

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS	)	
by LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	PCB No. 07-134
VILLAGE OF ROCKTON, an Illinois	)	(Enforcement - Water)
municipal corporation,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 11th day of April, 2008, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY:   
STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau North  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
312-814-2087

DATE: April 11, 2008

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**SERVICE LIST**

Mr. Bradley Halloran  
Chief Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street, 11th Floor  
Chicago, IL 60601

Mr. Gregory E. Cox, Esq.  
Attorney for Village of Rockton  
Nicolosi & Associates LLC  
363 Financial Court, Suite 100  
Rockford, IL 61107-6671

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

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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 June 8, 2007, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On April 11, 2008, a Stipulation and Proposal for Settlement was filed with the Board in this matter.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2006), provides as follows:

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

**Electronic Filing - Received, Clerk's Office, April 11, 2008**

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).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415

ILCS 5/31(c)(2) (2006).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2006).

Respectfully submitted,

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

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

  
STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau North  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-2087  
[ssylvester@atg.state.il.us](mailto:ssylvester@atg.state.il.us)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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by LISA MADIGAN, Attorney General	)	
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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 Village of Rockton ("Rockton") (collectively "parties to this Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties to this Stipulation agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties to this Stipulation if a hearing were held. The parties to this Stipulation 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 to this Stipulation 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, Rockton 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 to this Stipulation consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006).

**II. AUTHORIZATION**

The undersigned representatives for the Complainant, Rockton, and the Illinois EPA, certify that they are fully authorized to enter into the terms and conditions of this Stipulation and to legally be bound by the Stipulation.

**III. STATEMENT OF FACTS**

**A. Parties to this Stipulation**

1. On June 8, 2007, 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 (2006), against Rockton.

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 (2006).

3. At all times relevant to the Complaint, Rockton 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, Rockton owned and operated a waste water treatment plant ("WWTP"), which included a lift station ("Hawick lift station"), located on the 200 block of Hawick Street, Rockton, Winnebago County, Illinois ("Site").

2. On and before June 6, 2006, the Hawick lift station had an electric power box

lever that when in the "on" position provided power to the Hawick lift station and pumped sewage from the Hawick lift station across the Rock River to its WWTP for treatment. When the Hawick lift station electrical power box lever was in the "off" position, no power was provided for the operation of the Hawick lift station.

3. On and before June 6, 2006, the electric power box for the Hawick lift station was located on a power pole that was not fenced in or otherwise secured from unauthorized access.

4. Sometime between the late afternoon of June 6, 2006, and the morning of June 7, 2006, the Hawick lift station power box lever was in the "off" position, which resulted in sewage backing up and overflowing out of the Hawick lift station into a bypass pipe and discharging approximately 150,000 to 153,000 gallons of untreated sewage into the Rock River via a storm sewer outfall south of the Hawick lift station.

**C. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that Rockton has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Water Pollution Regulations:

Count I: WATER POLLUTION- Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);

Count II: NPDES PERMIT VIOLATIONS: UNLAWFUL DISCHARGES: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

Count III: SYSTEMS RELIABILITY VIOLATIONS: Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006) 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**

Rockton 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, Rockton 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.

**IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA, and Rockton, and any officer, trustee, agent, or employee of Rockton, as well as any successors or assigns of Rockton. Rockton 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 Rockton 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)(2006), provides as follows:

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

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

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

1. The environment was harmed by Rockton's discharge of approximately 150,000 to 153,000 gallons of untreated sewage into the Rock River via a storm sewer outfall south of the Hawick lift station.

2. The Site has social and economic benefit.

3. Rockton's Hawick lift station is suitable for the area in which it is located.

4. On or about, June 7, 2006, Rockton installed a duplicate power source for the Hawick lift station's emergency notification system. On or about, March 1, 2007, Rockton installed a backup generator for the Hawick lift station. This was both technically practicable and economically reasonable.

5. Rockton has subsequently complied with the Act.

#### **VII. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

1. Rockton failed to provide a duplicate power source for the Hawick lift station and for its emergency notification system, although it had undertaken improvements to the Hawick lift station in 2005. Rockton discharged approximately 150,000 to 153,000 gallons of untreated sewage into the Rock River via a storm sewer outfall south of the Hawick lift station. The violations began on or about June 6, 2006 through June 7, 2006, and were individually resolved at various times in the following year.

2. Rockton was diligent in attempting to come back into compliance with the Act, once the Illinois EPA notified it of its noncompliance.

3. The civil penalty obtained negates any economic benefit that Rockton may have accrued as a result of the delay in compliance.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Seven Thousand Five Hundred and Fourteen Dollars (\$7,514.00) will serve to deter further violations and aid in future voluntary compliance with the Act.

5. In 1975, the Board ordered Rockton to cease operating a landfill without a permit.

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. Rockton shall pay a civil penalty in the amount of Seven Thousand Five Hundred Fourteen Dollars (\$7,514.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. Rockton stipulates that payment has been tendered to Rockton's attorney of record in this matter in a form acceptable to that attorney. Further, Rockton stipulates that said attorney has been directed to make the penalty payment on behalf of Rockton, 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 Rockton's Federal Employer Identification Number (FEIN) shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2006), 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 (2006). 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, Rockton may be reached at the following address:

Village of Rockton  
110 East Main Street  
Rockton, IL 61072

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

Gregory E. Cox, Esq.  
Nicolosi & Associates LLC  
363 Financial Court, Suite 100  
Rockford, IL 61107-6671

5. In the event of default of this Section VIII.A, the Complainant and the Illinois EPA 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, Rockton hereby agrees that this Stipulation may be used against Rockton 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)(2006). Further, Rockton 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**

Rockton 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 Rockton's payment of the \$7,514.00 penalty and any specified costs and accrued interest, its commitment 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 Rockton from any further liability or penalties for violations of the Act and Board Water Pollution Regulations that were the subject matter of the Complaint

herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 8, 2007. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Rockton 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 Rockton'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 Rockton.

**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 Rockton'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. 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. Rockton 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 to this Stipulation agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then none of the parties to this Stipulation are bound by the terms herein.

4. It is the intent of the Complainant, the Illinois EPA, and Rockton 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.

**G. Execution of Document**

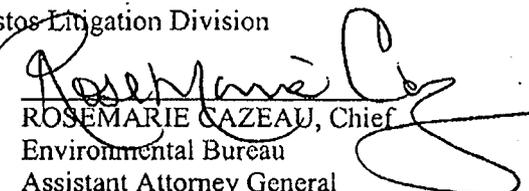
This Stipulation and Proposal for Settlement shall become effective only when executed by all parties to this Stipulation and accepted and approved by the Board. This Stipulation and Proposal for Settlement may be executed by the parties to this Stipulation in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

WHEREFORE, Complainant, the Illinois EPA, and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

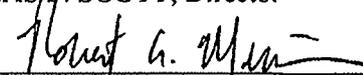
LISA MADIGAN  
Attorney General of the State of Illinois

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

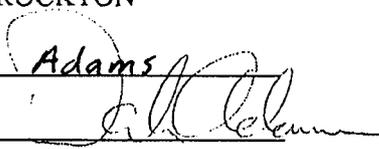
DATE: 2/8/08

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,  
DOUGLAS P. SCOTT, Director

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 2/7/08

VILLAGE OF ROCKTON

BY:   
Name: Dale Adams  
Title: President

DATE: 4/7/08

**CERTIFICATE OF SERVICE**

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 11th day of April, 2008, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
\_\_\_\_\_  
STEPHEN J. SYLVESTER