

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.	)	PCB 05-168
	)	(Enforcement - Public
HOME DEPOT U.S.A., INC.,	)	Water Supply)
a Delaware corporation,)	
)	
Respondent.	)	<u>VIA ELECTRONIC FILING</u>

NOTICE OF FILING


TO: Andrew H. Perellis	Dorothy Gunn, Clerk
Seyfarth Shaw, LLP	Illinois Pollution Control Board
55 East Monroe Street	James R. Thompson Center
Suite 4200	100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60603-5803	Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
 ZEMEHERET BERKET-AB
 Assistant Attorney General
 Environmental Bureau
 188 W. Randolph St., 20th Fl.
 Chicago, IL 60601
 (312) 814-3816

DATE: March 14, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.	)	No. PCB 05-168
	)	(Enforcement - Public
HOME DEPOT U.S.A., INC.,	)	Water Supply)
a Delaware corporation,)	
)	
Respondent.)	

**AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the People of the State of Illinois, filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2004) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2004).

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
(312) 814-3816

DATE: March 14, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
Complainant,) PCB 05-168
v.) (Enforcement - Public
HOME DEPOT U.S.A., INC.,) Water Supply)
a Delaware corporation,)
Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
ex rel. LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
	)	PCB 05-168
Complainant,)	
)	
	)	(Enforcement - Public
v.	)	Water Supply)
)	
HOME DEPOT U.S.A., INC.,)	
a Delaware corporation,)	
)	
Respondent.)	
)	

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 HOME DEPOT U.S.A., INC., ("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 represent a summary of some 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. (2004).

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. COMPLAINANT'S STATEMENT OF FACTS

A. Parties

1. On March 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(2004), 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 (2004).

3. At all times relevant to the Complaint, Respondent was and is a Delaware corporation that is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated the Home Depot store number 1989, located at 143rd Street and Bell Road, Homer Township, Will County, Illinois ("construction site" or "project").

2. On August 31, 2003, Illinois American Water Company, for the benefit of Home Depot applied for a construction permit for the installation of an 88 linear feet of 6-inch water main extension and 2,303 linear feet of 10-inch main to serve its new Home Depot store at the construction site.

3. On September 5, 2003, the Illinois EPA inspected the construction site and discovered that the Respondent had already installed a water main at the project without first obtaining the construction permit from the Illinois EPA that Illinois EPA maintains is required.

4. On October 1, 2003, the Illinois EPA issued "As-Built" Plans Construction Permit No. 0431-FY2004 to Respondent.

According to Home Depot, at no time prior to this date did Home Depot connect the water main to the public water supply.

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 Obtain a Construction Permit, in violation of Section 15(a) of the Act, 415 ILCS 5/15(a)(2004), and 35 Ill. Adm. Code 602.101(a).

D. Non-Admission of Violations

The Respondent denies all allegations of non-compliance with the Act and represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

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) (2004), 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, Complainant alleges the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's failure to obtain a construction permit prior to commencement of the water main.
2. There is social and economic benefit to the Home Depot store.
3. Operation of the Home Depot store is suitable for the area in which it is located.
4. Obtaining a permit prior to construction of the water main at the project and compliance with its terms was both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations. Respondent does not agree with any of Complainant's characterizations made under Section VI herein with the exception of paragraphs 2 and 3 of this Section VI.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2004), 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, Complainant alleges as follows:

1. Construction of water mains without first obtaining a permit from the Illinois EPA is a grave violation. However, the violation was short lived. The violation was discovered on September 4, 2003, and was corrected with the issuance of "As-Built" permit on October 8, 2003.

2. Respondent demonstrated diligence in correcting the violation, and timely submitted the information required for the "As-Built" Construction Permit.

3. The \$15,000.00 (Fifteen Thousand Dollars) penalty agreed to herein, negates any economic benefits accrued by the Respondent by its failure to apply for a construction permit.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Solely for purposes of Section 42(h) of the Act, Home Depot has a prior adjudicated violation of the Act and Board regulations pursuant to the stipulation and proposal for

settlement in the matter of People v. Home Depot U.S.A., Inc., PCB 02-161, accepted by the Illinois Pollution Control Board by order entered on May 2, 2002.

6. Home Depot did not voluntarily disclose the alleged violations in this matter.

7. Home Depot has agreed to undertake a SEP consisting of a cash contribution of Fifteen Thousand Dollars (\$15,000.00) to the Village of Homer Glen, Will County, Illinois, for use in constructing an off road multi use trail system and trailhead.

Respondent does not agree with any of Complainant's characterizations made under Section VII herein with the exception of paragraphs 4, 5 and 7 of this Section VII.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. 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'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:

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

2. Home Depot shall, within 30 days of entry of this Stipulation, undertake a SEP consisting of a cash contribution of Fifteen Thousand Dollars (\$15,000.00) to the Village of Homer Glen, Will County, Illinois, for use in constructing an off-road multi-use trail system and trailhead. Payment of this \$15,000.00 cash contribution shall be made by certified check or money order, payable to the Village of Homer Glen and shall be sent by first class mail to:

Village of Homer Glen
c/o Dwight Johnson, Village Manager
14331 South Golden Oak Drive
Homer Glen, Illinois 60491

3. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), 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 (2004). 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.

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

Home Depot
1400 West Dundee Road
Arlington Heights, Illinois 60004
Attn: Brett Soloway

5. 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 hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding solely 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) (2004), 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.

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 \$15,000.00 (Fifteen Thousand Dollars) penalty and any specified costs and accrued interest, implementation of the SEP described in Section VIII.2, herein, its commitment 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 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 March 15, 2005. 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 (2004), or entity other than the Respondent.

Respondent, as used in this sentence includes any officer, director, or employee of the Respondent, as well as any successors or assigns of the Respondent.

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.1. ("Penalty Payment") and A.2. ("Supplemental Environmental Project") of this Stipulation shall be submitted as follows:

As to the Complainant

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

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

As to the Respondent

Andrew H. Perellis
Seyfarth Shaw
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603-5803

F. 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.E. 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.

G. 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. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, and if it does not dispose of this matter on each and every term and condition of the settlement as set forth herein, then this

Stipulation shall be null and void and neither party is bound by the terms herein.

3. 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.

The remainder of this page is intentionally left blank.

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: Rose Marie Cazeau (ew)
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 2/16/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: Robert A. Messina
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 2/13/06

HOME DEPOT U.S.A., INC.

BY: Richard C. Marshall
Name: RICHARD C. MARSHALL
Title: VP-Construction

DATE: 3/7/06



CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 14th day of March 2006, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB