

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 VILLAGE OF CAVE IN ROCK, an Illinois)
 municipal corporation, and)
 MAIER'S TIDY BOWL, INC., an Illinois)
 corporation,)
)
 Respondents.)

PCB No. 12-59
(Enforcement - Water)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on December 23, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT AS TO RESPONDENT VILLAGE OF CAVE IN ROCK, 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: *Rachel R Medina*
Rachel R. Medina
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 23, 2011

CERTIFICATE OF SERVICE

I hereby certify that I did on December 23, 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, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT AS TO RESPONDENT VILLAGE OF CAVE IN ROCK, upon the following:

Frederick Turner, Jr.
Attorney at Law
207 E. Main Street
P.O. Box 512
Golconda, IL 62938.



Rachel R. Medina
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 12-59
)	(Enforcement - Water)
VILLAGE OF CAVE IN ROCK, an Illinois)	
municipal corporation, and)	
MAIER'S TIDY BOWL, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (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:

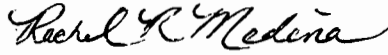
1. On October 24, 2011, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. PEOPLE OF THE STATE OF ILLINOIS and Respondent, VILLAGE OF CAVE IN ROCK, an Illinois municipal corporation, have reached agreement on all outstanding issues in this matter.
3. This agreement 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: 
Rachel R. Medina
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
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the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008), 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 (2008).

3. At all times relevant to the Complaint, Respondent was and is an Illinois municipal corporation authorized to do business in the State of Illinois.

4. The Respondent operates a wastewater treatment plant, Village of Cave-In-Rock STP ("WWTP"), located in the east half of Section 14, Township 12 South, Range 3 East of the Third Meridian, Village of Cave-In-Rock, Hardin County, Illinois. The WWTP consists of a two-cell lagoon with two dual pump wet well/dry well lift stations. The lift stations are located at the west end of Jefferson Street, Village of Cave-In-Rock, Hardin County, Illinois. The WWTP discharges treated municipal sewage to an unnamed tributary to the Ohio River ("unnamed tributary") pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0055581.

5. On or about October 4, 2009, at a time better known by the Respondent, heavy rainfall and malfunctioning pumps at the second lift station for the WWTP caused a high level overflow of raw sewage at the second lift station. One of two pumps installed at the lift station had malfunctioned leaving only one pump operable. Then, at the time of the overflow incident, the remaining pump malfunctioned.

6. On or about October 7, 2009, the Village of Cave In Rock ("Village") hired the Respondent to pump out the lift station wells for the Village's wastewater treatment plant ("WWTP") due to the malfunction of pumps at the lift station.

7. On October 7, 2009, the access hatches for the wet and dry wells were open and each well contained raw sewage. Hoses were extended down into the wet well for pumping. The Respondent pumped raw sewage from the wet well of the Village's WWTP into a septic hauling truck and subsequently discharged the waste from the truck into the unnamed tributary adjacent

to the WWTP. A Village official directed the Respondent to discharge to the unnamed tributary instead of to the WWTP lagoon due to an apparent maintenance problem with a pipe in the lagoon.

B. Allegations of Non-Compliance

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

Water Pollution

By causing or allowing the discharge of raw sewage into waters of the State so as to cause water pollution, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

Overflow Violation

By allowing untreated sewage to overflow or bypass the lift station, Respondent violated Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304, NPDES Permit Conditions, and Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

Offensive Conditions

By allowing a discharge of black, odorous, raw sewage directly to the unnamed tributary thereby causing color and odor of the unnatural origin in the unnamed tributary, Respondent violated Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

Offensive Discharge

By causing or allowing a liquid discharge exhibiting obvious turbidity and a raw sewage odor to the unnamed tributary, Respondent violated Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106 and Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

System Maintenance Violations

By failing to maintain an operable backup pump at its lift station so as to minimize violations of applicable standards, the Respondent violated Section 306.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a)

By causing, threatening, or allowing the discharge of raw sewage to as to violate Board regulations, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

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.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, 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. 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 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), 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 unlawful discharge of untreated wastewater from the Village's sanitary sewer to the unnamed tributary caused water pollution and threatened human health.
2. The parties agree that the Respondent's operations are of economic benefit to the surrounding community.
3. Respondent's operations are suitable to the area in which they occur.
4. The parties agree it is both technically practicable and economically reasonable to take steps to comply with the requirements of the Act, 415 ILCS 5/1 *et seq.* (2008), and associated regulations.
5. Respondent has subsequently complied 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)(2008), 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 Respondent allowed an overflow of their WWTP on or about October 4, 2009. In addition, the Respondent unlawfully discharged untreated wastewater from the WWTP to an unnamed tributary on October 7, 2009.
2. Upon instruction from the Illinois EPA inspector, the Respondent ceased the discharge to the unnamed tributary, readily acknowledged its action and expressed commitment to not repeat the violation. In addition, the Respondent repaired the failed pumps.
3. The Respondent delayed the costs of having a reliable wastewater collection system by not investing in backup pumps. The penalty of One Thousand Nine Hundred Fifty Dollars (\$1,950.00) recovers the nominal economic benefit gained by delaying these costs.
4. Complainant has determined, based upon the specific facts of this matter that a penalty of One Thousand Nine Hundred Fifty Dollars (\$1,950.00) 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. The violations were reported by a complainant.
7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of One Thousand Nine Hundred Fifty Dollars (\$1,950.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the 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 the 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 the 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 Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. 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.

2. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$1,950.00 penalty, its commitment to cease and desist as contained in Section V.D.2. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 October 24, 2011. 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 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.

F. 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,

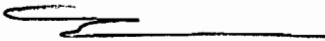
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

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

BY:



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY:

JOHN J. KIM
Chief Legal Counsel

DATE:

12/23/11

DATE:

VILLAGE OF CAVE-IN-ROCK

BY:



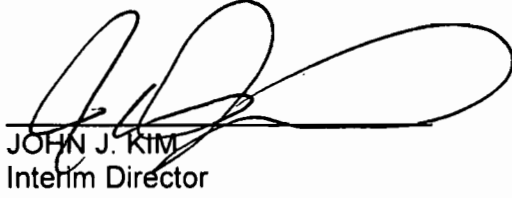
MARTY KAYLOR
President

DATE:

11-29-11

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY:



JOHN J. KIM
Interim Director

DATE:

12/20/11