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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 27 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
VILLAGE OF CAPRON, an Illinois)
municipal corporation,)
)

No. PCB 05-008
(Enforcement)

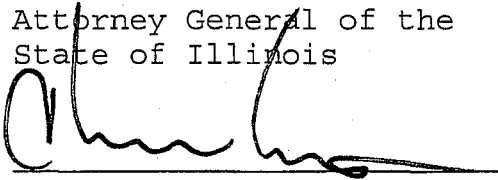
NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, January 27, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of our Stipulation and Proposal for Settlement, a copy of which is attached herewith and served upon you.

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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 VILLAGE OF CAPRON, an Illinois)
 municipal corporation,)
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 Respondent.)

No. PCB 05-008
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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 requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. On July 20, 2004, Complainant filed its one-count complaint against the Respondent, alleging violation of regulations applicable to public water supplies. Since that date, the Respondent has come into compliance with these regulations.

2. Along with this Motion, Complainant is filing a Stipulation and Proposal for Settlement executed between Complainant and the Respondent, VILLAGE OF CAPRON.

3. 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).

* * *

4. No hearing is now scheduled in this matter.

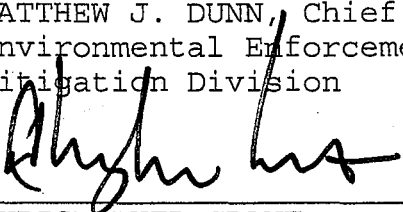
5. Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2002).

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

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 vs.) No. PCB 05-008
) (Enforcement)
 VILLAGE OF CAPRON, an Illinois)
 municipal 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, VILLAGE OF CAPRON, an Illinois municipal 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 Respondent, and each of them, and on any officer, director, agent, employee or servant of the Respondent, as well as the 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 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 CAPRON ("Capron"), is an Illinois municipal corporation, located in Boone County, Illinois.

B. Facility Description

Capron is the owner and operator of a municipal potable water supply and distribution system, serving approximately 960 people on a year-round basis. Respondent Capron is required by applicable regulations to provide its customers with annual reports related to operations of its public water supply, and the quality of water supplied during the previous calendar year. In addition, Capron is required to submit similar reports to Illinois EPA.

C. Noncompliance

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

COUNT I: FAILURE TO PREPARE AND DISTRIBUTE CONSUMER CONFIDENCE REPORTS, violation of 415 ILCS 5/18(a) ((2002), and 35 Ill. Adm. Code, Sections 611.882 and 611.885.

D. Response to allegations

The Respondent admits 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:*

As a result of the alleged violations, users of Respondent's water system were not provided with timely and accurate information regarding water quality and/or possible operational problems which could affect potable water supplied to local homes and businesses. In addition, Illinois EPA's oversight role was impaired by the Respondent's failure to provide required information.

2. *Social and Economic Benefit:*

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

3. *Suitability to the Area:*

The Respondent's public water supply is both suitable and necessary to the area.

4. *Technical Practicability:*

Providing required reports to users and to Illinois EPA is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondent has now provided required Consumer Confidence Reports to users of its system, and has verified such to Illinois EPA.

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, in which case the economic benefits 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 violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator 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 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.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

The violations continued from July, 2003 until September, 2004.

2. *Diligence of Respondent:*

The Respondent did not demonstrate diligence in responding to the notice of violation. However, the Respondent came into compliance following the filing of this enforcement action.

3. *Economic Benefit of Noncompliance:*

Complainant does not believe that the Respondent derived any significant economic benefit from its noncompliance.

4. *Deterrence:*

A penalty of One Thousand Dollars (\$1,000.00) against the Respondent will deter future noncompliance by the Respondent and others.

5. *Compliance History:*

The Respondent has one previously adjudicated violation. On December 27, 2004, the parties entered a consent order in the Circuit Court of Boone County, case No. 00 CH 145. The consent order resolved violations of the Act relating to Respondent's sewage treatment plant. There are no previously adjudicated violations relating to Respondent's public water supply.

6. *Voluntary self-disclosure:*

The Respondent did not voluntarily self-disclose the

violations.

7. *Supplemental Environmental Project*

No SEP has been proposed by the Respondent.

VII.

TERMS OF SETTLEMENT

1. The Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000.00) within thirty (30) days of the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. 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. The case name, case number, and Respondent's Federal Employer Identification ("FEIN") number shall be written on the face of the certified check or money order. For issues relating to the payment of the penalty, the Respondent may be reached at the following addresses:

Village of Capron
120 South 4th Street
Capron, Illinois 61012

A copy of the 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

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.

IX.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the 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 Respondent's payment of a One Thousand Dollar (\$1,000.00) penalty, and Respondent's commitment to cease and desist from future violations, the Complainant releases, waives and discharges the 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, filed on July 20, 2004. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the 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 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 the Respondent.

WHEREFORE, Complainant and Respondent 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: Rosemarie Cazeau
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 1/5/05

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: Joseph E. Svobeda
JOSEPH E. SVOBODA
Chief Legal Counsel
TITLE: _____

DATE: 12/29/04

FOR THE RESPONDENT:

VILLAGE OF CAPRON

BY: *[Signature]*

Title: VILLAGE PRESIDENT

DATE: 1-12-05

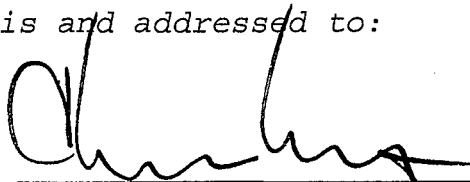
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 Respondent.)

No. PCB 05-008
(Enforcement)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 27th day of January, 2005, the foregoing Stipulation and Proposal for Settlement and Notice of Filing upon the person listed below, 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. R.C. Pottinger
Barrick Switzer et al
One Madison Street
Rockford, IL 61104

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
[by hand delivery]
The Honorable John Ustich, President
The Village of Capron