

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|------------------------------------|---|-------------------------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | PCB NO. 11- 53 |
| v. |) | (Enforcement-Water) |
| |) | |
| VILLAGE OF SPRING GROVE, |) | |
| an Illinois municipal corporation, |) | |
| |) | <u>VIA ELECTRONIC FILING</u> |
| Respondent. |) | |

NOTICE OF FILING

TO: Roy M. Harsch, Esq.
Drinker Biddle & Reath LLP
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606


Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board ("Board") pursuant to Section 103.300(a) of the Board Procedural Rules, a Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, a Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
ZEMEHERET BERKET-AB
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, IL 60602
(312) 814-3816

DATE: November 29, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| Respondent. |) | |

**AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the parties filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2010) 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). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2010).


WHEREFORE, Complainant and Respondent, request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 

ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-3094

DATE: November 29, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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 Spring Grove ("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 February 23, 2011, 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 Village of Spring Grove ("Spring Grove") was and is an Illinois municipal corporation duly organized and existing under the laws of the State of Illinois.

4. At all times relevant to this Complaint, Spring Grove owns and operates a sewage treatment plant ("STP"). The STP is located at 3001 Industrial Drive, Spring Grove, McHenry County, Illinois. The STP primarily treats domestic waste water originating from the residents and an industrial and commercial corridor located along Route 12 in Spring Grove that are connected to Respondent's sanitary sewer system.

5. On January 1, 2007, the Illinois EPA issued to Spring Grove a renewal of the National Pollutant Discharge Elimination System ("2007 NPDES") Permit Number IL0074985 with an expiration date of December 31, 2011. The 2007 NPDES Permit authorizes and regulates the discharge of effluent from Spring Grove's STP to Nippersink Creek, a tributary to the Fox River, which in turn flows into the Illinois River. On March 1, 2012, the Illinois EPA issued a renewal of NPDES Permit Number IL0074985 ("2012 NPDES Permit").

B. Allegations of Non-Compliance

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

- Count I: Exceeding Ammonia Nitrogen Effluent Limits in violation of Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2010), and 35 Ill. Adm. Code 304.104(a);
- Count II: Failure to Report Effluent Limit Violations in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), 35 Ill. Adm. Code 305.102(b) and Standard Condition of 12(e) of NPDES Permit #IL0074985;
- Count III: Violation of NPDES Permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Special Condition 14 of NPDES Permit #IL0074985.

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 above, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. In 2004, Respondent prohibited the introduction of septic waste hauler discharges to its STP in order to reduce ammonia nitrogen loadings.
2. Respondent has engaged its consultants to evaluate steps that could be implemented to increase biological nitrification during the cold weather periods. As a result of this evaluation, Respondent installed and began operating a warm air diffuser to increase waste water temperature.

3. Respondent has hired a consultant who has conducted a stream survey and a dilution evaluation, and on November 1, 2011, submitted to the Illinois EPA a report entitled, "Zone of Initial Dilution for Village of Spring Grove Waste Water Treatment Plant."

4. Respondent after consulting with representatives of the Illinois EPA, revised and updated its existing list of non-residential customers and conducted site inspections in 2010 to verify that selected customers did not discharge process waste water.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 (2010).

The Respondent shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation 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 to each contractor already retained no later than thirty (30) calendar days after the date of entry 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 this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant thirty (30) calendar 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 as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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, Complainant states the following:

1. Respondent's failure to meet the ammonia-nitrogen effluent limits during cold weather winter months was detrimental to human health and the environment.
2. There is social and economic benefit to Respondent's STP.
3. Operation of the STP was suitable for the area in which it occurred.
4. Complying with ammonia-nitrogen effluent limits was both technically practicable and economically reasonable.
5. Respondent took the actions described in Section I.D., above, once the Illinois EPA notified it of its noncompliance.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2010 effective as of August 23, 2011), 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.
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, Complainant states as follows:

1. The ammonia-nitrogen effluent violations threatened human health and the environment and occurred during the cold winter months of January, February and March 2009.
2. Respondent has shown due diligence in attempting to resolve the violations.
3. Economic benefits accrued by Respondent are accounted for in the \$4,000.00 penalty agreed herein.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Four Thousand Dollars (\$4,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, there is no record of previously adjudicated violations of this Act by Respondent.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

8. On November 5, 2009, the Illinois EPA rejected the Compliance Commitment Agreement proposed by Respondent.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Four Thousand Dollars (\$4,000.00) 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 complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$100.00 (One Hundred Dollars) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties.

All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. 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.

3. 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.

4. The stipulated penalties shall be enforceable by the Plaintiff 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.

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:

Zemeheret Bereket-Ab
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Investigation of means to increase nitrification during winter months

Within thirty (30) days of entry of this Stipulation, Respondent shall complete its investigation of all technically feasible and economically reasonable means to increase nitrification during cold winter season at its STP to comply with applicable ammonia limitations.

2. Ammonia Nitrogen Interim Limits

Beginning on the date this Stipulation is entered and continuing until either March 1, 2013, if compliance with the ammonia nitrogen limits is obtained pursuant to Section V.D.1. above, and/or other steps taken by the Respondent, or the date upon which a final and effective decision by the Board or a court of competent jurisdiction is obtained regarding Respondent's ability to utilize a mixing zone and ammonia nitrogen effluent discharge limits regulatory relief is sought, the Respondent shall comply with the following interim limits for ammonia nitrogen effluent discharges from its STP, expressed in milligrams per liter:

| | Monthly Average | Weekly Average | Daily Maximum |
|-----------------------|-----------------|----------------|---------------|
| April-May Sept-Oct | 1.5 | 3.8 | 5.1 |
| Summer | 1.0 | 2.5 | 5.6 |
| Winter | 8.0 | -- | 11.0 |

Thereafter, the Respondent shall comply with the ammonia nitrogen effluent limits as contained in its then-effective NPDES permit, or as otherwise provided by law.

3. Relief from Pollution Control Board

The Respondent may apply for permanent relief from the Board in connection with the discharge limits for ammonia nitrogen and the use of a mixing zone to determine water quality based effluent limitations for ammonia by filing a petition for site specific water quality standards. The Respondent shall notify the Illinois EPA of its intention to apply for site specific water quality standards within 14 days of making such decision but in no event later than March 1, 2013. If the Respondent seeks relief, the Respondent shall diligently pursue such relief once started until a final and effective decision is obtained. The Illinois EPA neither supports nor opposes the Board granting relief to the Respondent for the ammonia nitrogen limitations and the use of a mixing zone to determine water quality based effluent limitations for ammonia through this paragraph and Stipulation, and retains all rights and duties to review the merits of any claim for relief and provide a recommendation for, against or with conditions to the Board. In the event the Board grants the final and effective relief requested by the Respondent in connection with its ammonia nitrogen limitations and the use of a mixing zone to determine water quality

based effluent limitations for ammonia, such relief shall supersede the interim limits established in this Stipulation under Section V.D.2.

4. Submission of Written Plan. In the event the Respondent does not obtain a final non-appealable order or judgment granting it the relief it requests in connection with ammonia nitrogen limitations and the use of a mixing zone to determine water quality based effluent limitations for ammonia, then the Respondent shall within ninety (90) days from the final non-appealable order submit to the Illinois EPA, for its review and approval, a written plan for attaining compliance with the ammonia nitrogen discharge standards in its then-effective NPDES permit.

5. 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 Respondent's facility 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.

6. 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.

7. 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 \$4,000.00 (Four Thousand Dollars) penalty, its commitment to cease and desist as contained in Section V.D. above, completion of all activities required hereunder, 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 February 23, 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. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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

Scott Twait
Environmental Protection Engineer
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Roy M. Harsch
Drinker Biddle & Reath LLP
191 North Wacker Drive, Suite 3700
Chicago, Illinois 60606

G. Enforcement and Modification of Stipulation

1. 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.

2. The Parties to the Stipulation 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 V.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 the Parties to the Stipulation.

H. Execution of Stipulation

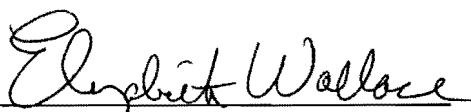
The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

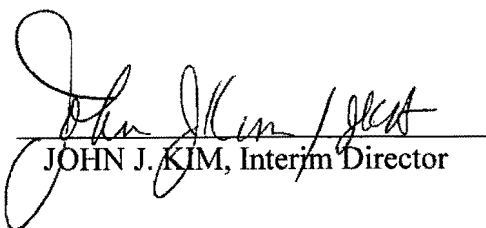
WHEREFORE, the parties, to the Stipulation request that the Board adopt and accept the Stipulation and Proposal for Settlement as written.

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM, Interim Director

DATE: 11/21/12

DATE: _____

VILLAGE OF SPRING GROVE

BY: 
Village President

DATE: October 26, 2012

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CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 29th day of November 2012, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB