

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

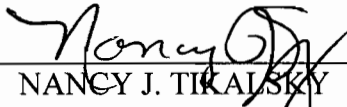
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 10 – 108
)	(Enforcement – Water)
WILLIAM CHARLES REAL ESTATE)	
INVESTMENT, LLC, an Illinois limited liability)	
company,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 15th day of June 2011, 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: 

NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
312-814-8567

DATE: June 15, 2011

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. Charles F. Helston
Hinshaw & Culbertson LLP
100 Park Ave.
Rockford, IL 61105

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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 June 24, 2010, Complaint number PCB 10-108 was filed with the Illinois Pollution Control Board (“Board”) in this matter.
2. On June 15, 2011, a Stipulation and Proposal for Settlement was filed with the Board.
5. Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2010), 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.
6. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2010), 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).

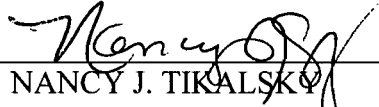
7. No hearing is currently scheduled in the instant case.
8. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

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) (2010).

Respectfully submitted,

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

BY: _____


NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
312-814-8567

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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 William Charles Real Estate Investment, LLC (“Respondent”), (collectively “Parties to the Stipulation”), 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 et seq. (2010), and the Board’s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On June 24, 2010, 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 (2010), 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 (2010).

3. At all times relevant to the Complaint, Respondent was and is an Illinois limited liability corporation authorized to transact business in the State of Illinois.

4. Lookout Preserve, which was intended to be developed as a subdivision, is approximately 65 acres in size, and is located at the northwest corner of Rotary Road and Ryberg Road in New Milford, Winnebago County, Illinois ("Site"). The Site is located approximately two miles south of Rockford, Illinois, and consists of land on which residential and commercial buildings were to be built.

B. Allegations of Non-Compliance

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

Count I: Water Pollution
Violation of Section 12(a) of the Act, 415 ILCS 5/12(d) (2010);

Count II: Water Pollution Hazard
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
and

Count III: National Pollutant Discharge Elimination System ("NPDES")
Violation
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

C. Non-Admission of Violations

The Respondent represents that it has entered into the Stipulation only 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 non-compliance referenced above, and this Consent Order shall not be interpreted as including any such admission.

D. Compliance Activities to Date

1. The Respondent has regraded various portions of the Site and reintroduced soils more conducive to vegetative cover.
2. Silt fences have been repaired where necessary at the Site.
3. The Respondent has taken all reasonable measures necessary to reseed and establish vegetative cover over certain portions of the Site, and has returned the Site to agricultural use. Further, the Respondent has ensured that adequate stabilization of the Site has been accomplished and will be maintained. The Respondent has updated its Stormwater Pollution Prevention Plan for this Site to reflect current Site status and erosion control needs, and has provided copies of the same as required by its NPDES permit, as well as providing a copy of the same to Charles Corley at the address listed in Section V.F.
4. The Respondent has submitted to the Illinois EPA a report detailing all measures which have been taken to ensure that adequate stabilization of the Site will be maintained.

5. The Respondent has submitted the names and qualifications of the person(s) performing any required Site inspections pursuant to the Respondent's NPDES permit to Charles Corley at the address listed in Section V.F.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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. 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 for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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 the Stipulation state the following:

1. The Complainant contends that human health and the environment were threatened by the Respondent's failure to properly control erosion at the Site and comply with the terms of its NPDES permit. Respondent claims human health and the environment were not threatened by its activities at the Site.

2. There is social and economic benefit to the Site.

3. The Site is suitable for the area in which it is located.

4. The Complainant contends that controlling erosion and complying with the terms and conditions of a NPDES permit is both technically practicable and economically reasonable. The Respondent claims that controlling erosion and complying with the terms and conditions of its NPDES permit is both technically practicable and economically reasonable when not confronted with conditions beyond the control of the Site owner/operator and/or NPDES permittee. The Respondent claims that it has substantially complied with all applicable laws, regulations, and permits for the Site.

5. The Respondent has regraded various portions of the Site and reintroduced soils more conducive to vegetative cover. The Respondent has attempted to reseed and establish vegetative cover over portions of the Site. Silt fences have been repaired where necessary at the Site. The Respondent claims it has taken all reasonable measures necessary to reseed and establish vegetative cover over certain portions of the Site.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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 to the Stipulation state as follows:

1. The Complainant contends that the following conditions at the Site were noted during the Illinois EPA's June 11, 2008 inspection: Vegetative groundcover was thin; sediment and erosion controls were lacking on the topsoil stockpiles; areas of silt fence were overrun and

down; and evidence of sediment discharges offsite was present. The Respondent does not admit the allegations noted during the Illinois EPA's June 11, 2010 inspection.

2. As of the date of the filing of this Stipulation, seeding and erosion control structures have been installed at the Site.

3. The Complainant contends that the Respondent realized an economic benefit by delaying the costs of implementing adequate erosion controls at the Site that would have prevented the erosion control issues noted, particularly, adequate stabilization of disturbed soils at the Site. The Complainant contends that the Respondent realized an economic benefit of Three Thousand, Eight Hundred and One Dollars (\$3,801.00) as a result of its noncompliance. The Respondent claims it has not realized an economic benefit by delaying the costs of implementing adequate erosion controls at the Site. Moreover, the Respondent claims it has expended in excess of three hundred thousand dollars (\$300,000.00) in implementing measures necessary to control erosion on an on-going basis and ensure on-going adequate stabilization at the Site.

4. The Complainant has determined, based upon the specific facts of this matter that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. This penalty includes the \$3,801.00 economic benefit the Complainant alleges was realized by Respondent. Without admitting the Complainant's claims in this matter, the Respondent is willing to pay a penalty of Ten Thousand dollars (\$10,000.00) to avoid the time and expense of protracted litigation in this matter.

5. The Respondent has no known 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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$100 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. 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.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund. Payments 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

The case name, case number and the Respondent's federal tax identification number 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:

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall complete the following future compliance activities:
 - a. At all times while the Site is covered under Respondent's NPDES permit, Respondent shall employ and maintain adequate erosion control structures and soil stabilization techniques to prevent silt-laden stormwater runoff from the Site;

- b. Until such time as the Respondent is granted termination of its coverage under its construction site NPDES permit by the Illinois EPA, the Respondent shall submit all inspection reports submitted for the Site in accordance with the requirements of its NPDES permit;
- c. Within fourteen (14) days of any incident of noncompliance with its NPDES permit, and until such time as the Respondent's is granted termination of its coverage under its construction site NPDES permit by the Illinois EPA, the Respondent shall submit an Incident of Noncompliance Report regarding conditions at the Site to Charles Corley at the address listed in Section V.F.; and
- d. Prior to submitting any Notice of Termination under its construction site NPDES permit, the Respondent shall notify Charles Corley at the address listed in Section V.F of its intent in writing.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's Site which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. 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.

3. 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.

4: The Respondent shall cease and desist from future violations of the Act and Board regulations that were the subject matter of the Complaint. It is the current intention of the Respondent to continue to use the Site for agricultural purposes until such time as the Respondent deems further development of the Site to be appropriate.

E. Release from Liability

In consideration of the Respondent's payment of the Ten Thousand dollars (\$10,000.00) civil penalty and any specified costs and accrued interest, its commitment to cease and desist as contained in Section V.D.4 above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 24, 2010. 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 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.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant:

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

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

Charles Corley
Manager, Field Operations Section
Rockford Regional Office
Illinois Environmental Protection Agency
4302 North Main Street
Rockford, Illinois 61103

As to the Respondent:

Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105

Erik W. Lindberg
Associate Counsel
William Charles Real Estate Investment, LLC
1401 North Second Street
Rockford, Illinois 61107

G. Enforcement and Modification of Stipulation

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. The Parties to the 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 V.F. 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 the Parties to the Stipulation.

H. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation 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. This Stipulation may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

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

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

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

By: [Signature]
JOHN J. KIM
Chief Legal Counsel

Date: 6/9/11

Date: 6/2/11

FOR THE RESPONDENT:

WILLIAM CHARLES REAL ESTATE
INVESTMENT, LLC

By: Charles F. Thompson
PRESIDENT WILLIAM CHARLES INVESTMENTS, INC.
MANAGER OF WILLIAM CHARLES REAL ESTATE INVESTMENT, LLC

Date: 05/31/2011

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Respondent.)	

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement, and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on June 15, 2011.

BY:


NANCY J. TIKALSKY