

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-v-)	
)	
FIRST ROCKFORD GROUP, INC., an Illinois)	PCB 05-215
corporation, VILLAGE OF CHERRY VALLEY,)	
an Illinois municipal corporation, HERITAGE)	
ENGINEERING, LTD., an Illinois corporation,)	
and SCHLICHTING & SONS EXCAVATING,)	
INC., an Illinois corporation,)	
)	
Respondents.)	

NOTICE OF FILING

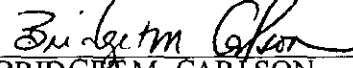
TO: See Attached Service List.

PLEASE TAKE NOTICE that today, September 26, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board by electronic filing a Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
 BRIDGET M. CARLSON
 Assistant Attorney General
 Environmental Bureau
 188 W. Randolph Street, Suite 2001
 Chicago, Illinois 60601
 (312) 814-0608

Date: September 26, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. John P. Malburg
Heritage Engineering Ltd.
345 Executive Parkway
Suite M1
Rockford, Illinois 61125

Mr. James E. Stevens
Barrick, Switzer, Long, Balsley & Van Evera
One Madison Street
Rockford, Illinois 61104

Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford, Illinois 61105

Mr. Jack D. Ward
Reno, Zahm, Folgate, Lindberg & Powell
2902 McFarland Road
Suite 400
Rockford, Illinois 61107

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Respondents.)

MOTION FOR RELIEF FROM HEARING REQUIREMENT FOR STIPULATION AND PROPOSAL FOR SETTLEMENT WITH HERITAGE ENGINEERING LTD.

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and 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 Complainant and the Respondent, Heritage Engineering, 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 15 of the Act, 415 ILCS 5/15(2002) and Section 602.101(a) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 602.101(a).
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties, People of the State of Illinois and Heritage Engineering, 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 filed this same date.

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).

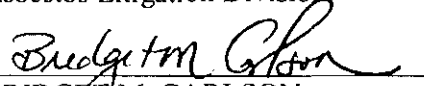
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:


BRIDGET M. CARLSON
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0608

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**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH
HERITAGE ENGINEERING**

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 Respondent, HERITAGE ENGINEERING, LTD. ("Heritage"), an Illinois corporation, (collectively "the parties") 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 Heritage 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. This Stipulation in no way releases or otherwise compromises the violations and liabilities alleged by the Complainant against the Respondents, the Village of Cherry Valley, First Rockford Group Inc. or Schlichting and Sons Excavating Inc. Respondents the Village of Cherry Valley, First Rockford Group Inc. or Schlichting and Sons Excavating Inc. are not signatories to this stipulation.

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 June 15, 2005, 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 Heritage.

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 Heritage, was and is an Illinois corporation that is authorized to transact business in the State of Illinois. The principal business address for Heritage is 345 Executive Parkway, Suite M1, Post Office Box 5145, Rockford, Illinois 61125-0145.

B. Site Description

1. The site where the violations occurred is a development project at the Golf Hill subdivision ("Site"), a 78 home development located in Cherry Valley, Winnebago County, Illinois.

2. Respondent, Heritage, acted as the engineer developing Site grading plans, potable water and sewer installation plans. Heritage assisted in completing the necessary permit application forms for development work at the Site.

3. Respondent Heritage prepared a construction permit application for the developer, Respondent First Rockford Group, for the installation of potable water lines to service the Site. Respondent First Rockford Group and Respondent Heritage signed the permit application on September 24, 2003. After September 24, 2003, on a date better known to Respondent Heritage, the permit application was submitted to the Illinois EPA.

4. On October 28, 2003, prior to the issuance of a construction permit for the project

by the Illinois EPA, the Respondent Heritage caused or allowed the commencement of the construction of the potable water supply lines at the development Site.

5. On or about November 11, 2003 the Illinois EPA received information that construction had begun on a potable water supply line at the Site, prior to the issuance of a construction permit for the project by the Illinois EPA.

6. An Illinois EPA potable water line construction permit was ultimately issued for the Site on November 18, 2003.

7. As a result of the Respondent's construction of potable water lines without a construction permit at the Site, the Illinois EPA sent Respondent Heritage a violation notice on May 18, 2004.

C. Allegations of Non-Compliance

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

Count I: Construction of Potable Waterlines without a Permit –
Violation of Section 15 of the Act, 415 ILCS 5/15(2002)
and Section 602.101(a) of the Board's Public Water
Supplies Regulations, 35 Ill. Adm. Code 602.101(a).

D. Admission of Violations

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

E. Compliance Activities to Date

1. On November 18, 2003 the Illinois EPA issued a construction permit for the installation of potable water lines at the Site.

2. As of November 18, 2003, Heritage has been in compliance with the construction permit requirements of the Illinois EPA, relating to the installation of potable water lines which are the subject matter of this action.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent Heritage, and any officer, director, agent, or employee of the Respondent Heritage, as well as any successors or assigns of the Respondent Heritage. The Respondent Heritage 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.

No change in ownership, corporate status or operator of the Site shall in any way alter the responsibilities of the Respondent Heritage under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the Site, the Respondent Heritage shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent Heritage 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. Human health and the environment were minimally threatened by the Respondent Heritage's violations and the Illinois EPA's information gathering responsibilities hindered by

the Heritage's violations. Obtaining construction permits prior to construction of a water supply structure is the primary and essential means Illinois EPA has to ensure the structural integrity of the lines are intact and the water supply lines are constructed in a manner protective of public health and the environment.

2. There is social and economic benefit to the installation of the potable water source which is the subject matter of this litigation. Heritage, by causing or allowing construction of the potable water line, permitted water service to reach the residential development.

3. Operation of the potable water line was suitable for the area in which it occurred.

4. The proper construction permits were issued for the Site approximately 21 days after construction began. The installation of the water source was technically practical and economic reasonable for this development Site.

5. Heritage has been in compliance with the Illinois EPA requirements for the installation of the potable water source since the November 18, 2003 issuance of the construction permit.

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. Heritage acted as engineer and technical advisor to the developer of the Site in preparing the potable water line construction permit application for the project. Obtaining construction permits prior to construction is the primary and essential means Illinois EPA has to ensure adequate water supply structures are constructed to protect public health and the environment. The duration Heritage remained in violation was twenty-one (21) days.
2. Heritage assisted the developer in obtaining the construction permit by providing engineering expertise in developing plans and completing the construction permit application for the potable water line at the Site. Heritage was diligent in attempting to return to compliance with the requirements of the Act.
3. It does not appear that Heritage gained any economic benefit from the

construction of the potable water line in question on October 28, 2003, prior to issuance of the construction permit for the project. The penalty obtained in this matter includes any economic benefit Heritage may have received.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Two Thousand Five Hundred Dollars (\$2,500.00) will serve to deter further violations and will aid in future voluntary compliance with the Act and Board regulations. The civil penalty agreed to by Complainant and Heritage should impress upon Heritage and similarly-situated consultants, the need to ensure construction permits are in place prior to initiating construction activities.

5. The Illinois EPA is presently unaware of prior enforcement actions against Heritage.

6. Heritage did not disclose the violations noted above to the Illinois EPA.

7. Heritage has not proposed any supplemental environmental projects to resolve this manner.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent Heritage shall pay a civil penalty in the sum of Two Thousand Five Hundred Dollars (\$2,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent Heritage 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 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 Heritage's Federal Employer Identification Number (FEIN) shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Ms. Bridget M. Carlson
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

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, Heritage may be reached at the following address:

Mr. John Malburg
Heritage Engineering Ltd.
345 Executive Parkway, Suite M1
Post Office Box 5145
Rockford, Illinois 61125-0145

Mr. Curtis Tobin
Tobin & Ramon
530 South State Street
Suite 200
Belvedere, Illinois 61008

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.D, below, the Respondent Heritage hereby agrees that this Stipulation may be used against the Respondent Heritage 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 Heritage 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

Respondent Heritage 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 III.C. of this Stipulation.

D. Release from Liability

In consideration of the Respondent Heritage's payment of the \$2,500.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.C 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 Heritage 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 June 15, 2005. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent Heritage 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 Heritage.

E. 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") shall be submitted as follows:

As to the Complainant

Ms. Bridget M. Carlson
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

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

As to the Respondent

Mr. John Malburg
Heritage Engineering Ltd.
345 Executive Parkway, Suite M1
Post Office Box 5145
Rockford, Illinois 61125-0145

F. 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 Heritage 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 Heritage 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.

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WHEREFORE, Complainant and Respondent Heritage 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, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: _____
WILLIAM D. INGERSOLL
Acting Chief Legal Counsel

DATE: _____

HERITAGE ENGINEERING LTD.

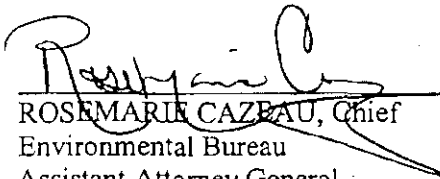
BY: _____
JOHN MALBURG
Its President

DATE: 8/10/05


WHEREFORE, Complainant and Respondent Heritage 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:  _____ DATE: 8/24/05
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY:  _____ DATE: August 15, 2005
ROBERT A. MESSINA
Chief Legal Counsel

HERITAGE ENGINEERING LTD.

BY: _____ DATE: _____
JOHN MALBURG
Its President

CERTIFICATE OF SERVICE

I, BRIDGET M. CARLSON, an Assistant Attorney General, certify that on the 26th day of September 2005, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement 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.


BRIDGET M. CARLSON

