

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 EDELSTEIN WATERWORKS CO-OP.,)
 an Illinois not-for-profit corporation,)
)
 Respondent.)

PCB No. 07-83
(Enforcement)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on August 12, 2014, 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 STIPULATION AND PROPOSAL FOR SETTLEMENT, and MOTION FOR RELIEF FROM HEARING REQUIREMENT 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: s/Elizabeth Dubats
ELIZABETH DUBATS
Assistant Attorney General
Environmental Bureau

Elizabeth Dubats #6308913
500 South Second Street
Springfield, Illinois 62706
217-782-9031

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB NO. 07-83
)	
EDELSTEIN WATERWORKS CO-OP.,)	
an Illinois not-for-profit corporation,)	
)	
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 EDELSTEIN WATERWORKS CO-OP., an Illinois not-for-profit corporation, ("Respondent" or "Edelstein"), the Parties to the Stipulation and Proposal for Settlement ("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. (2012), 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 March 5, 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 (2012), 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 (2012).

3. At all times relevant to this Stipulation, Respondent was and is an Illinois not-for-profit corporation authorized to transact business in the State of Illinois.

4. Respondent is a "public water supply" ("PWS") as that term is defined under Section 3.365 of the Act, 415 ILCS 5/3.365 (2012).

B. Site Description

1. The Respondent owns and operates a PWS which serves approximately one hundred and twenty five (125) consumers through forty-seven (47) residential and three (3) industrial connections throughout Edelstein, Illinois. Water is obtained from drilled rock Well #1(50189), discharged into a 12,000 gallon collecting tank, chlorinated, pumped and discharged into an 2,000 gallon pressure tank and then into the distribution system.

C. Complainant's Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations. The violations listed herein include violations alleged in

Complainant's Complaint as well as additional violations which occurred after the filing of the Complaint.

- Count I: Sections 611.521(a), 611.522(a) and 611.731 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.521(a), 611.522(a) and 611.731 and Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18(a)(2) and 19 (2004);
- Count II: Sections 611.831 and 653.605 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.831 and 653.605, and Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2004);
- Count III: Sections 603.102, 603.103 and 603.105(b) of the Board's Public Water Supply Regulations, 35 Ill. Adm. Code 603.102, 603.103 and 603.105(b), Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2004), and Section 1 of the Water Supply Operations Act, 415 ILCS 45/1 (2004);
- Count IV: Sections 601.101, 607.104, 611.330, 611.883 and 611.884 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101, 607.104, 611.330, 611.883 and 611.884, and Section 18 of the Act, 415 ILCS 5/18 (2004).

D. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.C herein.

E. Compliance Activities to Date

As of May 18, 2005, Respondent employed a certified operator and responsible person in charge. Respondent has submitted required samples and reports to the Illinois EPA. Respondent is participating in a project which will allow it to meet the MCLs for Combined Radium and Gross Alpha Radium. The project included the installation of "point of entry" water softener units at each service connection to remove radium from the system.

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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), 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 failure to monitor drinking water for fecal coliform bacteria, for residual chlorine and for radiological contaminants during a time when the PWS was unable to meet MCLs for Combined Radium and Gross Alpha Radium, is a serious violation, as it allows the consumption of water of unknown quality. The failure to have a properly certified operator and a responsible person in charge on file with the Illinois EPA increases the risk of the consumption of unsafe water in that an unqualified, untrained operator was running the PWS plant.

2. There is social and economic benefit to the Respondent's PWS in that it provides water to the approximately 125 consumers using approximately 47 connections, including three industrial users.

3. Respondent's PWS is suitable to the area.

4. It is technically practicable and economically reasonable for Respondent to meet the MCLs for Combined Radium and Gross Alpha Radium. It is technically practicable and economically reasonable for Respondent to properly monitor and sample the drinking water provided by its PWS plant. It is also technically practicable and economically reasonable for

Respondent to employ a certified operator and responsible person in charge and to install a backup generator.

5. As of May 18, 2005, Respondent has employed a certified operator and responsible person in charge. Respondent has submitted required samples and reports to the Illinois EPA. Respondent has installed "point of entry" water softeners at each service connection which will allow it to meet the MCLs for Combined Radium and Gross Alpha Radium.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2012), 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, the Parties to the Stipulation state as follows:

1. The failure to monitor drinking water for fecal coliform bacteria, for residual chlorine and for radiological contaminants during a time when the PWS was unable to meet MCLs for Combined Radium and Gross Alpha Radium, is a serious violation, as it allows the consumption of water of unknown quality. The failure to have a properly certified operator and a responsible person in charge on file with the Illinois EPA increased the risk of the consumption of unsafe water in that an unqualified, untrained operator was running the PWS plant. The failure to install a backup generator puts the system's users at risk of losing water capacity during a power outage.
2. Respondent's lack of diligence was moderate. It has attempted to remedy the violations within the restraints of a limited budget.
3. Although the actual benefit was minor, Respondent did gain an economic benefit by avoiding the costs of taking samples and having them tested. Respondent also avoided the cost of paying a certified operator for the months of March, April and the first half of May 2005.
4. Complainant has determined, based upon the specific facts of this matter that a penalty of One Thousand, Four Hundred, and Twenty Five dollars (\$1,425.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. The Respondent has no previously adjudicated violations.
6. The Respondent did not voluntarily disclose the violations at issue.
7. Respondent's performance of a SEP is not at issue in this matter.
8. Respondent has not entered into a Compliance Commitment Agreement which would mitigate or aggravate the violations at issue in the Complaint.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of One Thousand, Four Hundred and Twenty Five dollars (\$1,425.00) in two installments. One payment of One Thousand Dollars (\$1,000.00) to be made within thirty (30) days from the date the Board adopts and accepts this Stipulation. One Payment of Four Hundred and Twenty Five dollars (\$425.00) to be made twelve (12) months from the date the Board adopts and accepts this Stipulation.

B. 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:

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

C. Future Compliance

1. The Respondent shall install a generator as required by Section 653.110 of the Agency's Public Water Supply Regulations, 35 Ill. Adm. Code 653.110, which provides as follows:

A combination of ground storage, hydropneumatic storage and pumps may be considered in water systems for maintaining pressure on the distribution system. Design of such a system shall include:

- a) a minimum ground storage volume equivalent to 1.5 times the average daily usage;
- b) a minimum of two pumps, each capable of meeting the peak system demand. If more than two pumps are proposed, the peak system demand shall be met when any pump is out of service;
- c) an electric generator with automatic start capable of providing power to pump(s) which can produce the peak system demand, plus sufficient power to operate all chemical feeders, appurtenances and equipment essential to plant operation. Consideration should be given to sizing the generator to provide power for at least one well; and
- d) an hydropneumatic tank sized to provide service for a minimum of ten minutes under peak system demand.

2. The Respondent shall install the required generator according to the following schedule:

- a. On January 1, 2014, Respondent will raise its monthly water rates from \$40 per month to \$55 per month. Respondent will keep these rates for a period of 24 months, ending on January 1, 2016.
 - b. Respondent will install the required backup generator by January 31, 2016.
3. The Respondent will follow all testing and reporting requirements set forth in its operating and construction permit.
 4. 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.
 5. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

D. Stipulated Penalties, Interest and Default

1. If the Respondent fails to install the required generator by January 1, 2016, the Respondent shall provide notice to the Complainant of this failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$100.00 per month until such time that the generator is properly installed and operational. 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.

E. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Complainant

Elizabeth Dubats
Assistant Attorney General
Environmental Enforcement Bureau
500 South Second Street
Springfield, Illinois 62706

Joey Logan-Pugh
1021 North Grand Ave East
Mail Code 21
Post Office Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

David Stammerjohn
2907 W. Main St
Edelstein, Illinois 61526

F. Release from Liability

In consideration of the Respondent's payment of the \$1,425.00 penalty, its commitment to cease and desist as contained in Section V.C. 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 the same day as this Stipulation. 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.

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.

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 foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Director
Illinois Environmental Protection Agency

BY: Matthew J. Dunn
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: [Signature]
JOHN J. KIM
Chief Legal Counsel

DATE: 8/8/14

DATE: 8/5/14

EDELSTEIN WATERWORKS CO-OP

BY: David M Stamerjohn DATE: 6/30/2014

Name: David M Stamerjohn

Title: President, Edelstein Waterworks Co-op

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
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Complainant,)	
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vs.)	PCB No. 07-83
)	(Enforcement)
EDELSTEIN WATERWORKS CO-OP.,)	
an Illinois not-for-profit 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) (2012), 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) (2012). In support of this motion, Complainant states as follows:

1. On March 5, 2007, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
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) (2012).

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) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: s/Elizabeth Dubats
ELIZABETH DUBATS
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on August 12, 2014, 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, STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT upon the following:

David Stammerjohn
Edelstein Waterworks Co-op
2714 West Streitmatter
Edelstein, IL 61526-9516

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

s/Elizabeth Dubats
ELIZABETH DUBATS
Assistant Attorney General

This filing is submitted on recycled paper.