

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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


PCB 05-215
(Enforcement)

NOTICE OF FILING

TO: See Attached Service List.

PLEASE TAKE NOTICE that today, December 23, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board by electronic filing a Stipulation and Proposal for Settlement with Cherry Valley and Motion for Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

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

BY: 
 BRIDGET M. CARLSON
 Assistant Attorney General
 Environmental Bureau
 188 West Randolph Street, Suite 2001
 Chicago, Illinois 60601
 (312) 814-0608
 Attorney No. 99000

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

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PCB 05-215

MOTION FOR RELIEF FROM HEARING REQUIREMENT FOR STIPULATION AND PROPOSAL FOR SETTLEMENT WITH CHERRY VALLEY

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, Cherry Valley, 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), Section 602.101(a) of the Board’s Public Water Supplies Regulations, 35 Ill. Adm. Code 602.101(a) and Section 652.101(a) of the Board’s Public Water Supplies Regulations, 35 Ill. Adm. Code 652.101(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 Cherry Valley, 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).

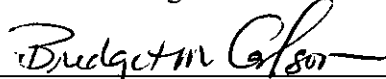
Respectfully submitted,

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

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PCB 05-215

STIPULATION AND PROPOSAL FOR SETTLEMENT WITH CHERRY VALLEY

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, VILLAGE OF CHERRY VALLEY ("Respondent Cherry Valley"), have agreed to the making of this Partial 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 Cherry Valley 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: Heritage Engineering, First Rockford Group Inc. or Schlichting and Sons Excavating Inc. Respondents Heritage Engineering, First Rockford Group Inc. and 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 Cherry Valley.

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 Cherry Valley was and is a municipal corporation that is authorized to transact business in the State of Illinois.

B. Site Description

1. Respondent Cherry Valley is the owner of the public water supply system to which a potable water supply system at a residential development project at the Golf Hill subdivision ("Site"), a 78 home development located in Cherry Valley, Winnebago County, Illinois is attached.

2. The development project at the Site included the creation of grading plans, potable water and sewer installation plans, and the completion of necessary permit application forms for development work at the Site.

3. Respondent Heritage Engineering prepared a construction permit application for potable water lines at the Site on behalf of Respondent First Rockford. On September 24, 2003, Respondents First Rockford Group and Heritage Engineering signed the permit application. On October 7, 2003, Respondent Cherry Valley signed the permit application. Shortly thereafter, 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, Respondents Cherry Valley, First Rockford, Heritage Engineering and Schlichting directed, commenced and/or allowed the construction of the potable water line at the development Site.

5. On October 29, 30, 31, November 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 17, 2003, Respondent Cherry Valley inspected the on-going construction of the water line.

6. Construction of the potable water supply line had occurred prior to the issuance of a construction permit for the project by the Illinois EPA.

7. On November 18, 2003, a potable water line construction permit was issued for the Site by the Illinois EPA.

C. Allegations of Non-Compliance

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

Count I: Caused or allowed the construction installation, changes or additions to potable water supply lines at the Site without first obtaining written approval for an Illinois EPA construction permit, in violation of Section 15 of the Act, 415 ILCS 5/15 (2002), and 35 Ill. Adm. Code 602.101(a).

Count II: Caused or allowed the construction of potable water lines at the Site without a construction permit in violation of 35 Ill. Adm. Code 652.101(a).

D. Admission of Violations

The Respondent Cherry Valley admits to the violation(s) alleged in the Complaint filed in

this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

On November 18, 2003, a potable water line construction permit was issued for the Site by the Illinois EPA.

F. Value of Settlement and Resulting Benefits

A review of the public water supply permit application prior to the construction of potable water supplies and issuance of construction permits is the primary and most effective means by which the Illinois EPA can ensure the protection of Illinois residents. While the proper Illinois EPA permits are now in place, the Respondent Cherry Valley's payment of civil penalties will reinforce the importance of this permit process and encourage future compliance with the Act, as well as the Board's Water Pollution Regulations.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent Cherry Valley, and any officer, director, agent, or employee of the Respondent Cherry Valley, as well as any successors or assigns of the Respondent Cherry Valley. The Respondent Cherry Valley 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 Cherry Valley 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 and the Illinois EPA's information gathering responsibilities hindered by the Respondent Cherry Valley's failure to ensure that the proper construction permits were obtained from the Illinois EPA prior to the

construction of the Site's potable water lines.

2. The Site provides a social and economic benefit to the Respondent Cherry Valley.

The Site consists of a 78 home development located in Cherry Valley that will increase the Respondent Cherry Valley's tax base and provide additional income to area business and services.

3. The Site was a development project at the Golf Hill subdivision, and was suitable for residential development.

4. Obtaining a permit prior to construction at the Site and compliance with its terms are both technically practicable and economically reasonable. Respondent Cherry Valley had signed and submitted the permit application to the Illinois EPA, but had directed, commenced and/or allowed construction to begin at the Site prior to the issuance of a permit.

5. Respondent Cherry Valley has subsequently complied with the Act and the Board Regulations. However, the acquisition of an Illinois EPA construction permit does not remedy the time period during which construction took place at the site without a permit and in violation of the Act and 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 Cherry Valley failed to obtain a construction permit for the potbale water lines at the Site prior to beginning construction of those lines. The violations began on or around October 28, 2003, or a date better known to the Respondent Cherry Valley, and were resolved on November 18, 2003.
2. Respondent Cherry Valley was diligent in attempting to come back into compliance with the Act and Board regulations.
3. The civil penalty obtained herein negates the economic benefit that Respondent may have accrued as a result of its non-compliance.
4. Complainant has determined, based upon the specific facts of this matter, that a

penalty of Fourteen Thousand Five Hundred Dollars (\$14,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent Cherry Valley has at least one previously adjudicated violation of the Act, as evidenced by the Opinion and Order of the Board PCB 03-190. This matter involved circumstances similar to the present matter, in that Respondent Cherry Valley failed to acquire an Illinois EPA construction permit for construction to the public water supply.

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 Cherry Valley shall pay a civil penalty in the sum of Fourteen Thousand Five Hundred Dollars (\$14,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent Cherry Valley stipulates that payment has been tendered to Respondent Cherry Valley's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent Cherry Valley stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent Cherry Valley, 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 Respondent Cherry Valley'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 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, Respondent Cherry Valley may be reached at the following address:

Mr. James Claeysen
President - Village of Cherry Valley
806 East State Street
Cherry Valley, Illinois 61016

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 Cherry Valley hereby agrees that this Stipulation may be used against the Respondent Cherry Valley 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 Cherry Valley 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 Cherry Valley 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 Cherry Valley's payment of the \$14,500.00 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 Cherry Valley 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 Cherry Valley 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 Cherry Valley'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

Cherry Valley.

E. Correspondence, Reports and Other Documents

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

As to the Complainant

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

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

As to the Respondent Cherry Valley

Mr. James Claeysen, Village President
Village of Cherry Valley
806 East State Street
Cherry Valley, Illinois
61016

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

F. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Partial 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 Cherry Valley agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Partial 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 Partial Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

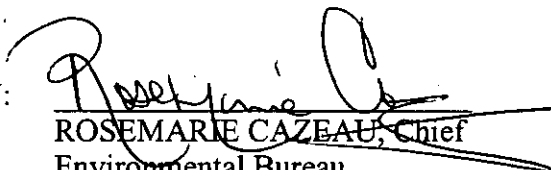
4. It is the intent of the Complainant and Respondent Cherry Valley that the provisions of this Stipulation and Proposal for Settlement with Cherry Valley and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to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

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

PEOPLE OF THE STATE OF ILLINOIS,

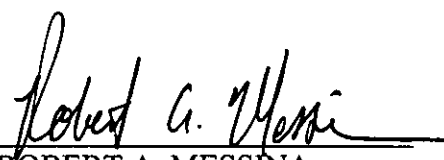
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 11/8/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 11/3/05

VILLAGE OF CHERRY VALLEY

BY: _____
Name: _____
Title: _____

DATE: _____

WHEREFORE, Complainant and Respondent Cherry Valley request that the Board adopt and accept the foregoing Partial 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: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

VILLAGE OF CHERRY VALLEY

BY: Jim E. Clarys
Name: JIM E. CLARYSSEN
Title: VILLAGE PRESIDENT

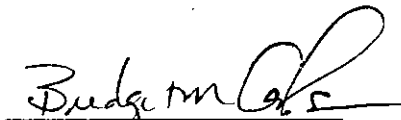
DATE: 12/7/05

CERTIFICATE OF SERVICE

I, BRIDGET M. CARLSON, an Assistant Attorney General, certify that on the 23rd day of December 2005, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement with Cherry Valley 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

It is hereby certified that a copy of the Stipulation and Proposal for Settlement with Cherry Valley was filed via electronic filing, with the Illinois Pollution Control Board on December 23, 2005.

BY: 
BRIDGET M. CARLSON