

**RECEIVED**  
CLERK'S OFFICE

FEB 28 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
VILLAGE OF DORCHESTER, )  
an Illinois municipal corporation, )  
)  
Respondent. )

PCB No. 07-037  
(Enforcement)

**NOTICE OF FILING**

To: Mr. T. Parrish  
Strang & Parish, Ltd.  
Attorneys at Law  
108 N. LaFayette Street  
Jerseyville, IL 62062

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: 

J. L. HOMAN  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 27, 2007

## CERTIFICATE OF SERVICE

I hereby certify that I did on February 27, 2007, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

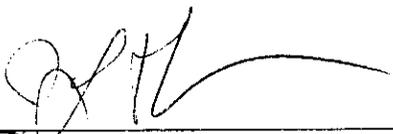
To: Mr. T. Parrish  
Strang & Parish, Ltd.  
Attorneys at Law  
108 N. LaFayette Street  
Jerseyville, IL 62062

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
\_\_\_\_\_  
J. L. HOMAN  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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VILLAGE OF DORCHESTER, )  
an Illinois municipal corporation, )  
)  
Respondent. )

PCB No. 07-037  
(Enforcement)

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 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:

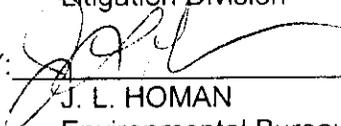
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not 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

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

BY: 

J. L. HOMAN  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 27, 2007

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEB 28 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
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Complainant, )  
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v. ) PCB 07-037  
) (Enforcement - \_\_\_\_\_)  
)  
)  
VILLAGE OF DORCHESTER, an )  
Illinois municipal corporation, )  
)  
Respondent.

**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 DORCHESTER, an Illinois municipal corporation ("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 November 16, 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 an Illinois municipal 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 public water supply which serves approximately one hundred fifty residents located in the area of Rock Road, a road which runs perpendicular to Spanish Needle Road, Macoupin County, Illinois ("site").

**C. Allegations of Non-Compliance**

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

Count I: **Permit Violations, in violation of Section 18(a) of the Act, 415 ILCS 5/18(a) (2004), and 35 Ill. Adm. Code 653.117(e).**

**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**

The Respondent has taken water samples as requested by the Agency and submitted the samples for analysis.

**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.

1. 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.

2. In the event that the Respondent proposes to sell or transfer any real property or operations subject to any Order accepting and adopting the terms of this Stipulation and Proposal for Settlement, the Respondent shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make the prospective purchaser or successor's compliance with any Order accepting and adopting the terms of this Stipulation a condition of any such

sale or transfer and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to any such successor in interest. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

3. The Respondent shall notify each contractor to be retained to perform work required by any Order accepting and adopting the terms of this Stipulation of each of the requirements of said Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to each contractor already retained no later than 30 days after the date of adoption of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by any Order accepting and adopting the terms 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 and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility is suitable for the area in which it occurred.
4. Obtaining a permit prior to construction at the site and compliance with its terms was both technically practicable and economically reasonable.
5. Respondent has committed to subsequently comply 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 Respondent failed to obtain a permit for construction site activities prior to beginning construction activities at the site, and violated provisions of its permit once such coverage was obtained. The violations began on or around May 7, 2004.

2. Once the Respondent was contacted by the Illinois Attorney General's Office, the Respondent was diligent in

attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.

3. There was economic benefit to the facility.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of three hundred dollars (\$300.00) 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 an 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 three hundred dollars (\$300.00) 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, money order or electronic funds transfer 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:

Peggy Poitevint  
Illinois Attorney General's Office  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

Joey Logan-Wilkey  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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. T. Parrish  
Strang & Parish, Ltd.  
Attorneys at Law  
108 N. LaFayette Street  
Jerseyville, IL 62062

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. Compliance Plan**

The Respondent will submit a completed application for partial operating permit and receipt showing the length of the water main installed to the Illinois Environmental Protection Agency, provided the outstanding monthly operating reports for the period March 2003 to June 2006, and provided water sample

test results for the samples taken on Monday, July 17, 2006, and Tuesday July 18, 2006, within thirty days (30) of the date of entry of this Order. These items will be submitted to:

Bureau of Water  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Joey Logan-Wilkey  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

The Respondent shall continue to timely submit monthly monitoring reports and water quality sample test results.

**C. Stipulated Penalties**

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in Section VIII.B ("Compliance Plan") of this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation. In addition, the Respondent shall pay to the Complainant, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of \$25.00 until such time that compliance is achieved.

2. Following the Complainant's determination that the

Respondent has failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Complainant may make a demand for stipulated penalties upon Respondent for its noncompliance with this Stipulation. Failure by the Respondent to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties.

3. All penalties owed the Complainant under this section of this Stipulation that have not been paid shall be payable within thirty (30) days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

4. a. All stipulated penalties shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA for deposit into the EPTF and shall be sent by first class mail, unless submitted by electronic funds transfer, and delivered to:

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

b. The name and number of the case and the Respondent's FEIN shall appear on the face of the check. A copy

of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Peggy Poitevint  
Illinois Attorney General's Office  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

5. The stipulated penalties shall be enforceable by the Respondent and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

**D. 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.F, 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.

**E. 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.

**F. Release from Liability**

In consideration of the Respondent's payment of the \$300.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.E 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 November 16, 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.

**G. 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 facility 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.

**H. 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") and C ("Stipulated Penalties") of this Stipulation shall be submitted as follows:

As to the Complainant

J. Homan  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

Joey Logan Wilkey  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Bureau of Water  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Respondent

Mr. T. Parrish  
Strang & Parish, Ltd.

Attorneys at Law  
108 N. LaFayette Street  
Jerseyville, IL 62062

**I. 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.H. 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.

**J. 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,

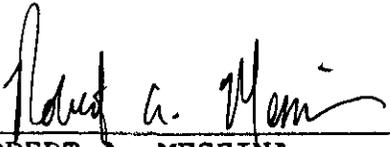
LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 2/16/07

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:   
\_\_\_\_\_  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 2/22/07

VILLAGE OF DORCHESTER

BY:   
\_\_\_\_\_  
Name: Charles R. Knoche  
Title: V of D President

DATE: 1/31/07