

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant, )

PCB 07-049

v. )

(Enforcement - Water)

CITY OF WOODSTOCK, an Illinois )  
municipal corporation, )

Respondent.

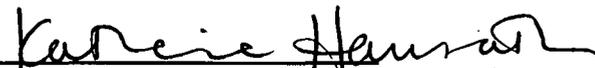
**NOTICE OF FILING**

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board a Motion to Request Relief from Hearing, and a Stipulation and Proposal for Settlement as to Respondent City of Woodstock, a copy of which is attached and hereby served upon you.

Respectfully submitted,

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

By: 

KATHERINE M. HAUSRATH  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington, 18<sup>th</sup> Floor  
Chicago, IL 60602  
(312) 814-0660

SERVICE LIST

Carlos S. Arévalo  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, Illinois 60014

Mr. Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601

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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 January 4, 2007, the Complaint was accepted for hearing by the Pollution Control Board ("Board") in this matter. On April 17, 2007, a Stipulation and Proposal for Settlement with Respondent City of Woodstock was filed with the Board. If accepted, the Stipulation and Proposal for Settlement will dispose of the case.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), 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. Both parties agree that a hearing on the Stipulation and Proposal for

Settlement is not necessary, and respectfully request relief from such hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully 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 of the State of Illinois

By: 

KATHERINE M. HAUSRATH

Assistant Attorney General

Environmental Bureau

69 W. Washington St., 18th Floor

Chicago, Illinois 60602  
(312) 814-0660

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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 CITY OF WOODSTOCK ("Respondent" or "Woodstock"), 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, Woodstock 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 December 21, 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 Woodstock.

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, Woodstock was and is an Illinois municipal corporation, duly organized and existing under the laws of the State of Illinois.

**B. Site Description**

1. At all times relevant to the Complaint, Respondent Woodstock owned and operated the Woodstock South Wastewater Treatment Plant ("Woodstock South WWTP"). The Woodstock South WWTP is located at 800 Dieckman Street in Woodstock, McHenry County, Illinois, and serves the south side of Woodstock.

2. The Woodstock South WWTP discharges effluent to the Kishwaukee River pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0034282.

3. Sometime before October 2005, on a date better known to Woodstock, Woodstock installed a wastewater spray irrigation system appurtenant to the Woodstock South WWTP for use at a nearby athletic field.

**C. Allegations of Non-Compliance**

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

Count I: Construction Without a Permit, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), and 35 Ill. Adm. Code 309.202(a).

Count II: Violation of NPDES Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

**D. Admission of Violations**

Woodstock 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, Woodstock 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**

On February 21, 2006, Woodstock submitted to the Illinois EPA an application for a construction and operating permit for the wastewater spray irrigation system. On April 20, 2006, the Illinois EPA issued a construction and operating permit to Woodstock for the wastewater spray irrigation system. Woodstock's NPDES permit need not be amended provided Woodstock complies with the conditions of the construction and operating permit for the spray irrigation system.

**IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and Woodstock, and any officer, director, agent, or employee of Woodstock, as well as any successors or assigns of Woodstock. Woodstock 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.

**V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation in no way affects the responsibilities of Woodstock 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 were hindered by Woodstock's violations.
2. There is a social and economic benefit to the athletic field where the spray irrigation system in question is located.

3. Construction of the wastewater spray irrigation system was suitable for the athletic complex.
4. Obtaining a permit prior to construction at the Woodstock South WWTP was both technically practicable and economically reasonable.
5. Woodstock 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. Woodstock failed to obtain a permit from the Illinois EPA prior to constructing the wastewater spray irrigation system at the Site. Woodstock constructed the wastewater spray irrigation system on or before October 2005, and received a construction permit from the Illinois EPA on April 20, 2006.
2. Woodstock submitted a construction permit application soon after it was notified of the need for the permit by the Illinois EPA.
3. Woodstock did not receive any economic benefit as a result of its failure to timely obtain a permit. Woodstock submitted a permit application that was denied by the Illinois EPA in the fall of 2005. Accordingly, Woodstock had already paid its engineering firm for completing the initial application. Also, besides testing the wastewater spray irrigation system once, Woodstock did not operate the wastewater spray irrigation system before it received the permit from the Illinois EPA on April 20, 2005.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Two Thousand Three Hundred Dollars (\$2,300.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. The Board issued a \$100.00 civil penalty against Woodstock in 1972 for improper operations at its then municipal landfill.
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. Woodstock shall pay a civil penalty in the sum of Two Thousand Three Hundred Dollars (\$2,300.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. Woodstock stipulates that payment has been tendered to Woodstock's attorney of record in this matter in a form acceptable to that attorney. Further, Woodstock stipulates that said attorney has been directed to make the penalty payment on behalf of Woodstock, 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 Woodstock's Federal Employer Identification Number (FEIN), 36-6006165, shall appear on the check. A copy of the certified check or money order shall be sent to:

Katherine M. Hausrath  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Floor  
Chicago, Illinois 60602

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 or money order, 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, Woodstock may be reached at the following address:

City of Woodstock  
Timothy Clifton, City Manager  
121 W. Calhoun Street  
Woodstock, IL 60098

with a copy to:

Carlos S. Arevalo  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, IL 60014

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, Woodstock hereby agrees that this Stipulation may be used against Woodstock 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, Woodstock 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**

Woodstock 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 Woodstock's payment of the \$2,300.00 penalty, and to Cease and

Desist as contained in Section VIII.C and upon the Board's acceptance and approval of the terms of this Stipulation, the Complainant releases, waives and discharges Woodstock 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 December 21, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Woodstock 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 Woodstock'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 Woodstock.

**E. 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 Woodstock'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.

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Katherine M. Hausrath  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Floor  
Chicago, Illinois 60602

Charles Gunnarson  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Respondent

City of Woodstock  
Timothy Clifton, City Manager  
121 W. Calhoun Street  
Woodstock, IL 60098

with a copy to:

Carlos S. Arevalo  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, IL 60014

**G. 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.F. 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 Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

**H. 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 Board and may be enforced as such through any and all available means.

2. Woodstock agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation 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, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Woodstock that the provisions of this Stipulation 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 as written.

PEOPLE OF THE STATE OF ILLINOIS,

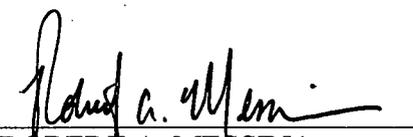
LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 4/13/07

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 4/11/07

CITY OF WOODSTOCK

BY: \_\_\_\_\_

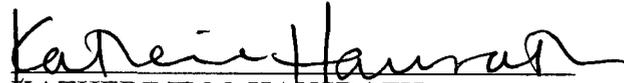
DATE: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CERTIFICATE OF SERVICE

I, KATHERINE M. HAUSRATH, an Assistant Attorney General, do certify that I caused to be mailed this 17 day of April, 2007, the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement with Respondent City of Woodstock, and Notice of Filing, upon the persons listed on said notice, by certified mail.



KATHERINE M. HAUSRATH  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington, 18<sup>th</sup> Floor  
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312-814-0660