

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

VILLAGE OF VOLO, a Municipal)
Corporation, and SMITH ENGINEERING)
CONSULTANTS, INC., an Illinois)
Corporation,)

Respondents.)

PCB No. 2006-090
(Enforcement -
Public Water Supply)

NOTICE OF MOTION AND OTHER FILING

TO: Mr. William J. Anaya
Armstein & Lehr, LLP
120 South Riverside Plaza, Suite 1200
Chicago, Illinois 60606

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

PLEASE TAKE NOTICE that I have today, March 30, 2006, filed with the Office of the Clerk of the Illinois Pollution Control Board the **Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement**, true and correct copies of which are attached hereto and herewith served upon you.

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

BY:



MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601
Tel: 312.814.2069
Fax: 312.814.2347
E-Mail: mpartee@atg.state.il.us

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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves for relief from the hearing requirement in this case pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), and Section 103.300 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 103.300. In support of this Motion, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

* * *

(c)(2) 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). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) 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 proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act

3. On December 9, 2005, the Complaint was filed on behalf of the People of the State of Illinois with the Board. On December 15, 2005, the Board found that the Complaint met the content requirements of the Board's procedural rules and accepted it for hearing.

4. The parties have reached a Stipulation and Proposal for Settlement and, accordingly, request relief from the Board's hearing requirement.

5. Along with the filing of this Motion, a Stipulation and Proposal for Settlement was filed with the Board, and no hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY:



MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601
Tel.: 312.814.2069
Fax: 312.814.2347
E-Mail: mpartee@atg.state.il.us

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by LISA MADIGAN, Attorney General)	
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Complainant,)	
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CONSULTANTS, INC., an Illinois)	
Corporation,)	
)	
Respondents.)	

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 Respondents, VILLAGE OF VOLO ("Volo"), a municipal corporation, and SMITH ENGINEERING CONSULTANTS, INC. ("Smith"), an Illinois corporation, 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, Respondents agree 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. STATEMENT OF FACTS

A. Parties

1. On December 9, 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 Respondents.

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, Volo was and is a municipal corporation incorporated under the laws of Illinois. At all times relevant to the Complaint, Volo was and is the owner and official custodian of a public water supply located in Volo, Lake County, Illinois.

4. At all times relevant to the Complaint, Smith was and is an Illinois corporation incorporated under the laws of Illinois. At all times relevant to the Complaint, Smith was the certified operator of Volo's public water supply.

B. Site Description

1. Pursuant to a public water supply construction permit issued by Illinois EPA on September 8, 2000, Volo installed the public water supply, which included two wells (Well #1 and Well #2) for obtaining raw water for potable use and an ion exchange system connected only to Well #1 for removing naturally-occurring contaminants (iron and magnesium) from the raw water.

2. The public water supply serves approximately 60 people for more than 60 days per year.

3. At some point before July 19, 2004, Well #2 and the ion exchange system were connected and placed in service.

4. Neither Volo nor Smith submitted plans and specifications to the Illinois EPA before causing or allowing construction of the connection between Well #2 and the ion exchange system.

5. Also, neither Volo nor Smith obtained a construction or operating permit from the Illinois EPA before causing or allowing the construction and operation of the connection between Well #2 and the ion exchange system.

C. Allegations of Non-Compliance

1. Complainant contends that Volo and Smith violated the following provisions of the Act and Board and Illinois EPA regulations:

- Count I: Failing to submit plans and specifications for a public water supply before construction in violation of Section 15(a) of the Act, 415 ILCS 5/15(a) (2004);
- Count II: Constructing a public water supply without a permit in violation of Section 18(a) of the Act, 415 ILCS 5/18(a) (2004), and Section 602.101(a) of the Board's Public Water Supply Regulations, 35 Ill. Adm. Code 602.101(a); and
- Count III: Operating a public water supply without a permit in violation of Section 18(a) of the Act, Section 602.102 of the Board's Public Water Supply Regulations, 35 Ill. Adm. Code 602.102, and Section 652.201 of the Illinois EPA's Public Water Supply Regulations, 35 Ill. Adm. Code 652.201.

2. Complainant contends that Volo also violated the following provisions of the Act and Illinois EPA regulations:

- Count IV: Constructing a community water supply without a permit in violation of Section 18(a) of the Act and Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations, 35 Ill. Adm. Code 652.101(a).

D. Admission of Violations

The Respondents deny the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

Sometime prior to November 30, 2004, Respondents provided the Illinois EPA with "as-built" construction drawings indicating that the equipment used in conjunction with the public water supply had been constructed appropriately and that the public water supply was safe. On November 30, 2004, the Illinois EPA approved the "as-built" plans for the public water supply. This approval also constituted an operating permit for the public water supply. The Illinois EPA has no evidence that the public or the public water supply were at risk from the original

construction thereof through the date Illinois EPA approved the "as built" plans and issued the operating permit on November 30, 2004.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents 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 Respondents to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board and Illinois EPA 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, the parties state the following:

1. The State's ability to supervise the public water supply in order to protect the public from disease and to assure an adequate supply of potable water was hindered by Respondents' violations.
2. The public water supply provides a social and economic benefit in the form of potable water for the connected residences.
3. The operation of the public water supply was and is suitable for the area in which it operates.
4. Submitting plans and specifications, and obtaining construction and operating permits, before construction and operation of the public water supply was and is both technically practicable and economically reasonable.
5. On November 30, 2004, prior to the filing of this case, the Illinois EPA determined that the public water supply had achieved compliance when the Illinois EPA approved "as-built" plans for the public water supply. This approval also constituted an operating permit for the public water supply. The Illinois EPA has no evidence that the public or the public water supply were at risk at any time from the original construction thereof through the date Illinois EPA approved the "as built" plans and issued the operating permit on November 30, 2004.

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, the parties state as follows:

1. In terms of gravity, the Respondents failed to submit plans and specifications, or to obtain a permit for the construction and operation of a public water supply, before constructing and operating said supply. Pursuant to Section 15 of the Act, 415 ILCS 5/15 (2004), the General Assembly mandated that plans and specifications shall be submitted pre-construction, and shall be complete and of sufficient detail to show all proposed construction,

changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply. In light of the purpose of the relevant provisions of the Act, the gravity of the violations was modest. In terms of duration, the violations began in 2000 and were resolved on November 30, 2004, by the preparation and submission to Illinois EPA of "as built" drawings showing that the public water supply had not been at risk as to the sanitary quality, mineral quality or adequacy of the public water supply. Therefore, the duration of the violations, which was about four years, was significant.

2. Respondents were diligent in preparing and delivering to Illinois EPA "as built" drawings showing compliance with the Act and the Board and Illinois EPA regulations after the Illinois EPA notified them of their alleged noncompliance.

3. Because the Respondents submitted "as-built" plans toward permits, albeit after construction, Respondents did not avoid the cost of preparing such plans. Complainant contends that there accrued only a nominal economic benefit from the delay in compliance, which resulted from the benefit of having the approximately four-year time value of money spent in preparing the "as-built" plans.

4. Complainant contends that the civil penalty payment adequately serves to deter further violations by the Respondents and otherwise aids in enhancing voluntary compliance with this Act by the Respondents and other persons similarly subject to the Act.

5. Complainant is not aware that the Respondents have previously-adjudicated violations. After a diligent inquiry, Respondents represent that they have no previously-adjudicated violations.

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. Smith shall pay a total civil penalty in the sum of Eight Thousand Dollars (\$8,000.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation. The Respondents shall be jointly and severally liable for this payment. The Respondents stipulate that the sum of \$8,000.00 has been deposited with William J. Anaya (counsel of record for Volo), in escrow, which sum shall be disbursed as herein provided. Further, Respondents stipulate that said attorney has been directed to make the penalty payment on behalf of Smith within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation in the manner described below. The penalty described in this Stipulation shall be paid by counsel's law firm check payable to the "Illinois EPA," designated for deposit in 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 Smith's Federal Employer Identification Number shall appear on the check. A copy of the check and any transmittal letter shall be sent to:

Michael C. Partee (or designee)
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, IL 60601

Charles W. Gunnarson (or designee)
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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

To: Village of Volo

Village of Volo
27273 Volo Village Road
Volo, Illinois 60073
Attention: Village President

with a copy to:

Arnstein & Lehr, LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606-3109
Attention: Mr. William J. Anaya

To: Smith

Smith Engineering Consultants, Inc.
4500 Prime Parkway
Mc Henry, Illinois 60050
Attention: Mr. Timothy J. Hartnett

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 Respondents hereby agree that this Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board and Illinois EPA Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for

purposes of Sections 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h) (2004). Further, Respondents agree 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 Respondents shall cease and desist from future violations of the Act and Board and Illinois EPA 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 payment of the \$8,000.00 civil penalty pursuant to Section VIII.A and to cease and desist pursuant to Section VIII.C and upon the Board's acceptance and approval of the terms of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for violations of the Act and Board and Illinois EPA 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 December 9, 2005 in this cause. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' 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 Respondents.

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 facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections to monitor compliance with the provisions of this Stipulation. 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. Enforcement of Board Order

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

2. Complainant and Respondents agree that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation may be made by mail and Complainant and Respondents waive any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation, then no party is bound by the terms herein.

4. It is the intent of the Complainant and Respondents that the provisions of this Stipulation 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 Respondents request that the Board adopt and accept the foregoing Stipulation as written.

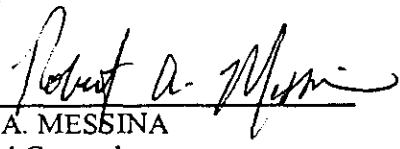
PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

DATE: 3/9/06

**ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY**

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 3/5/06

VILLAGE OF VOLO

BY: 
BURNELL RUSSELL, Village President

DATE: 3-27-06

SMITH ENGINEERING CONSULTANTS, INC.

BY: 
TIMOTHY J. HARTNETT, Vice President

DATE: 3/23/06

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of the **Notice of Motion and Other Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on March 30, 2006.

BY: 
MICHAEL C. PARTEE

It is hereby certified that the above referenced documents were electronically filed with the following person on March 30, 2006:

Pollution Control Board, Attn: Clerk
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

BY: 
MICHAEL C. PARTEE