

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 10 1999

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
CITY OF JOLIET, ILLINOIS,)
)
Respondent.)

PCB 00-98
(Enforcement)

NOTICE OF FILING

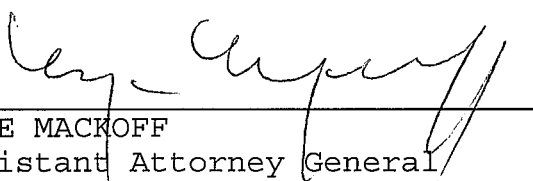
TO: See Attached Service List

PLEASE TAKE NOTICE that on the 10th day of December, 1999, I filed with the Clerk of the Illinois Pollution Control Board a Complaint, Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,

JAMES E. RYAN
Attorney General of the
State of Illinois

BY:



MIKE MACKOFF
Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 11th Fl.
Chicago, Illinois 60601
(312) 814-2381

December 10. 1999

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. John Knittle
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street
Suite 11-500
Chicago, IL 60601

Mr. Jeffrey Plyman
Corporation Counsel
City of Joliet
150 W. Jefferson St.
Joliet, Illinois 60432-4158

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, complains of Respondent, CITY OF JOLIET, ILLINOIS, as follows:

COUNT I

CONSTRUCTING PUBLIC WATER SUPPLY FACILITIES WITHOUT A PERMIT

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (1998).

2. The Illinois EPA is an agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1998), charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent, CITY OF JOLIET ("Joliet") was an Illinois municipality located in

Will County, Illinois.

4. Respondent Joliet operates a public water supply that serves approximately 90,000 people through approximately 28,000 direct service connections.

5. Joliet obtains its water from fifteen (15) wells.

6. At sometime before July 22, 1998, on a date better know to Respondent, Joliet completed construction of a well house with treatment facilities (Well House No. 15, Well 15D and the Drauden Road Water Main).

7. On July 22, 1998, Joliet submitted to the Illinois EPA an application for a construction permit for the well, well house and water main extension.

8. Section 15 of the Act, 415 ILCS 5/15 (1998), provides as follows:

Owners of public water supplies, their authorized representatives, or legal custodian, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

9. Section 3.28 of the Act, 415 ILCS 5/3.28 (1998), provide the following definition:

Section 3.28

"PUBLIC WATER SUPPLY" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks, and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply".

10. Well House no. 15, Well 15D and the Drauden Road Water Main are all part of a "public water supply" as that term is defined in Section 3.28 of the Act.

11. Section 602.101(a) of the Pollution Control Board's ("Board") Water Supply Regulations, 35 Ill. Adm. Code 602.101(a), provides, in pertinent part, as follows:

- a. No person shall cause or allow the construction of any new public water supply installation or cause or allow the change or addition to any existing public water supply, without a construction permit issued by the Environmental Protection Agency (Agency). Public water supply installation, change or addition shall not include routine maintenance, service pipe connections, hydrants and valves, or replacement of equipment, pipe, and appurtenances with equivalent equipment, pipe and appurtenances.

12. Section 18(a) of the Act, 415 ILCS 5/18(a) (1998), provides, in pertinent part, as follows:

No person shall:

1. Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity to be injurious to human health; or
2. Violate regulations or standards adopted by the Illinois PCB under this Act.

13. Respondent constructed Well House No. 15, Well 15D and the Drauden Road Water Main without a construction permit issued by the Illinois EPA in violation of 35 Ill. Adm. Code 602.101(a).

14. Respondent did not provide plans and specifications to, and obtain written approval from the Illinois EPA prior to their construction of Well House No. 15, Well 15D and the Drauden Road Water Main in violation of Section 15 of the Act, 415 ILCS 5/15 (1998).

15. By the actions described herein, Respondent has violated Sections 15 and 18 of the Act, 415 ILCS 5/15, 18 (1998), and 35 Ill. Adm. Code 602.101(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent on Count I, and:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Sections 15 and 18 of the Act and 35 Ill. Adm. Code 602.101(a);
3. Ordering Respondent to cease and desist from any

further violations of Sections 15 and 18 of the Act and 35 Ill. Adm. Code 602.101(a);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violations have occurred;

5. Assessing all costs against Respondent, including expert witness, consultant and attorney fees; and

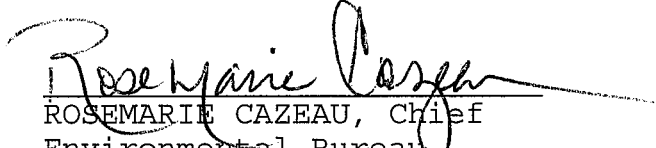
6. Granting such other relief as the Board deems appropriate and just.

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:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

MIKE MACKOFF
Assistant Attorney General
Environmental Bureau
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 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB 00- 98
(Enforcement)

**MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, 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 December 10, 1999, a Stipulation and Proposal for Settlement in this case was filed before the Board.

2. Section 31 of the Environmental Protection Act, 415 ILCS 5/31 (1998) ("Act") provides, in pertinent part, as follows:

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 for 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).

415 ILCS 5/31(c) (2) (1998).

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 JAMES E. RYAN, Attorney General of the State of Illinois, requests relief from requirement of a hearing pursuant to 415 ILCS 5/31(c) (2) (1998).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN,
Attorney General of the
State of Illinois

BY:


MIKE MACKOFF
Assistant Attorney General
Environmental Bureau
100 W. Randolph St. - 11th Fl.
Chicago, Illinois 60601
(312) 814-2381

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STIPULATION AND PROPOSAL FOR SETTLEMENT

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 (collectively, the "State"), and Respondent, CITY OF JOLIET, ILLINOIS, ("Joliet"), do hereby agree to this Stipulation and Proposal for Settlement ("Agreement"). The parties further stipulate that this statement of alleged facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Agreement, nor any of the alleged 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 by Complainant as evidence of a past adjudication of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (1998), for purposes of Section 42(h) of the Act, 415 ILCS 5/42(h) (1998). 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.* (1998).

II.

AUTHORIZATION

The undersigned representative for each party certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms of this Agreement and to legally bind them to it.

III.

APPLICABILITY

This Agreement shall apply to and be binding upon the Complainant and Respondent, and any officer, agent and 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 Agreement the failure of its officers, agents, servants or employees to take such action as shall be required to comply with the provisions of this Agreement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brings this action on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and pursuant to the statutory authority vested in him under Section 31 of the Act, 415 ILCS 5/31 (1998).

2. The Illinois EPA is an administrative agency in the executive branch of the State government of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1998), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to Complainant's Complaint, Respondent, Joliet, was an Illinois municipality, located in Will County, Illinois.

4. Respondent Joliet operates a public water supply that serves approximately 90,000 people through approximately 28,000 direct service connections.

5. Joliet obtains its water from fifteen (15) wells.

B. Alleged Violations

1. In its Complaint, Complainant alleges the following violations of the Act:

Count I: Construction of public water supplies facilities without a permit, in violation of Sections 15 and 18 of the Act, 415 ILCS 5/15, and 5/18 (1998), and 35 Ill. Adm. Code 602.101(a)..

2. Defendant neither admits nor denies the alleged violations.

V.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1998), 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 the following:

1. Although human health and the environment were potentially threatened by Respondent's unpermitted construction of public water supply facilities, there is no evidence of actual negative impact to the public resulting from Respondent's alleged noncompliance.

2. There is social and economic benefit to the public water supply facilities.

3. The construction was suitable for the area in which it occurred.

4. Obtaining a permit prior to the construction of public water supply facilities is both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act, the Board Regulations and applicable Federal regulations.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1998), 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.

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

1. The Respondent is alleged to have failed to obtain a permit prior to construction of public water supply facilities. The violations occurred during the summer of 1998.

2. Respondent was not diligent in attempting to come back into compliance with the Act, Board Regulations and applicable Federal regulations.

3. Any economic benefit Respondents realized from their noncompliance is unquantifiable but is believed to be nominal.

4. Complainant has determined that a penalty of Twenty Five Thousand Dollars (\$25,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

VII.

TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a penalty in the sum of Twenty Five Thousand Dollars (\$25,000.00) within thirty (30) days of the date the Board adopts and accepts this Agreement. The penalty described in this Agreement shall be paid by certified check to the Treasurer of the State of Illinois, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency

Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 36-6088568, shall appear on the check.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1998), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (1998). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund and delivered to the address described above.

3. For purposes of payment and collection, Respondent may be reached at the following address.

City Manager
City of Joliet
150 W. Jefferson St.
Joliet, IL 60432

B. Future Compliance

1. In the future, Respondent shall timely and properly obtain Illinois EPA permits before construction of any public water supply facilities.

2. Prior to the construction of any public water supply facilities or components, Respondent shall provide plans and specifications to, and obtain written approval from the Illinois EPA.

3. Respondents shall cease and desist from the unpermitted construction of public water supply systems.

C. Right of Entry

1. In addition to any other authority, the Illinois EPA, its employees and representatives, the Illinois Attorney General, and his/her agents and representatives, shall have the right of entry or access to the Respondent's public water supply facility which was the subject of this proceeding at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of the site, the Illinois EPA, its employees and representatives, the Attorney General, and his/her agents and

representatives, may take any photographs or samples as they deem necessary in order to conduct their inspection. Copies of these photographs and samples will be provided to Respondent upon written request.

VIII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Agreement in no way affects the responsibility of the Respondent to comply with any federal, state or local regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (1998), and the Board regulations, 35 Ill. Adm. Code Subtitles A through H.

IX.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of the penalty specified herein, and commitment to refrain from future violation of the Act, Board Regulations and applicable federal regulations, Complainant shall release, waive and discharge Respondent and its officers, agents, servants, employees, successors and assigns from any further liability or penalties for the alleged violations of the Act, and Board Regulations which are the subject matter of the Complaint, following receipt by the Complainant of all monies owing pursuant to Section VII.1. of this Agreement. Nothing in this Agreement shall be construed as a waiver by the Attorney General or the Illinois EPA of the right to redress future violations, if any, or to obtain penalties with respect thereto.

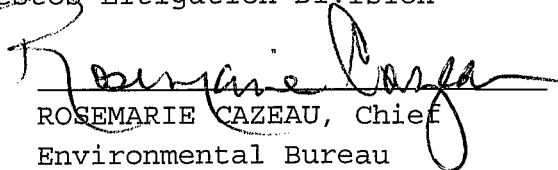
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

JAMES E. RYAN,
Attorney General
State of Illinois

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

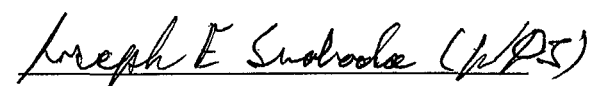
BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 12/6/99

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY:


JOSEPH E. SVOBODA
General Counsel

DATE: _____

CITY OF JOLIET, ILLINOIS

BY:


Name: _____

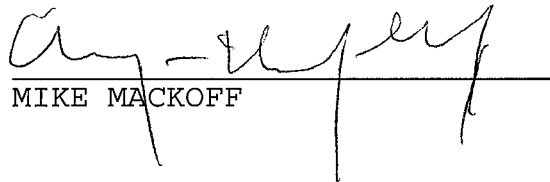
Title: _____

DATE: DECEMBER 1, 1999

c:joliet2.doc

CERTIFICATE OF SERVICE

I, MIKE MACKOFF, an Assistant Attorney General in this case, do certify that I caused to be mailed this 10th day of December, 1999 the foregoing Notice of Filing, Complaint, Request for Relief from Hearing Requirement, and Stipulation and Proposal for Settlement upon the person(s) listed on said Notice by first class mail in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph Street, Chicago, Illinois.


MIKE MACKOFF