

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|---|---|------------|
| PEOPLE OF THE STATE OF |) | |
| ILLINOIS, ex rel. LISA MADIGAN, |) | |
| Attorney General of the State of Illinois, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | No. |
| |) | |
| VILLAGE OF PERCY, |) | |
| an Illinois municipal corporation, |) | |
| |) | |
| Respondent. |) | |

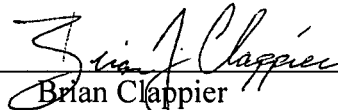
NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2015, via First Class Mail, with postage thereon fully prepaid and by depositing in a United States Post Office Box, I mailed a true and correct copy of Notice of Filing, Complaint and Stipulation and Proposal for Settlement to:

Village of Percy
c/o Mark Prange, Village President
201 East Pine, P.O. Box 99
Percy, IL 62277

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN, Attorney General of the
State of Illinois,

BY: 
Brian Clappier
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

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| Respondent. |) | |

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY complains of the Respondent, VILLAGE OF PERCY, as follows:

COUNT I
FAILURE TO PROVIDE SAFE SOURCE OF RAW WATER

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2014).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4(2014), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. The Respondent, VILLAGE OF PERCY ("PERCY"), is an Illinois municipal corporation, duly organized under the laws of the State of Illinois and has a population of approximately 914 residents.

4. The Respondent is a person as that term is defined under Section 3.26 of the Act, 415 ILCS 5/3.26 (2014), as follows:

“PERSON” is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

5. The Respondent operates a public water supply which serves its population through approximately 483 service connections.

6. The Respondent’s public water supply is obtained from two community water supply wells, referred to as Well #3 (WL00281) and Well #4 (WL00745). The water is softened, chlorinated, and fluoridated at the treatment plant, and is then discharged to the distribution system.

7. Well #3 and Well #4 and the service connections are a “public water supply” as that term is defined under Section 3.28 of the Act, 415 ILCS 5/3.28 (2014), as follows:

“PUBLIC WATER SUPPLY” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year.

8. The Respondent’s public water supply is a “community water system” (“CWS”), a “groundwater system” (“GWS”), and a “public water system” (“PWS”), as those terms are defined under the Pollution Control Board’s (“Board”) Public Water Supplies Regulations, 35 Ill. Adm. Code 611.1.01 (2010) as follows:

“COMMUNITY WATER SYSTEM” or “CWS” means a public water system (PWS) that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

* * *

“GWS” means “groundwater system”, a public water supply (PWS) that uses only groundwater sources.

* * *

“PUBLIC WATER SYSTEM” or “PWS” means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A PWS is either a community water system (CWS) or a non-community water system (non-CWS). Such term includes:

Any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

Any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.

* * *

9. The Respondent is a “supplier” as that term is defined under Section 611.101 of the Board’s Public Water Supplies Regulations, 35 Ill. Adm. Code 611.101, as follows:

“SUPPLIER OF WATER” OR “SUPPLIER” means any person who owns or operates a public water system (PWS).

10. Section 18(a) of the Act, 415 ILCS 5/18 (2014), provides the following prohibition:

(a) No person shall:

- (1) Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health; or
- (2) Violate regulations or standards adopted by the Board under this Act.

11. The Illinois Pollution Control Board’s Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101, provides as follows:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection Act [415 ILCS 5] (Act), the Pollution Control Board (Board) Rules, and the Safe Drinking Water Act (42 U.S.C. 300f et seq.) continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality, clean, adequate in

quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

12. Starting in January 2012 and reoccurring in April 2012 and May 2012 routine sampling of the Respondent's raw water from Well 3 tested positive for total coliform.

13. A positive test for total coliform bacteria indicates that Well 3 is contaminated and unsafe for ordinary domestic consumption.

14. Raw water was distributed from Well 3 without adequate treatment. The repeatedly positive total coliform raw water sampling results demonstrated that there is an ongoing bacteriological problem with the Respondent's water supply.

15. On July 10, 2012, the Illinois EPA issued the Respondent a Violation Notice, citing a failure to provide a safe source of raw water and including several recommendations on how the Respondent can achieve compliance.

16. By knowingly distributing water from a public water supply that tested positive for total coliform that was not adequately treated and is injurious to human health, the Respondent has violated Section 18(a)(1) of the Act, 415 ILCS 5/18(a)(1).

17. By delivering water that was not assuredly safe in quality and clean for ordinary domestic consumption, the Respondent violated Section 18(a)(1) of the Act, 415 ILCS 5/18(a)(1) (2014) and 35 Ill. Adm. Code 601.101.

18. By delivering water that was not assuredly safe in quality and clean for ordinary domestic consumption, as required under Section 601.101 of the Board's Public Water Supply Regulations, the Respondent violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2)(2014) and 35 Ill. Adm. Code 601.101.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PERCY:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- D. Assessing against the Respondent a civil penalty of (\$50,000) for each violation of the Act with an additional penalty of Ten Thousand Dollars (\$10,000) for each day of violation; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II
FAILURE TO ADEQUATELY TREAT A PUBLIC WATER SUPPLY

1-15. Complainant realleges and incorporates herein by reference paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count II.

16. The Board's Public Water Supply Regulations, 35 Ill. Adm. Code 654.102(a), provide, in pertinent part:

- a) Treatment equivalent to that described in Section 654.101 shall be provided for ground water sources subject to bacteriological contamination.

17. The Board's Public Water Supply Regulations, 35 Ill. Adm. Code 654.101, provide, in pertinent part:

Surface water shall be approved as a community water supply source only if treatment to produce a finished water which meets the standards of 35 Ill. Adm. Code 604 is provided.

- (a) Sampling shall be performed to determine treatment requirements. Representative samples shall be collected at least once a month over 12 consecutive periods to determine raw water quality.
- (b) More frequent sampling shall be required to obtain a true representation of raw surface water quality. Raw water characteristics shall be determined after heavy rainfall and runoff, low stream flow and at other times when unusual factors pertaining to physical and chemical quality, treatability, tastes, and odors exist.
- (c) A 12 month running geometric mean shall be used to calculate raw water bacteriological quality.
- (d) Complete treatment including coagulation, clarification, rapid sand filtration or its equivalent, and continuous post-chlorination shall be provided for all surface waters.
- (e) Auxiliary treatment shall be provided for waters containing coliform bacteria exceeding 5,000 per 100 milliliters in more than 20% of the samples examined during any one month. Examples of auxiliary treatment are presedimentation, prechlorination and storage of raw water for 30 days or more.

18. The Respondent failed to provide treatment equivalent to that described in Section 654.101 of the Board's Public Water Supply Regulations.

19. By failing to provide the required treatment for groundwater sources subject to bacteriological contamination as found in the Board's Public Water Supply Regulations, the Respondent violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2)(2014), and 35 Ill. Adm. Code 654.102(a).

PRAYER FOR RELIEF

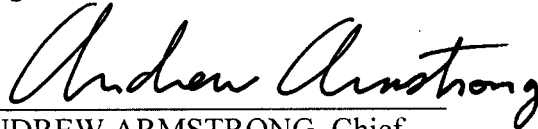
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- E. Granting such other relief as the Board may deem appropriate.

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

By: 
ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield
Assistant Attorney General

Of Counsel:

Brian J. Clappier
ARDC #6307721
500 South Second Street
Springfield, Illinois 62706

Dated: 8/17/15

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**PEOPLE OF THE STATE OF
ILLINOIS,**

Complainant,

V.

VILLAGE OF PERCY,
an Illinois municipal corporation,

Respondent.

No.

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 VILLAGE OF PERCY, (“Respondent”) (“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.* (2012), 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. Simultaneously with the filing of this Stipulation and Proposal for Settlement, 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 (2012), against 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 (2012).

3. At all times relevant to the Complaint, Respondent was and is an Illinois municipal corporation and has a population of approximately 914 residents. At all times relevant to the Complaint, Respondent owned and operated a public water supply which serves its population through approximately 483 service connections (the "Site").

B. Allegations of Non-Compliance

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

Count I: Failure to Provide a Safe Source of Raw Water
415 ILCS 5/18(a)(1)-(2)(2014) and 35 Ill. Adm. Code 602.101.

Count II: Failure to Adequately Treat a Public Water Supply
415 ILCS 5/18(a)(2)(2014) and 35 Ill. Adm. Code 654.102(a).

C. Admission of Violations

Respondent admits to the violation(s) alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

Respondent has undertaken the following compliance activities in order to resolve the violations alleged in the Complaint:

(1) Respondent has relocated a dog pen and a group of animals that was previously

located on the neighboring property, which was in close proximity to the Site and was thought to contribute to contamination problems to the public water supply.

- (2) Respondent completed arrangements to change the air venting on the well casing at the Site, such that the air intake is indoors, rather than outdoors, and is less prone to airborne contamination that may enter the well.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation.

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 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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2012), 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. Human health was threatened when Respondent failed to provide a safe source of raw water and failed to adequately treat a public water supply.
2. There is social and economic value in the existence and operation of municipal public water supply facilities.
3. Respondent's public water supply is suitable to its location, as long as Respondent complies with the Act and operation of the facility is suitable for the area in which it occurs.
4. Providing a safe source of raw water and adequately treating the public water supply was both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2012), 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. Respondent failed to provide a safe source of raw water and failed to adequately treat a public water supply. Samples taken from the Site tested positive for coliform bacteria on January 3, 2012, April 3, 2012, April 16, 2012 and May 8, 2012.
2. Respondent showed diligence in returning to compliance with the Act, Board regulations and applicable federal regulations after the Illinois EPA notified it of its noncompliance.
3. Any economic benefit attributable to the noncompliance would be minimal.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Two Thousand Three Hundred Eighty Dollars (\$2,380.00) 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. Self-disclosure is not at issue in this matter.

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

8. On July 8, 2012, pursuant to Section 31(a) of the Act, Complainant sent Violation Notice A-2012-00060 to Respondent. The Illinois EPA did not issue a Compliance Commitment Agreement ("CCA").

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent shall pay a civil penalty in the sum of Two Thousand Three Hundred Eighty Dollars (\$2,380.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, 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, 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 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 ("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, IL 62794-9276

The name, case number and 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:

Brian Clappier
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.
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 Respondent's facility 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 Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

E. Release from Liability

In consideration of Respondent's payment of the \$2,380.00 penalty and any specified costs and accrued interest, its commitment to cease and desist as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges 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 simultaneously with this Stipulation and Proposal for Settlement. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against 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 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 Respondent.

F. Enforcement and Modification 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

LISA BONNETT, Director
Illinois Environmental Protection Agency

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

BY:



ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield
Assistant Attorney General

DATE:

8/17/2015

BY:



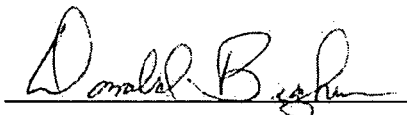
JOHN J. KIM
Chief Legal Counsel

DATE:

8/6/15

VILLAGE OF PERCY

BY:



Name: Donald Biggem

Title: Village Attorney

DATE:

7-28-15