.

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3. The parties agree that the Site is suitable to the area where it is located.
4. The parties agree that compliance with the requirements of the Act and the Respondent's NPDES permit is both technically practicable and economically reasonable.
5. The parties agree that Respondent subsequently complied

with the Act and its NPDES permit.

VIII.

CONSIDERATION OF SUBSECTION 42(h) FACTORS

Subsection 42(h) of the Act, 415 ILCS 5/42(h) 2002, provides as follows:

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 or 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.
- 
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.

In determining the appropriate civil penalty to be imposed

under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent.

In response to these factors the parties state as follows:

1. The parties agree that the gravity of the alleged violations is significant in that Respondent failed to comply with the Act and its NPDES permit. The parties agree that the duration is equally significant, as the alleged violations began sometime on or prior to April 9, 2003 and continued until Respondent corrected the violations in May 2004.

2. The parties agree that Respondent did not initially exercise due diligence in complying with the Act and its NPDES permit. However, Respondent subsequently came into compliance with its NPDES permit.

3. The parties agree that Respondent derived economic benefits by not using proper methods of siltation and erosion control for the approximately five-acre Site.

4. The parties agree that a five-thousand dollar (\$5,000.00) civil penalty is adequate to deter Respondent from future violations.

5. Complainant is unaware of any previously adjudicated violations of the Illinois Environmental Protection Act against

Respondent.

6. Respondent did not self-disclose the alleged violations to the Illinois EPA.

7. Respondent is not conducting a supplemental environmental project.

8. The penalty is at least as great as the economic benefit achieved by Respondent as a result of the violations. The penalty will not present an economic hardship to Respondent.

#### IX.

#### TERMS OF SETTLEMENT

1. Respondent shall pay a civil penalty of five-thousand dollars (\$5,000.00) within thirty (30) days of the date of entry of this Stipulation and Proposal for Settlement. Payment of five-thousand dollars (\$5,000.00) shall be made by certified check or money order payable to the "Illinois Environmental Protection Agency" and designated to the Environmental Protection Trust Fund. The certified check or money order shall include Respondent's federal employer identification numbers and be sent by first class mail to:

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

A copy of the check shall be sent to:

Joel Sternstein  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street 20th Floor  
Chicago, Illinois 60601

On the checks and/or money orders, Respondent shall include the case name and case number.

2. For the purposes of collection, inquiries can be addressed to Respondent Rogers' attorney at:

Patrick W. Hayes  
Guyer & Enichen  
2601 Reid Farm Road, Suite B  
Rockford, IL 61114

3. Pursuant to Subsection 42 (g) of the Act, 415 ILCS 5/42 (g) (2002), interest shall accrue on any amount not paid within the time prescribed herein at the maximum rate allowable under Subsection 1003 (a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (a) (2002).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on a payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed Complainant shall be paid by certified checks payable to the "Illinois Environmental Protection Agency" for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in

Subsection IX.1 herein.

d. In the event that Respondent fails to make all or part of the payment set forth in Subsection IX.1, Respondent shall be in default and the unpaid balance owed, plus any accrued interest, shall become due and owing Complainant immediately.

4. Respondent shall in the future operate in compliance with the Act and its NPDES permit.

5. Respondent shall cease and desist from further violations of the Act and its NPDES permit, including, but not limited to, the Subsection of the Act that was the subject matter of the Complaint as outlined in Subsection III.C of this Stipulation.

X.

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 laws and regulations, including but not limited to the Act, 415 ILCS 5/1 et seq. (2002), and the Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

XI.

FUTURE USE

Notwithstanding any other language in this Stipulation and Proposal for Settlement to the contrary, this Stipulation and Proposal for Settlement may be used against Respondent in any

subsequent enforcement action or permit proceeding as evidence of a past adjudication of violation of the Act and its NPDES permit.

XII.

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 Site at all reasonable times for the purposes of carrying out environmental 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.

XIII.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of the \$5,000.00 penalty, Complainant releases, waives and discharges Respondent from any further liability or penalties for violations of the Act and its NPDES permit 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 the Complaint in this matter. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against 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 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 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 Respondent.

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

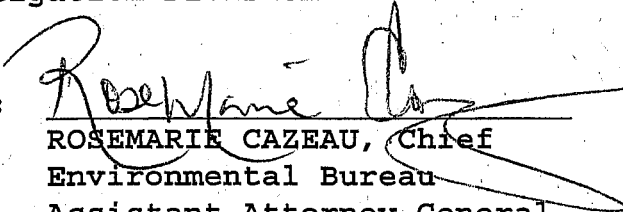


AGREED:

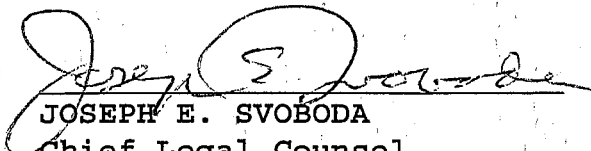
FOR COMPLAINANT:

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

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

By:  Date: 8/27/04  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:  Date: 8-20-04  
JOSEPH E. SVOBODA  
Chief Legal Counsel

FOR RESPONDENT:

By:  Date: 9-14-04  
William H. Rogers  
President  
Rogers Development Company

G:\Environmental Enforcement\JOEL\Case Documents\Rogers\settlement-draft1.wpd

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 22<sup>nd</sup> day of September, 2004, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement, Request for Relief from the Hearing Requirement, and Notice of Filing to the parties named on the attached Service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
\_\_\_\_\_  
JOEL J. STERNSTEIN