

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS )

Complainant, )

v. )

YOUSSI REAL ESTATE AND )  
DEVELOPMENT, INC., an Illinois )  
Corporation, )

Respondent. )

No. 05-60  
(Enforcement - Water)

MAR 10 2005  
STATE OF ILLINOIS  
Pollution Control Board

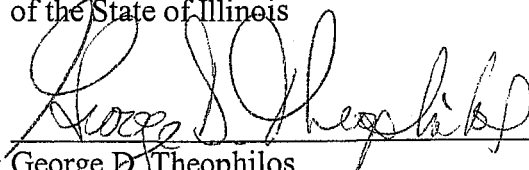
NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 10th day of March, 2005, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a **Stipulation and Proposal for Settlement**, true and correct copies of which are attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney General  
of the State of Illinois

By:

  
George D. Theophilos  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, 20<sup>th</sup> Fl.  
Chicago, IL 60601  
(312) 814-6986

DATE: March 10, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

**SERVICE LIST**

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

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

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

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STATE OF ILLINOIS  
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PCB 05-60

(Enforcement - Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and YOUSSI REAL ESTATE AND DEVELOPMENT, INC., an Illinois Corporation ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. 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 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 any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

#### 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. On September 27, 2004, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondent.

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 was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

#### B. Site Description

1. At all times relevant to the Complaint, Respondent was a developer of residential homes at the Prairie Meadow subdivision, a 72.2 acre parcel of land located at the corner of Dawson Lake Road and Caledonia Road in the Village of Timberlane, Boone County, Illinois ("site").

2. Respondent built Phase II of the site ("Phase II"), a 28 acre parcel where lot sizes average 1.3 acres each, beginning sometime in 2003 until mid-2004, on dates better known to

Respondent.

3. Since 2003, at least one stormwater retention pond was located at the Site to allow stormwater settling prior to discharge from Phase II. Any overflow from the retention pond would flow south approximately one mile to the headwaters of Beaver Creek which is a tributary to the Kishwaukee River.

4. During development and construction activities at Phase II from 2003 until mid-2004, Respondent performed or directed affairs which disturbed and moved topsoil.

5. During development and construction activities at Phase II from 2003 until mid-2004, the site was not covered by a National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit.

### C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Failure to secure a NPDES stormwater discharge permit for Phase II construction activities, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002) and Section 309.103 of the Pollution Control Board's regulations, 35 Ill. Adm. Code 309.103.

**D. Admission of Violations**

The Respondent admits to the violation alleged in the Complaint filed in this matter and referenced within Section III.C herein.

**E. Compliance Activities to Date**

Respondent subsequently submitted a Notice of Intent ("NOI") for coverage under the general NPDES stormwater discharge permit for construction and development activities at the Site.

**IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

**V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local

laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

**VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

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.

In response to these factors, the parties state the following:

1. The environment was threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations.



2. There is social and economic benefit to the site.
3. Operation of the site was suitable for the area in which it occurred.
4. Obtaining a permit prior to construction at the site and compliance with its terms was both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

#### VII. 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 respondent 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 respondent 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 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.

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

1. The Respondent failed to obtain coverage under the general NPDES stormwater permit for construction site activities prior to beginning construction activities at the site. The violations began sometime in 2003, and were resolved in mid-2004.

2. Respondent was diligent in attempting to come back into compliance with the Act, and Board regulations, once the Illinois EPA notified it of its noncompliance.

3. Respondent failed to secure the necessary NPDES permit to conduct construction activities at Phase II. Respondent obtained a minimal economic benefit as a result of the delay in obtaining this NPDES Permit. The \$5,000.00 penalty herein recovers that economic benefit.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of five thousand dollars (\$5,000.00) 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.

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

7. The settlement of this matter does not include a supplemental environmental project.

#### VIII. TERMS OF SETTLEMENT

##### A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum five thousand dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA designated to the Illinois

Environmental Protection Trust Fund. A certified check or money order shall be 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), 36-3673070, shall appear on the check. If submitting an electronic funds transfer to the Illinois EPA, the electronic funds transfer shall be made in accordance with specific instructions to be timely provided to Defendant prior to the date of the entry of the Consent Order. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Joel J. Sternstein  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

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

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002); 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 (2002). 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, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

Patrick W. Hayes  
Guyer & Eichen  
2601 Reid Farm Road  
Rockford, IL 61114

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release

from Liability contained in Section VIII.F, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h) (2002). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**C. Cease and Desist**

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

**D. Release from Liability**

In consideration of the Respondent's payment of the \$5,000.00 penalty and any specified costs and accrued interest, to Cease and Desist as contained in Section VIII.E and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, 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 September 27, 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, or entity other than the Respondent.

**E. 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 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.

**F. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") and C ("Stipulated Penalties") of this Stipulation shall be submitted as follows:

As to the Complainant

Joel Sternstein  
Assistant Attorney General (or other designee)  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Charles Gunnarson  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276



As to the Respondent

Patrick W. Hayes  
Guyer & Eichen  
2601 Reid Farm Road  
Rockford, IL 61114

**G. Modification of Stipulation**

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.H. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

**H. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

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,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: Rosemarie Cazeau DATE: 2/7/05  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

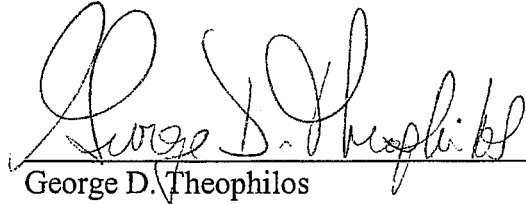
BY: William D. Ingersoll DATE: Feb 1, 2005  
WILLIAM D. INGERSOLL  
Acting Chief Legal Counsel

YOUSSEF REAL ESTATE AND DEVELOPMENT,  
INC.

BY: Christopher Youssi DATE: 2/14/05  
CHRISTOPHER YOUSSEF  
President

**CERTIFICATE OF SERVICE**

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused to be mailed, this 10<sup>th</sup> day of March, 2005, the foregoing **STIPULATION AND PROPOSAL FOR SETTLEMENT** to the persons listed on said Service List by first class mail in a postage pre-paid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
George D. Theophilos