

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)

v.

FIRST ROCKFORD GROUP, INC., an Illinois)
 corporation, VILLAGE OF CHERRY VALLEY,)
 an Illinois municipal corporation, HERITAGE)
 ENGINEERING, LTD., an Illinois corporation,)
 and SCHLICHTING & SONS EXCAVATING,)
 INC., an Illinois corporation,)
 Respondents.)

PCB 05-215
(Enforcement - Land)

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)

v.

FIRST ROCKFORD GROUP, INC., an)
 Illinois corporation,)
 Respondent.)

PCB 06-103
(Enforcement - Land)
(Consolidated).

NOTICE OF FILING

TO: Jack D. Ward
Reno & Zahm LLP
2902 McFarland Road, Suite 400
Rockford, IL 61107

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

(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that on the 19th day of June, 2006, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement, and Motion to

Request Relief From Hearing Requirement, copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN

Attorney General of the State of Illinois

By: 

REBECCA A. BURLINGHAM

Supervising Attorney

Environmental Bureau

188 W. Randolph St., 20th Fl.

(312) 814-3776

Chicago, Illinois 60601

Date: June 19, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	
FIRST ROCKFORD GROUP, INC., an Illinois)	PCB 05-215
corporation, VILLAGE OF CHERRY VALLEY,)	
an Illinois municipal corporation, HERITAGE)	(Enforcement - Land)
ENGINEERING, LTD., an Illinois corporation,)	
and SCHLICHTING & SONS EXCAVATING,)	
INC., an Illinois corporation,)	
)	
Respondents.)	
)	

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-103
)	
)	(Enforcement - Land)
FIRST ROCKFORD GROUP, INC., an)	(Consolidated)
Illinois corporation,)	
)	
Respondent.)	

**MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On June 15,2005, a Complaint was filed with the Pollution Control Board

("Board") in case number PCB 05-215. By order dated February 2, 2006, the Board consolidated PCB 05-215 with PCB 06-103. On June 19, 2006, a Stipulation and Proposal for Settlement with Respondent Schlichting & Sons Excavating, Inc. was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), 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. Section 31(c)(2) provides:

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).

3.. No hearing is currently scheduled in the instant case.

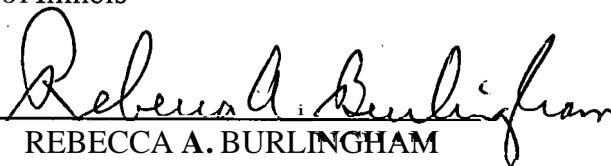
4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

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), effective August 1, 1996.

Respectfully submitted,

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

By: 
REBECCA A. BURLINGHAM
Supervising Attorney

Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
(312) 814-3776

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 FIRST ROCKFORD GROUP, INC.,)
 an Illinois corporation, VILLAGE OF)
 CHERRY VALLEY, an Illinois municipal)
 corporation, HERITAGE ENGINEERING,)
 LTD., an Illinois corporation, and)
 SCHLICHTING & SONS EXCAVATING,)
 INC., an Illinois corporation,)
)
 Respondents.)

PCB 05-215

STIPULATION AND PROPOSAL FOR SETTLEMENT WITH SCHLICHTING & SONS EXCAVATING, INC.

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 Schlichting and Sons Excavating, Inc. ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be

bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On June 15, 2005, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2004), against 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 (2004).

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

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a excavating contracting company. The principal place of business for Schlichting & Sons Excavating is at 8966 East State Street, Rockford, Illinois, 61108.

2. Schlichting and Sons Excavating installed potable water lines at the Golf Hill subdivision, a 78 home development located in Cherry Valley, Winnebago County, Illinois ("Site").

3. The development project at the Site included the creation of grading plans, potable water and sewer installation plans, and the completion of necessary permit application forms for development work at the Site.

4. Respondent Heritage Engineering prepared a construction permit application for potable water lines at the Site on behalf of Respondent First Rockford. On September 24, 2003, Respondents First Rockford Group and Heritage Engineering signed the permit application. On October 7, 2003, Respondent Cherry Valley signed the permit application. Shortly thereafter, the permit application was submitted to the Illinois EPA.

5. On October 28, 2003, prior to the issuance of a construction permit for the project by the Illinois EPA, Respondents Cherry Valley, First Rockford, Heritage Engineering and Schlichting and Sons Excavating directed, commenced **and/or** allowed the construction of the potable water line at the development Site.

6. On October 29, 30, 31, November 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 17, 2003, Respondent Schlichting and Sons Excavating conducted construction of the potable water line.

7. Construction of the potable water supply line had occurred prior to the issuance of a construction permit for the project by the Illinois EPA.

8. On November 18, 2003, a potable water line construction permit was issued for the Site by the Illinois EPA.

C. Allegations of Non-Compliance

Complainant contends that Respondent Schlichting and Sons Excavating violated the following provisions of the Act and Board regulations:

Count I: Respondent constructed a potable water line without a permit in violation of Section 15 of the Act, 415 ILCS 5/15 (2004) and 35 Ill. Adm. Code 602.101(a);

D. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

On November 18, 2003, a potable water line construction permit was issued for the Site by the Illinois EPA.

F. Value of Settlement and Resulting Benefits

Reviewing a public water supply permit application prior to the construction of a potable water supply, and the issuance of construction permits is a primary and effective means by which

the Illinois EPA can ensure the protection of Illinois residents public health. While the proper Illinois EPA permits are now in place, the Respondent, Schlichting and Sons Excavating's payment of a civil penalty will reinforce the importance of this permit process and encourage future compliance with the Act, as well as the Board's Water Pollution Regulations.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, 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, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under 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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state the following:

1. Human health and the environment were minimally threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent Schlichting and Sons Excavating's failure to ensure that the proper construction permits were obtained from the Illinois EPA prior to the construction of the Site's potable water lines.

2. The Site provides a social and economic benefit to the surrounding community. The Site consists of a 78 home development located in Cherry Valley and it will increase the local tax base and provide additional income to area business and services.

3. The Site was a development project at the Golf Hill subdivision, and was suitable

for residential development.

4. Obtaining a permit prior to construction at the Site and compliance with its terms are both technically practicable and economically reasonable. The permit application was submitted to the Illinois EPA, but Respondent directed, commenced and/or allowed construction to begin at the Site prior to the issuance of a permit.

5. Respondent Schlichting and Sons Excavating has subsequently complied with the Act and the Board Regulations. However, the acquisition of an Illinois EPA construction permit does not remedy the time period during which construction took place at the site without a permit and in violation of the Act and Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief **therefrom** as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter **further** violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by **the** respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated

violations of this Act by the respondent;

6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The Respondent failed to obtain a construction permit for site activities prior to beginning potable water supply construction activities at the site. The violations began on or around October 28, 2003, or a date better known to the Respondent Schlichting and Sons Excavating, and were resolved on November 18, 2003.

2. Respondent Schlichting and Sons Excavating was diligent in attempting to come back into compliance with the Act, Board regulations.

3. The civil penalty obtained herein compensates for any economic benefit that Respondent may have accrued as a result of its non-compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$ 10,000) 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 one previously adjudicated violation of the Act as evidenced by Boone County Circuit Court Case Number 03 CH 137. Case Number 03 CH 137 alleged that Respondent violated water pollution regulations and created a water pollution hazard.

6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000) 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 the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check or money order payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

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

The name and number of the case and Respondent's Federal Employer Identification Number ("FEIN") shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Rebecca A. Burlingharn
Supervising Attorney
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

Mr. Bruce Schlichting
Schlichting & Sons
8966 East State Street,
Rockford, Illinois **61108**

Mr. Jack Ward
Reno, Zahn, Folgate, Lindberg & Powell
2902 McFarland Road
Suite **400**
Rockford, Illinois **61108**

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable

attorney's fees.

B. 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.D, 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)(2004). 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.

C. Cease and Desist

The Respondent shall cease and desist from future violations of the 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.

D. Release from Liability

In consideration of the Respondent's payment of the Ten Thousand Dollar

(\$10,000) penalty and any specified costs and accrued interest, to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges 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 specified in Complainant's Complaint filed on June 15, 2005. 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 513.315, or entity other than the Respondent.

E. Correspondence, Reports and Other Documents

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

As to the Complainant

Rebecca A. Burlingham
Supervising Attorney
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Mr. 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

Mr. Bruce Schlichting
Schlichting & Sons
8966 East State Street,
Rockford, Illinois 61108

Mr. Jack Ward
Reno, Zahm, Folgate, Lindberg & Powell
2902 McFarland Road
Suite 400
Rockford, Illinois 61108.

F. Modification of Stipulation

The parties 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.E. 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, 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.

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

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of **competent** jurisdiction to be inconsistent with state or federal law, and therefore **unenforceable**, the remaining clauses shall remain in full force and effect.

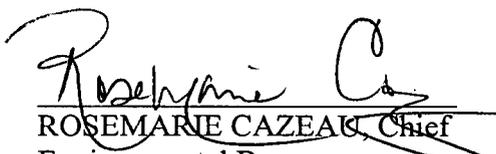
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the

foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General, State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 6/14/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 6/2/06

SCHLICHTING & SONS EXCAVATING, INC.

BY: _____
BRUCE SCHLICHTING
President, Schlichting and Sons Excavating

DATE: _____

foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General, State of Illinois

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

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

DATE: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

SCHLICHTING & SONS EXCAVATING, INC.

BY: 
BRUCE SCHLICHTING
President, Schlichting and Sons Excavating

DATE: 6/1/06

CERTIFICATE OF SERVICE

I, REBECCA A. BURLINGHAM, an Assistant Attorney General in this case, do certify that I caused to be served this 19th day of June, 2006, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the person listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


REBECCA A. BURLINGHAM