

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
 by LISA MADIGAN, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 MATRIX NATIONAL INVESTMENT)
 CORP, an Illinois corporation,)
)
 Respondent.)


PCB No. 06-160
 (Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 13th day of March, 2007, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: 
 STEPHEN J. SYLVESTER
 Assistant Attorney General
 Environmental Bureau North
 188 West Randolph St., 20th Floor
 Chicago, Illinois 60601
 312-814-2087

DATE: March 13, 2007

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

Mr. Donald G. Schweihs
Nack, Richardson, & Nack P.C.
P.O. Box 6614
Galena, IL 61036

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	
)	PCB No. 06-160
MATRIX NATIONAL INVESTMENT)	(Enforcement - Water)
CORP, an Illinois 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 Matrix National Investment Corp ("Matrix"), 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, Matrix 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. STATEMENT OF FACTS

A. Parties

1. On May 2, 2006, 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 Matrix.

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, Matrix was and is an Illinois corporation in good standing.

B. Site Description

1. At all times relevant to this Complaint, Matrix is and was a company that owns and is developing a residential subdivision known as Cobblestone Crossing, located in Section 12, Township 28 North, Range 1 West on Oldenburg Road in the northwestern portion of the City of Galena, Jo Daviess County, Illinois ("Site").

2. The Site is an approximately thirty-four (34) acre mixed-use development comprised of twelve (12) single family homes, thirty-two (32) multi-family dwellings and one commercial building.

3. Stormwater run-off from the Site flows south through a storm sewer system and a separate culvert directly into an unnamed creek on the southern portion of the Site ("southern creek"), which flows to a detention pond on the eastern portion of the Site. Stormwater run-off from the Site also flows north into an unnamed creek on the northern portion of the Site ("northern creek"), which bypasses the detention pond and leads to the Hughlett Branch of the Galena River.

4. The Illinois EPA issued to Matrix a general National Pollutant Discharge Elimination System ("NPDES") Permit No. ILR108050 for storm water discharges from construction site activities for Cobblestone Crossing Subdivision ("NPDES Permit No. ILR108050"). NPDES Permit No. ILR108050 became effective on or about April 21, 2003 and remains in effect as of the date of the filing of this Stipulation.

C. Allegations of Non-Compliance

Complainant contends that Matrix has violated the following provisions of the Act:

Count I: WATER POLLUTION: Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

Count II: CREATING A WATER POLLUTION HAZARD: Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);

Count III: NPDES PERMIT VIOLATIONS: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

D. Admission of Violations

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

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and Matrix, and any officer, director, agent, or employee of Matrix, as well as any successors or assigns of Matrix. Matrix 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 Matrix 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, the parties state the following:

1. The environment was threatened by Matrix's failure to implement adequate stormwater control measures at the Site.
2. The Site has social and economic benefit.
3. Matrix's residential development is suitable for the area in which it is located.
4. Matrix's compliance with the terms and conditions of NPDES Permit No. ILR108050 was both technically practicable and economically reasonable.
5. Matrix has subsequently complied with the Act.

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. Matrix failed to implement and update its storm water pollution prevention plan to adequately address erosion control issues at the Site, including missing or improperly installed silt fencing, inadequate stabilization of disturbed soils, and causing, threatening or allowing silt and sediment laden stormwater runoff to waters of the State. The violations began on or around November 2004, and were individually resolved at various times in the following year.

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

3. The civil penalty obtained negates any economic benefit that Matrix may have accrued as a result of the delay in compliance.

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.

5. To Complainant's knowledge, Matrix has no previously adjudicated violations of the Act.

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

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. Matrix 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.

Matrix stipulates that payment has been tendered to Matrix's attorney of record in this matter in a form acceptable to that attorney. Further, Matrix stipulates that said attorney has been directed to make the penalty payment on behalf of Matrix, 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 or money order 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 Matrix's Federal Employer Identification Number ("FEIN"), shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

Stephen J. Sylvester
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) (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 or money order, 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, Matrix may be reached at the following address:

Matrix National Investment Corp
c/o Rick Hochman, Chairman/CEO
9327 W. Powderhouse Hill Rd.
P.O. Box 6226
Galena, IL 61036

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

Donald G. Schweih, Esq.
609 Gear St.
P.O. Box 6614
Galena, IL 61036

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. Compliance Plan

1. Matrix shall comply with all of the terms and conditions of its NPDES stormwater permit for the Site, including but not limited to the following:

a. Ensure that all disturbed areas at the Site, which will not be undergoing construction activities for a period of more than twenty-one (21) consecutive days, are stabilized to prevent soil erosion from those areas;

b. Perform weekly site inspections of the entire Site and perform site inspections within twenty-four (24) hours of the end of any storm that is 0.5 inches or greater or equivalent snowfall and record the findings of those inspections as required by the NPDES

stormwater permit;

2. Within fourteen days of the Board Order accepting entry of this Stipulation, Matrix shall submit to the Complainant copies of the weekly site inspection reports for the Site for the period beginning November 1, 2006. Thereafter, Matrix shall send copies of its inspection reports to the Complainant every two weeks, at a minimum of one inspection report per week, until such time as its NPDES stormwater permit is terminated by the Illinois EPA.

3. Matrix shall notify Complainant thirty (30) days prior to requesting termination of its NPDES stormwater permit for the Site.

C. Stipulated Penalties

1. If Matrix fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in Section VIII.B ("Compliance Plan") of this Stipulation, Matrix shall provide notice to the Complainant of each failure to comply with this Stipulation. In addition, Matrix shall pay to the Complainant, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of \$200.00 until such time that compliance is achieved.

2. Following the Complainant's determination that Matrix has failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Complainant may make a demand for stipulated penalties upon Matrix for its noncompliance with this Stipulation. Failure by Matrix to make this demand shall not relieve Matrix of the obligation to pay stipulated penalties.

3. All penalties owed the Complainant under this section of this Stipulation that have not been paid shall be payable within thirty (30) days of the date Matrix knows or should have known of its noncompliance with any provision of this Stipulation.

4. a. All stipulated penalties shall be paid by certified check or money order, payable to the Illinois EPA for deposit into the EPTF and shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

b. The name and number of the case and Matrix's FEIN shall appear on the face of the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

Stephen J. Sylvester
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

5. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

D. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.F, below, Matrix hereby agrees that this Stipulation may be used against Matrix 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)(2004).

Further, Matrix agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

E. Cease and Desist

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

F. Release from Liability

In consideration of Matrix's payment of a \$15,000.00 penalty and any specified costs and accrued interest, and 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 Matrix 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 May 2, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Matrix 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 Matrix'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 Matrix.

G. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Site which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

H. Enforcement of Board Order

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

2. Matrix 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 Matrix 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.

I. Execution of Document

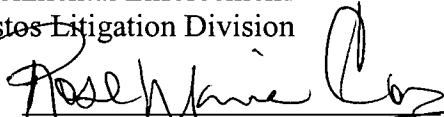
This Stipulation and Proposal for Settlement shall become effective only when executed by all parties and accepted and approved by the Board. This Stipulation and Proposal for Settlement may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

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,

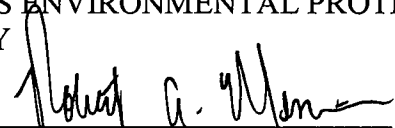
LISA MADIGAN
Attorney General of the State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 3/8/07

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 3/6/07

MATRIX NATIONAL INVESTMENT CORP

BY: _____

Name: _____

DATE: _____

Title: _____

inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

I. Execution of Document

This Stipulation and Proposal for Settlement shall become effective only when executed by all parties and accepted and approved by the Board. This Stipulation and Proposal for Settlement may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

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 of the State of Illinois

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

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

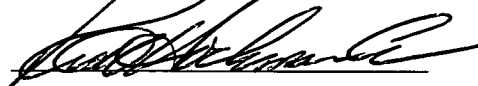
DATE: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

MATRIX NATIONAL INVESTMENT CORP

BY: 

Name: Rick Hochman

DATE: Feb 19, 2007

Title: CEO

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	
)	PCB No. 06-160
MATRIX NATIONAL INVESTMENT)	(Enforcement - Water)
CORP, an Illinois corporation,)	
)	
Respondent.)	

MOTION TO REQUEST 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 requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On May 2, 2006, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On March 13 2007, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2004), provides as follows:

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).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2004).

Respectfully submitted,

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

BY:



STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
188 West Randolph St., 20th Floor
Chicago, Illinois 60601
312-814-2087

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 13th day of March, 2007, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

BY:


STEPHEN J. SYLVESTER