

SERVICE LIST

Dennis Walsh
Klein, Thorpe & Jenkins
15010 S. Ravinia Avenue, Suite 17
Orland Park, Illinois 60477

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 07-
) (Enforcement - Water)
VILLAGE OF TINLEY PARK, a)
municipal corporation,)
)
 Respondent.)

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, VILLAGE OF TINLEY PARK, a municipal corporation, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought 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 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 (2004), and is an action for civil penalties.

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2004), and is charged, inter

alia, with the duty of enforcing the Act. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004).

3. At all times relevant to this Complaint, the Village of Tinley Park ("Tinley Park") was and is a municipal corporation duly organized and existing under the laws of the State of Illinois. Tinley Park is a village with a population of 48,401 individuals.

4. On August 11, 2004 at approximately 10:00 a.m., Tinley Park notified the Illinois EPA that a 20-inch sewer force main had developed a crack and raw sewage had been released to a drainage ditch.

5. An investigation by the Illinois EPA following the notification revealed that on August 10, 2004 at approximately 4:00 p.m., a two-inch split had occurred in the force main located at 171st Street and 80th Avenue, Tinley Park, Cook County, Illinois ("Site") causing a leak.

6. Tinley Park personnel pumped approximately 5,000 gallons of untreated sewage from the main to the Midlothian Drainage Ditch to allow the needed repairs of the main. The Midlothian Drainage Ditch is a channelized section of Midlothian Creek. Hay bales were used to minimize the amount of solids reaching the creek.

7. During an August 11, 2004 inspection, the Illinois EPA

inspector observed gray matter in the bed of the Midlothian Drainage Ditch channel where the pumping had taken place. Tinley Park advised the inspector that the bed of the channel would be cleaned up after the necessary repairs to the force main were completed.

8. On August 11, 2004, excavation of the sanitary sewer main was conducted and a small crack of approximately three inches long was repaired using a 20 inch by 24 inch stainless steel repair clamp. The excavation was then backfilled.

9. The Midlothian Drainage Ditch and surrounding bank were cleaned by removing the contaminated soils, replacing the soil along the bank, and flushing approximately 50,000 gallons of clean water to dilute the ditch water and reduce the odor.

10. Subsequent to the release that occurred on August 10, 2005, the Respondent developed a standard operating procedure ("SOP") to address broken sewer force mains in the future.

11. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the following definition:

WATER POLLUTION: is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals,

birds, fish, or other aquatic life.

12. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

13. Respondent Tinley Park is a "person" as that term is defined in 415 ILCS 5/3.315 (2004).

14. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

15. Untreated sewage is a "contaminant" as that term is defined in 415 ILCS 5/3.165 (2004).

16. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), provides the following definition:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

17. The Midlothian Drainage Ditch is "waters" as that term is defined in 415 ILCS 5/3.550 (2004).

18. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

19. Respondent Tinley Park, by placing untreated sewage in the Midlothian Drainage Ditch, a channelized section of Midlothian Creek, thereby causing, threatening and allowing gray sediment to accumulate in the drainage ditch, caused, threatened or allowed water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF TINLEY PARK, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004);
3. Order Respondent to cease and desist from any further violations of Section,12(a) of the Act;
4. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten

Thousand Dollars (\$10,000.00) for each day of violation;

5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Grant such other relief as, the Board deems appropriate and just.

COUNT II
WATER POLLUTION HAZARD

1-17. Complainant realleges and incorporates by reference herein Paragraphs 1 through 17 of Count I as Paragraphs 1 through 17 of this Count II.

18. Section 12(d) of the Act, 415 ILCS 5/12(d)(2004), provides as follows:

No person shall:

*

*

*

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

19. By depositing raw sewage on the land in such place and manner as to create a water pollution hazard to waters of the State, Tinley Park violated Section 12(d) of the Act, 415 ILCS 5/12(d)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,

respectfully requests that the Board enter an order against Respondent, VILLAGE OF TINLEY PARK, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d)(2004);
3. Order Respondent to cease and desist from any further violations of Section 12(d) of the Act;
4. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Grant such other relief as the Board deems appropriate and just.

COUNT III
VIOLATIONS OF NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT

1-17. Complainant realleges and incorporates by reference herein Paragraphs 1 through 17 of Count I as Paragraphs 1 through 17 of this Count III.

18. Section 12(f) of the Act, 415 ILCS 5/12(f)(2004), provides as follows:

No person shall:

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

19. Section 309.102(a) of the Illinois Pollution Control Board ("Board") Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

- a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

20. Section 720.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 720.110, provides the following definition:

"POINT SOURCE" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well,

discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

21. The sanitary sewer main was a "point source" as that term is defined in 35 Ill. Adm. Code 720.110.

22. Pursuant to Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), Respondent was required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of raw sewage to waters of the State.

23. Tinley Park did not have a NPDES permit for the discharge described in this Complaint.

24. By failing to obtain an NPDES permit, and causing, threatening or allowing the deposit of contaminants into waters of the State, Tinley Park violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board Water Pollution regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order, against Respondent, VILLAGE OF TINLEY PARK, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Find that Respondent has violated section 12(f) of the Act, 415 ILCS 5/12(f)(2004), and Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a);

3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act and Section 309.102(a) of the Board Water Pollution regulations;

4. Assess against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each violation pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1)(2004);

5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Grant such other relief as the Board deems appropriate and just.

COUNT IV
OFFENSIVE CONDITIONS

1-18. Complainant realleges and incorporates by reference herein Paragraphs 1 through 18 of Count I as Paragraphs 1 through 18 of this Count IV.

19. Section 302.203 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203, provides 'as follows:

Waters of the State shall be free from sludge or bottom deposits., floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin...

20. Section 304.105 of the Board Water Pollution regulations, 35 Ill. Adm. Code 304.105, provides as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation'of any applicable water quality standard...

21. On August 10, 2004, Tinley Park caused or allowed approximately 5,000 gallons of untreated sewage to be discharged into waters of the State. This discharge caused deposits of gray sediment and odors in waters of the State.

22. By causing or allowing the discharge of untreated sewage that resulted in a violation of the water quality standard found in Section 302.203, 35 Ill. Adm. Code 302.203, the Respondent violated Section 304.105, 35 Ill. Adm. Code 304.105.

23. By violating Sections 302.203 and 304.105 of the Board Water Pollution regulations, Respondent, thereby, also violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF TINLEY PARK, for the following relief:

1. Authorize a hearing in this matter at which time

Respondent will be required to answer the allegations herein;

2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and Sections 302.203 and 304.105 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203 and 304.105;

3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act and Sections 302.203 and 304.105 of the Board Water Pollution regulations;

4. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violations occurred;

5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Grant such other relief as the Board deems appropriate and just.

COUNT V
OFFENSIVE DISCHARGES

1-18. Complainant realleges and incorporates by reference herein Paragraphs 1 through 18 of Count I as

Paragraphs 1 through 18 of this Count V.

19. Section 304.106 of the Board Water Pollution regulations, 35 Ill. Adm. Code 304.106, provides as follows:

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

20. On August 10, 2004, Tinley Park caused or allowed approximately 5,000 gallons of untreated sewage to be discharged into the Midlothian Drainage Ditch, a water of the State. This discharge contained settleable solids and noticeable odor in violation of Section 304.106 of the Board Water Pollution regulations, 35 Ill. Adm. Code 304.106.

21. By violating Section 304.106 of the Board Water Pollution regulations, Respondent, thereby, also violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF TINLEY PARK, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and Section 304.106 of the Board

Water Pollution regulations, 35 Ill. Adm. Code 304.106;

3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act and Section 304.106 of the Board Water Pollution regulations;

4. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violations occurred;

5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Grant such other relief as the Board deems appropriate and just.

COUNT VI

FAILURE TO MAINTAIN RELIABLE POLLUTION CONTROL SYSTEMS

1-18. Complainant realleges and incorporates by reference herein Paragraphs 1 through '18 of Count I as Paragraphs 1 through 18 of this Count VI.

19. Section 306.102 of the Board Water Pollution regulations, 35 Ill. Adm. Code 306.102, provides as follows:

Systems Reliability

- a) Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.
- b) Spills: All reasonable measures, including where appropriate the provision of catchment areas, relief vessels, or entrapment dikes, shall be taken to prevent any spillage of contaminants from causing water pollution.

20. Section 306.304 of the Board Water Pollution regulations, 35 Ill. Adm. Code 306.304, provides as follows:

Overflows

Overflows from sanitary sewers are expressly prohibited.

21. Tinley Park failed to employ the appropriate procedures to prevent the spillage of contaminants during sewer main breaks from causing water pollution in violation of Section 306.102 of the Board Water Pollution regulations.

22. Tinley Park's failure to employ appropriate preventative procedures caused the discharge of untreated sewage into the Midlothian Drainage Ditch, thereby violating Section 306.304 of the Board Water Pollution regulations.

23. By violating Sections 306.102 and 306.304 of the Board

Water Pollution regulations, Respondent, thereby, also violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF TINLEY PARK, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and Sections 306.102 and 306.304 of the Board Water Pollution regulations, 35 Ill. Adm. Code 306.102 and 306.304;

3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act and Sections 306.102 and 306.304 of the Board Water Pollution regulations;

4. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violations occurred;

5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including attorney, expert witness and consultant fees expended by the State in its

pursuit of this action; and

6. Grant such other relief as the Board deems appropriate and just.

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:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

JENNIFER A. TOMAS
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-0609

approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties 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 July 19, 2006, 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 a municipal corporation duly organized and existing under the laws of the State of Illinois.

B. Site Description

1. On August 10, 2004 at approximately 4:00 p.m., a two inch split occurred in the force main located at 171st Street and 80th Avenue, Tinley Park, Cook County, Illinois ("Site") causing a leak.

2. Tinley Park personnel pumped approximately 5,000 gallons of untreated sewage from the main to the Midlothian Drainage Ditch to allow the needed repairs of the main. The Midlothian Drainage Ditch is a channelized section of Midlothian Creek. Hay bales were used to minimize the amount of solids reaching the creek.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has 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)(2004).

- Count II: Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d)(2004).
- Count III: Violations of National Pollutant Discharge Elimination System Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f)(2004), and Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a).
- Count IV: Offensive Conditions, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and Sections 302.203 and 304.105 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203 and 304.105.
- Count V: Offensive Discharges, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and Section 304.106 of the Board Water Pollution regulations, 35 Ill. Adm. Code 304.106.
- Count VI: Failure to Maintain Reliable Pollution Control Systems, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), and Sections 306.102 and 306.304 of the Board Water Pollution regulations, 35 Ill. Adm. Code 306.102 and 306.304.

D. Admission of Violations

The Respondent represents that it has 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 Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced

within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

E. Compliance Activities to Date

1. On August 11, 2004, excavation of the sanitary sewer main was conducted and a small crack of approximately three inches long was repaired using a 20 inch by 24 inch stainless steel repair clamp. The excavation was then backfilled.

2. The Midlothian Drainage Ditch and surrounding bank were cleaned by removing the contaminated soils, replacing the soil along the bank, and flushing approximately 50,000 gallons of clean water to dilute the ditch water and reduce the odor.

3. Respondent developed a standard operating procedure ("SOP") to address broken sewer force mains in the future.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, trustee, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, trustees, agents, employees or successors or assigns to take such action

as shall be required to comply with the provisions of this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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 threatened by the Respondent's violations. Respondent denies this statement.
2. The Site has social and economic benefit.
3. The Site is suitable for the area in which it is located.
4. It is both technically practicable and economically reasonable to have a standard operating procedure for force main breaks to prevent untreated sewage from discharging into the environment.
5. Respondent has subsequently complied with the Act and the Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (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 leak in the sewer force main was discovered on August 10, 2004, the Illinois EPA was notified on August 11, 2004, the bypass was conducting on August 11, 2004, and corrective measures were initiated on August 11, 2004. Complainant states, but Respondent denies, that the bypass amounted to the discharge of untreated sewage to a tributary of Midlothian Creek. While the discharge could have been prevented, Respondent's corrective measures appear to have been adequate to prevent significant damage to waters of the State.

2. Respondent was diligent in implementing remedial actions. A SOP was developed to prevent reoccurrences of the discharge.

3. Little if any economic benefit was gained by the Respondent through its noncompliance. The penalty obtained negates any economic benefit that may have accrued as a result of Respondent's noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fourteen Thousand Dollars (\$14,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

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

6. Respondent notified the Illinois EPA of the sewage discharge.

7. The settlement of this matter includes a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. a. Complainant initially determined that a civil penalty of Fourteen Thousand Dollars (\$14,000.00) for Respondent's violations of the Act and the Board regulations was appropriate based on the gravity of the alleged violations.

b. Respondent has agreed to implement, and Complainant has agreed to accept in partial settlement of this matter, the proposed terms of a Supplement Environmental Project ("SEP"), which has the value of approximately Thirty Thousand Dollars (\$30,000.00) and is described under Section VIII.C, below.

c. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, Complainant has agreed to mitigate the civil penalty to Five Thousand Dollars (\$5,000.00), based upon Respondent's commitment to implement the SEP.

d. 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.

Payment shall be made as follows:

e. Payment shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and shall be sent by first class mail and delivered to:

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

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

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

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

Dennis G. Walsh
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606

h. For purposes of payment and collection,

Respondent may be reached at the following address:

Scott Niehaus
Village of Tinley Park
16250 Oak Park Avenue
Tinley Park, Illinois 60477

i. Upon Respondent's failure to pay the civil penalty when due, the entire balance of the penalty remaining unpaid shall without notice be and become immediately due and payable.

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

k. In the event that Respondent fails to implement the SEP described in Section VIII.C, Respondent shall remit the amount of Nine Thousand Dollars (\$9,000.00) to the Illinois EPA within thirty (30) calendar days after the event(s) or circumstance(s) resulting in the nonperformance. Payment of the remittance shall be made according to Section VIII.1.e and VIII.1.f, above.

B. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g)(2004), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a)(2004).

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

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

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

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 West Randolph St., Suite 2001
Chicago, Illinois 60601

C. Supplemental Environmental Project

1. In connection with this Stipulation, Respondent shall perform a SEP consisting of streambank restoration and stabilization along Midlothian Creek. The goal of this project is to improve water quality in the stream located within the Little Calumet Watershed. Respondent plans to stabilize two areas of Midlothian Creek at Gentry Lane and Lakewood Drive in the Edgewater Walk subdivision. Currently the slopes are slumping due to erosion and scouring. After removing the litter and debris in these two areas, Respondent plans to regrade the banks, place riprap on the slopes, and place native wetland plants at the toe of the banks. At the Gentry Lane location, a storm sewer end section that has pulled away due to the erosion will also be repaired and riprap will be placed on the slope. When completed, a total of approximately 400 feet of stream bank will be stabilized and 2,000 feet of stream will have litter and debris removed.

2. This project will not only stabilize the banks, reduce erosion, and accommodate stormwater runoff, but will also help facilitate the restoration of the wildlife habitat because of the native wetland plantings. These native plants will also aid in the filtering of various lawn-care chemicals (fertilizers and herbicides) that turf grass does not fully absorb. .When these chemicals enter the streams, they greatly reduce water quality.

Native plantings on shorelines have been shown to provide a stable, long-lasting alternative to solely using riprap for soil stabilization. The litter and debris removal portion of this project will help reduce flooding caused by the accumulation of debris which inhibits the natural stream flow while improving the quality of the environment by reducing litter.

3. Respondent shall complete the SEP by July 31, 2006. Respondent shall submit all applicable documentation necessary to complete the SEP.

4. By signature on this Stipulation, Respondent certifies that, as of the date of entry of this Stipulation, it is not required to perform or develop the foregoing SEP by any federal, state or local law or regulation, nor is it required to perform or develop the SEP by agreement or injunctive relief in any other case.

5. In the event that the Respondent publicizes the SEP, or the results of the SEP performed hereunder, in connection with any advertisement of its business activities or any statement concerning the SEP in a news medium, Respondent shall include or reference the following statement: "This project was undertaken in connection with the settlement of an enforcement action taken by the State of Illinois for alleged violations of the State's environmental laws and the Illinois Pollution Control Board's regulations." The term "news media" as used

herein shall have the meaning given to that term in Section 8-902(b) of the Illinois Code of Civil Procedure, 735 ILCS 5/8-902(b)(2004).

6. Respondent shall certify completion of the above-referenced SEP by submitting a report to the Illinois EPA and the Attorney General within thirty (30) calendar days after completion.

D. Compliance Plan

The Respondent shall continue to comply with the Act and all applicable regulations with regard to force main breaks, and shall at all times implement its SOP in accordance with the terms contained therein.

E. 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.G, 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.

F. 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.

G. Release from Liability

In consideration of the Respondent's payment of the \$5,000.00 penalty and any specified costs and accrued interest, its commitment to Cease and Desist as contained in Section VIII.F 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 July 19, 2006. The

Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

H. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents 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 carrying out inspections. 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.

I. Correspondence, Reports and Other Documents

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

As to the Complainant

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

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

Scott Niehaus
Village of Tinley Park
16250 Oak Park Avenue
Tinley Park, Illinois 60477

Dennis G. Walsh
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606

J. 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.I. 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.

K. 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.

L. Execution of Document

This Stipulation shall become effective only when executed by all parties and the Board. 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, 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/
Asbestos Litigation Division

BY: Rose Marie Cazeau/rab
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 6/9/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: Robert A. Messina
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 6/1/06

VILLAGE OF TINLEY PARK

BY: Scott R. Niehaus
Name: SCOTT R. NIEHAUS
Title: VILLAGE MANAGER
DATE: 7/3/06

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 07-
) (Enforcement - Water)
VILLAGE OF TINLEY PARK, a)
municipal corporation,)
)
 Respondent.)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental protection Act ("Act"), 415 ILCS 5/31(c)(2)(2004), moves that the Illinois Pollution Control Board ("Board") grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1)(2004). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 12(a), (d) and (f) of the Act, 415 ILCS 5/12(a), (d) and (f)(2004), and Sections 309.102(a), 302.203, 304.105, 304.106, 306.102 and 306.304 of the Board Water Pollution Regulations.

2. Complainant is filing the Complaint with the Board simultaneous with this Motion and a Stipulation and Proposal for

Settlement.

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

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

5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1)(2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



JENNIFER A. TOMAS
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0609

DATE: July 19, 2006.

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 19th day of July 2006, I caused to be served by U.S. Certified Mail, Return Receipt Requested, the foregoing Complaint for Civil Penalties, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


JENNIFER A. TOMAS