





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).

\* \* \*

3. No hearing is now scheduled in this matter.
4. Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2014).

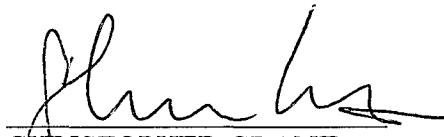
Respectfully submitted,

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

ELIZABETH WALLACE, Chief  
Environmental Bureau

BY:

  
CHRISTOPHER GRANT  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, Illinois 60602  
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS	)	
by LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	PCB No. 15-80
	)	(Enforcement – Water)
v.	)	
	)	
SSW DEVELOPMENT, L.L.C., a dissolved	)	
Illinois limited liability corporation, and	)	
JOHN KAUP, an individual,	)	
	)	
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”), SSW DEVELOPMENT, L.L.C., a dissolved Illinois limited liability corporation, and JOHN KAUP, an individual (“Respondents”), (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.* (2014), 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 October 24, 2014, 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 (2014), 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 (2014).

3. Respondent SSW Development, L.L.C. ("SSW Development") is a dissolved Illinois limited liability corporation that was duly authorized to transact business in Illinois from on or before March 23, 2004 through August 9, 2013.

4. At all times relevant to the Complaint, Respondent John Kaup was an Illinois resident and was the manager of SSW Development.

5. At all times relevant to the Complaint, SSW Development was the developer and permit holder for the Taylor Glen Subdivision, a residential subdivision located at Delaney Road, one quarter mile West of Cedar Road, New Lenox, Will County, Illinois ("Site").

**B. Allegations of Non-Compliance**

Complainant contends that the Respondents have violated the following provisions of the Act and Board Regulations:

Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

Count II: Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12 (d) (2014).

Count III: Failure to Comply with National Pollutant Discharge Elimination System ("NPDES") Storm Water Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their 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 Respondents 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 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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. Complainant asserts that the environment was threatened due to the Respondents' failure to properly manage storm water runoff at the Site. Complainant further asserts that the Illinois EPA's information gathering responsibilities were hindered by the Respondents' violations due to the Respondents' failure to maintain and make available proper documentation as required by the NPDES storm water permit for the Site.
2. There is social and economic benefit to the Site as the Respondents' activities resulted in the construction of new homes in a residential area.
3. Construction of the homes in the development was, and is, suitable for the residential area in which it is located.
4. Implementing measures at the Site to prevent threats to water pollution and compliance with the terms of the Respondents' NPDES storm water permit are each technically practicable and economically reasonable.
5. The Respondents have ceased construction activities at the Site and final stabilization of the Site has been completed. Illinois EPA terminated the Respondents' NPDES Storm Water Permit on December 12, 2013.

**IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), 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;
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; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Complainant alleges that the Respondents failed to develop a complete and accurate Storm Water Pollution Prevention Plan ("SWPPP") for the Site, failed to conduct required inspections of the Site and make records of those inspections available at the Site, and



failed to initiate stabilization measures as soon as practicable or within seven (7) days where construction activities at the Site had ceased. Such failures violated the terms of its NPDES storm water permit. Complainant alleges that the violations began on or before June 8, 2012, and individually ceased in or around Summer 2013 when construction of the residential development was completed.

2. Complainant alleges that the Respondents were not diligent in attempting to comply with the Act, Board regulations and applicable federal regulations once notified by Illinois EPA of their noncompliance, and that the Respondents were notified by Illinois EPA of the alleged violations on several occasions prior to commencement of an enforcement action.

3. The civil penalty is sufficient to recover any economic benefit realized by the Respondents as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eleven Thousand Dollars (\$11,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. The Respondents have 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.

8. The Respondents did not complete an approved Compliance Commitment Agreement.

## V. TERMS OF SETTLEMENT

### A. **Penalty Payment**

The Respondents shall pay a civil penalty in the sum of Eleven Thousand Dollars

(\$11,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Interest and Default**

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents 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**

1. 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 ("EPTF"). 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, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

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

Christopher Grant  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. At all times in the future, the Respondents shall comply with the terms and conditions of any NPDES permit they obtain from Illinois EPA.

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 Respondents' 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 Respondents 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 Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$11,000.00 civil penalty, their commitment to cease and desist as contained in Section V.D.4 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 October 24, 2014. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), or entity other than the Respondents.

**F. Enforcement of Stipulation**

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.

**G. 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.

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


PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

LISA BONNETT, Director  
Illinois Environmental Protection Agency

BY:   
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY:   
JOHN J. KIM  
Chief Legal Counsel

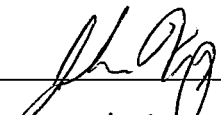
DATE: 4/14/15

DATE: 4/9/15

RESPONDENTS

SSW DEVELOPMENT, LLC

JOHN KAUP

BY:   
Its: MANAGER MEMBER

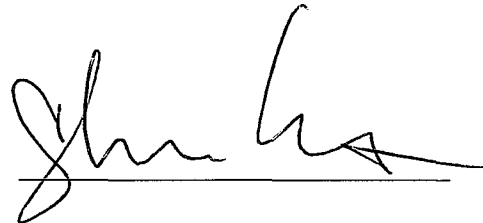


DATE: MAY 11<sup>TH</sup>, 2015

DATE: MAY 11<sup>TH</sup>, 2015

**CERTIFICATE OF SERVICE**

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 18<sup>th</sup> day of May, 2015, the Stipulation and Proposal for Settlement, Motion to Request Relief from the Hearing Requirement, and Notice of Electronic Filing, upon the person listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.

A handwritten signature in black ink, appearing to read 'Christopher Grant', written over a horizontal line.

CHRISTOPHER GRANT

**SERVICE LIST:**

SSW Development LLC, and John Kaup

Ms. Meghan E. Preston  
Rathbun, Cservenyak & Kozol, LLC  
9450 Enterprise Drive  
Mokena, IL 60448

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
(By electronic mail)