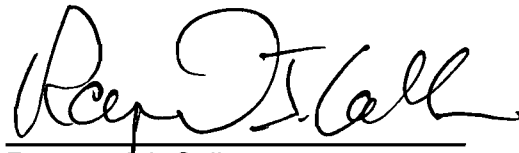




**CERTIFICATE OF SERVICE**

I hereby certify that I did on October 19, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.

A handwritten signature in black ink, appearing to read "Ray J. Callery", written over a horizontal line.

Raymond J. Callery  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Suniti R. Sud  
Attorney at Law  
1430 Ft. Jesse Road  
Normal, IL 61761

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 11-27</b>
	)	<b>(Enforcement-Water)</b>
	)	
<b>SUD FAMILY LIMITED PARTNERSHIP,</b>	)	
<b>a Wisconsin limited partnership,</b>	)	
	)	
<b>Respondent.</b>	)	

**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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

1. A Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter on December 9, 2010.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY: 

Raymond J. Callery  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 19, 2011

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
<b>Complainant,</b>	)	
	)	
v.	)	<b>PCB NO. 11-27</b>
	)	<b>(Enforcement - Water)</b>
<b>SUD FAMILY LIMITED PARTNERSHIP,</b>	)	
<b>a Wisconsin limited partnership,</b>	)	
	)	
<b>Respondent.</b>	)	

**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 SUD FAMILY LIMITED PARTNERSHIP, a Wisconsin limited partnership, ("Respondent") ("Parties to the 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2010), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On December 9, 2010, 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 (2010), 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 (2010).

3. At all times relevant to the Complaint, Respondent was and is a Wisconsin limited partnership that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent was the owner/developer of SUD Business Park, a development consisting of an automobile dealership and additional subdivision lots located on North Allen Road, at Illinois Route 6, in Peoria, Peoria County, Illinois ("Site").

5. Storm water from the Site discharges into an unnamed tributary of Kickapoo Creek and also into the municipal storm water inlets at the Site. Kickapoo Creek is a tributary to the Illinois River.

6. Pursuant to the National Pollutant Discharge Elimination System ("NPDES") the Illinois EPA issued permit number ILR10E923 ("Permit") to the Respondent for coverage of the discharge of storm water at the site under the general NPDES permit for Storm Water Discharges From Construction Site Activities.

7. The Illinois EPA inspected the Site on November 30, 2007, January 9, 2008, February 14, 2008, June 17, 2009, October 6, 2009, October 23, 2009, July 1 and

July 2, 2010, September 3, 2010, and November 23, 2010. The Peoria County Soil and Water Conservation District ("PCSCD") also inspected the Site on November 23, 2010.

8. The inspections by the Illinois EPA and the PCSCD found barren areas, unprotected storm water inlets, rill erosion, sediment discharges, sediment deposits, inadequate and poorly maintained silt fencing, and inadequate seeding. Rainfall inspections were not being performed as required and the Site lacked a comprehensive storm water pollution prevention plan ("SWPPP").

**B. Allegations of Non-Compliance**

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

Count I:	<u>Water Pollution Violation</u> 415 ILCS 5/12(a) Caused, allowed or threatened to cause water pollution by failing to provide adequate soil erosion and sediment control.
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Count II:	<u>NPDES Permit Violations</u> 415 ILCS 5/12(f) Failed to have adequate soil erosion and sediment control; failed to have an adequate SWPPP; failed to complete weekly and rainfall inspections; and failed to submit ION reports.
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**C. Non-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 I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

As of the November 23, 2010 inspection, lot numbers 1, 2, and 5 were no longer owned by Respondent and appeared to be stabilized. An automobile dealership is located on lot number 3. On lot number 4, rill erosion had been repaired near the cul-de-sac and the upper portion of the slope to the lake. Silt fencing had been installed across the repaired slope area but rill erosion remained beyond this point. A comprehensive SWPPP was still needed for this portion of the Site.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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. This Stipulation may be used against Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board's regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

**III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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 the Stipulation state the following:

1. The water quality of the unnamed tributary of Kickapoo Creek was adversely affected by the lack of storm water controls at the Site.
2. There is social and economic benefit in the construction of new commercial properties at the Site.
3. Construction activity at the Site was suitable for the area in which it occurred.
4. Providing adequate storm water pollution controls and complying with the NPDES general permit were both technically and economically reasonable; and
5. Respondent has now achieved substantial compliance with the Act and the Board Regulations.

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

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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 the Stipulation state as follows:

1. The water pollution and NPDES permit violations by Respondent were initially observed during an inspection on November 30, 2007. Subsequent inspections indicated improvements in erosion control practices. The November 23, 2010 inspection found that substantial compliance with the Act and Board Regulations had been achieved.
2. Once made aware of its violations of the Act and Board Regulations, the Respondent attempted to resolve the violations. The Respondent subsequently brought the Site into substantial compliance.
3. The Respondent received minimal economic benefit from delaying the costs of implementing adequate erosion control measures at the Site.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Nine Thousand Dollars (\$9,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and the Board's regulations.

5. The Respondent has no known prior enforcement history.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

Respondent shall pay a civil penalty in the sum of Nine Thousand Dollars (\$9,000.00). Payment shall be made in the following manner:

Four Thousand Five Hundred Dollars (\$4,500) within thirty (30) days from the date the Board adopts and accepts this Stipulation;

Two Thousand Two Hundred Fifty Dollars (\$2,250) within ninety (90) days of Board approval; and

Two Thousand Two Hundred Fifty Dollars (\$2,250) within one hundred eighty (180) days of Board approval

### **B. Interest and Default**

1. If Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. 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.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments 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

The name, case number and Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Enforcement Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Respondent shall properly implement a comprehensive SWPPP and comply with all requirements of the NPDES permit.

2. When final stabilization of the Site has been accomplished and all storm water discharges from the construction activities have been eliminated, Respondent shall submit a Notice of Termination to the Illinois EPA.

3. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall

have the right of entry into and upon the Site which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. 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.

4. This Stipulation in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board's regulations.

5. Respondent shall cease and desist from future violations of the Act and the Board's regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of Respondent's payment of the \$9,000.00 penalty, its commitment to cease and desist as contained in Section V, paragraph D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondent from any further liability or penalties for the violations of the Act and the Board's 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 9, 2010. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against 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 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), or entity other than Respondent.

**F. Enforcement**

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

**G. Execution of Stipulation**

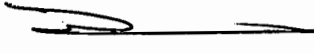
The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

**WHEREFORE**, the Parties to the Stipulation 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: 10/18/11

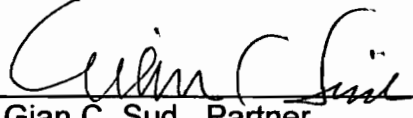
THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

LISA BONNETT, Interim Director  
Illinois Environmental Protection Agency

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 10/13/11

SUD FAMILY LIMITED PARTNERSHIP

BY:   
Gian C. Sud, Partner  
*Gen*

DATE: Sept. 14, 2011