

Electronic Filing - Received, Clerk's Office, March 5, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 08-027
) (Enforcement - Water)
)
CITY OF HOMETOWN, a municipal)
corporation,)
)
Respondent.)

NOTICE OF FILING

To: See Attached Service List.
(VIA ELECTRONIC FILING)

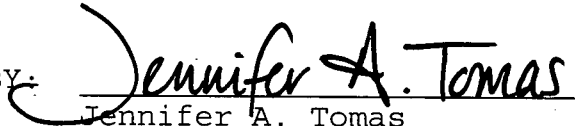
PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:


Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Ste. 1800
Chicago, Illinois 60602
(312) 814-0609

DATE: March 5, 2008

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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SERVICE LIST

Joseph Cainkar
Louis F. Cainkar, Ltd.
30 North LaSalle Street, Suite 3922
Chicago, Illinois 60602-2507

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

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

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)
Respondent.)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by 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) (2006), moves that the Illinois Pollution Control Board ("Board") grant the parties 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) (2006). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Section 1 of the Public Water Act, 415 ILCS 45/1 (2006), Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2006), and Sections 603.102, 603.103(a), and 603.105(b) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 603.102, 603.103(a), and 603.105(b).

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2. The parties have reached agreement on all outstanding issues in this matter.

3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

4. 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) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:


JENNIFER A. TOMAS

Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Ste. 1800
Chicago, Illinois 60602
(312) 814-0609

DATE: March 5, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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)
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 the City of Hometown (herein "Respondent" or "Hometown"), 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 Complainant, Illinois EPA and Respondent ("parties to this Stipulation") 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 to this Stipulation 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 to this Stipulation 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 its validity in any subsequent proceeding to implement or enforce its terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties to this Stipulation consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006).

II. AUTHORIZATION

The undersigned representatives for Complainant, the Illinois EPA, and Respondent certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to be legally bound by it.

III. STATEMENT OF FACTS

A. Parties to this Stipulation

1. On October 1, 2007 a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney

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General of the State of Illinois, on her own motion and upon the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), 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 (2006).

3. At all times relevant to the Complaint, Respondent was and is a municipal corporation duly organized and existing under the laws of the State of Illinois.

B. Site Description

1. Hometown has no water supply treatment facility, but is a satellite water supply that purchases finished Lake Michigan water from the City of Chicago, Cook County, Illinois.

2. Hometown has two (2) meter vaults. A primary meter vault is at 87th Street and Kostner Avenue and another meter vault is at 87th Street and Rumsey Avenue. The water flows from these two locations to Hometown's residents. The satellite supply has 1,977 service connections within Hometown.

3. On November 2, 2005, the Illinois EPA sent Hometown a Non-Compliance Advisory Letter notifying Hometown that their Notification of Certified Operator in Responsible Charge form was no longer valid because Hometown's certified operator in

responsible charge of Hometown's public water supply failed to complete the renewal training requirements to maintain his certified operator status.

C. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act, the Public Water Supply Act, and Board regulations:

Count I: Failure to Have a Certified Operator Responsible for the Public Water Supply, in violation of Section 1 of the Public Water Act, 415 ILCS 45/1 (2006); and

Count II: Failure to Designate and Notify the Illinois EPA of a Certified Operator Responsible for the Public Water Supply, in violation of Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2006) and Sections 603.102, 603.103(a), and 603.105(b) of the Board Public Water Supply Regulations.

D. Admission of Violations

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

E. Compliance Activities to Date

1. On November 20, 2006, the Superintendent of Oak Lawn's Water Department advised the Illinois EPA that he has a Class A

certification and was willing to serve as Hometown's water operator.

2. On December 13, 2006, the Illinois EPA received the completed Notification of Certified Operator in Responsible Charge form for the Superintendent of Oak Lawn's Water Department to serve as Hometown's interim public water supply operator.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, trustee, 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, trustees, 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.

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VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2006), 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 to this Stipulation state the following:

1. Human health and the environment were threatened by the Respondent's violations.
2. The Hometown public water supply has social and economic benefit.
3. The public water supply is suitable for the area in which it is located.

4. It is both technically practicable and economically reasonable to have a certified operator responsible for Hometown's public water supply.

5. Respondent has subsequently complied with the Act and the Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2006), provides, in pertinent part, 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;

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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 to this Stipulation state as follows:

1. On November 2, 2005, the Illinois EPA notified Hometown that its certified operator failed to complete the renewal training requirements, and therefore the Notification of Certified Operator in Responsible Charge form submitted by Hometown was no longer valid. On December 13, 2006, a replacement certified operator was named in the Notification of Certified Operator in Responsible Charge form sent to the Illinois EPA. From at least November 2, 2005 through December 13, 2006, no certified operator was responsible for Hometown's public water supply.

2. Based on information provided by Respondent on its efforts to obtain a certified operator, Respondent was diligent in attempting to find a replacement for its retired certified operator.

3. An economic benefit of approximately \$2,661.00 was gained by the Respondent through its noncompliance. However,

this amount would result in an economic hardship to the Respondent, and the lesser amount of \$1,000.00 was calculated using an alternative penalty calculation for small communities.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of One Thousand Dollars (\$1,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

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

6. Respondent did not voluntarily disclose the violations that were the subject of the Complaint to the Illinois EPA.

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. a. The Respondent shall pay a civil penalty in the sum of One Thousand Dollars (\$1,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date

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the Board adopts and accepts this Stipulation, in a manner prescribed below.

b. Payment shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("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, IL 62794-9276

c. The name, case number and the Defendant's Federal Identification Number ("FEIN") shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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

Joseph Cainkar
Louis F. Cainkar, Ltd.
30 N. LaSalle Street, Suite 3922
Chicago, Illinois 60602

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

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City of Hometown
Donald Robertson, Mayor
Hometown City Hall
4331 Southwest Highway
Hometown, Illinois 60456

f. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

B. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2006), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN shall appear on the face of the certified check or money order. A

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copy of the certified check or money order and the transmittal letter shall be sent to:

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

C. Future Compliance

Effective immediately, the Respondent shall continue to comply with the Act, Public Water Act, and all applicable regulations with regard to its public water supply, including employing a certified operator to be responsible for its public water supply.

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, the Respondent hereby agrees that this Stipulation may be used against the Respondent 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). Further, Respondent 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

The Respondent shall cease and desist from future violations of the Act, Public Water 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.

F. Release from Liability

In consideration of the Respondent's payment of the \$1,000.00 penalty and any specified costs and accrued interest, its commitment to Cease and Desist as contained in Section VIII.E 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

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specified in Complainant's Complaint filed on October 1, 2007.

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, or entity other than the Respondent.

G. Correspondence, Reports and Other Documents

Any and all correspondence, except for payments pursuant to Sections VIII.A ("Penalty Payment") of this Stipulation, shall be submitted as follows:

As to the Complainant

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

As to the Illinois EPA

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

As to the Respondent

Joseph Cainkar
Louis F. Cainkar, Ltd.
30 N. LaSalle Street, Suite 3922
Chicago, Illinois 60602

City of Hometown
Donald Robertson, Mayor
Hometown City Hall
4331 Southwest Highway
Hometown, Illinois 60456

H. Modification of Stipulation

The parties to this Stipulation 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.G. 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 to this Stipulation, 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.

I. Enforcement of Board Order

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

2. Respondent 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 to this Stipulation agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party to this Stipulation is bound by the terms herein.

4. It is the intent of the Complainant, Illinois EPA and Respondent that the provisions of this Stipulation and Proposal

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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.

J. Execution of Document

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

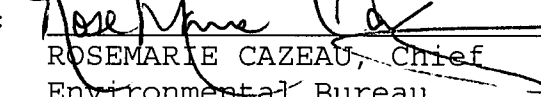
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

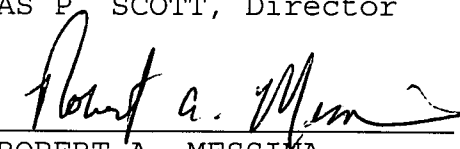
PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN, Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DOUGLAS P. SCOTT, Director

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 2/21/08

DATE: 2/20/08

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CITY OF HOMETOWN

BY: *DLR*

Name: Donnan L. Robertson
Title: MAYOR

DATE: 02-26-08

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 5th day of March 2008, I caused to be served by U.S. Certified Mail, Return Receipt Requested, the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


JENNIFER A. TOMAS