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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois	)	
Complainant,	)	PCB No. 03-190 (Enforcement)
vs.	)	
VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation,	)	
Respondent.	)	

NOTICE OF FILING

TO: Mr. James e. Stevens
Attorney for Respondent
Barrick, Switzer, Long,
Balsley & Van Evera
P.O. Box 17109
Rockford, Illinois 61110-7109

Village of Cherry Valley
c/o Stephen Appell
Village President
202 East State
Cherry Valley, Illinois 61016

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed with the Pollution Control Board, its AGREED MOTION TO REQUEST RELIEF FROM THE HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, true and correct copies of which are attached hereto and are hereby served upon you.

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

BY: Katherine A. Kelly

KATHERINE A. KELLY
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-3153

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,	)	PCB No. 03-190 (Enforcement)
vs.	)	
VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation,	)	
Respondent.	)	

AGREED MOTION TO REQUEST RELIEF FROM THE HEARING REQUIREMENT

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

1. Today, the People of the State of Illinois, 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)(2002) 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)(2002).

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

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY: Katherine A. Kelly

KATHERINE A. KELLY
Assistant Attorney General
Environmental Bureau
188 West Randolph St., Suite 2001
Chicago, IL 60601
(312) 814-3153

DATE: September 24, 2003

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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois	)	
Complainant,	)	PCB No. 03-190
vs.	)	
VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation,	)	
Respondent.	)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, VILLAGE OF CHERRY VALLEY ("Cherry Valley"), an Illinois municipal corporation, have agreed to the making of this Stipulation and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a trial were held. The parties 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 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, Respondent agrees to be bound by the Stipulation and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.*(2002).

II.

AUTHORIZATION

The undersigned representatives for each party 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.

III.

STATEMENT OF FACTS

A. Parties

1. On April 15, 2003, 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(2002), 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 (2002).

3. At all times relevant to the Complaint, Respondent, Cherry Valley, has been an Illinois municipal corporation doing business in the State of Illinois.

B. Site Description

1. At all times relevant to this complaint, Defendant owned and operated a public water supply ("PWS" or "facility"), which provides water to 5000 consumers through 1597 direct connections in the Village of Cherry Valley, Winnebago County, Illinois. Cherry Valley obtains its water from three wells. The water is treated with phosphate, fluoride, and chlorine prior to discharge to two elevated storage tanks and the distribution system.

2. On February 28, 2001, the Village of Cherry Valley applied for a construction permit for proposed modification to the Village's Well No. 3 in its facility. On May 8, 2001, the Illinois EPA sent a letter to the Village and its engineering firm, requesting revisions to this permit application.

3. On June 27, 2001, the Illinois EPA's Rockford Regional Office received laboratory results from the Winnebago County Laboratory for samples taken after modifications to Well No. 3 were made at the Village of Cherry Valley facility. An Illinois EPA representative subsequently contacted the Village and

confirmed that the Village had completed the modifications to Well No. 3 before the proper Illinois EPA permit was issued.

4. On July 13, 2001, the Village submitted "As-Built" plans and specifications for the proposed modifications, admitting that the Village had already completed the work proposed in the original permit application dated February 28, 2001.

C. Allegations of Non-Compliance

1. Complainant contends that the Respondent has violated the following provisions of the Act and Board Public Water Supply Regulations:

> Count I: Failure to Secure Permit For Construction to Public Water Supply
> Violation of Section 15 of the Act, 415 ILCS 5/15(2002)and Sections 602.101 and 602.102 of the Board Regulations, 35 Ill. Adm. Code 602.101 and 602.102(2002).

D. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced herein, and that same were wilful and knowing.

E. Compliance Activities to Date

Infratek Consultants on behalf of the Village of Cherry Valley drafted and submitted As-Built Plans and Specifications for the modifications to Well No. 3 on July 13, 2001, and bacteriological sample results on July 27, 2001. The Illinois EPA issued As-Built Permit #1712-FY2001 on July 30, 2001. The

Village of Cherry Valley Water Department staff performed all of of the water system work at the facility.

IV.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), 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 state:

1. Impact to the public resulting from Cherry Valley's noncompliance was that harm to human health and the environment was threatened due to Cherry Valley's compromise of the safety of the drinking water supply it provides to its community.

2. The parties agree that Cherry Valley's facility is of social and economic benefit.

3. The facility is suitable to the area in which it is located.

4. Complying with the requirements of the Act and the Board Regulations is both technically practicable and economically reasonable.

5. Cherry Valley did subsequently submit As-Built Plans and Specifications and bacteriological sample results to the Illinois EPA, and obtained an As-Built Permit for the well modifications.

V.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), 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 violator 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 violator because of delay in compliance with requirements;

4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state:

1. The duration of the violations occurred continuously from June 25, 2001 to July 30, 2001.

2. Cherry Valley demonstrated a lack of diligence by failing to obtain the required Illinois EPA permits before constructing and operating the additions to its public water supply, but did diligently submit As-Built plans and specifications at the request of the Illinois EPA.

3. The economic benefit of noncompliance is difficult to determine due to the nature of the violations described herein.

4. Complainant has determined, in this instance, that a penalty of Three Thousand Dollars ($3,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Public Water Supply regulations.

5. Respondent has no known previously adjudicated violations of the Act.

VI.

APPLICABILITY

A. This Stipulation shall apply to and be binding upon the

Complainant and the Respondent, 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, or employees to take such actions as shall be required to comply with the provisions of this Stipulation.

B. 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 of any conveyance of title, easement or other interest in the facility, 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 contemplated future owner 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.

VII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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, 35 Ill. Adm. Code, Subtitles A through H.

VIII.

TERMS OF SETTLEMENT

A. Penalty

1. a. The Respondent shall pay a civil penalty of Three Thousand Dollars ($3,000.00) within thirty (30) days after the date on which the Board adopts a final order approving this Stipulation. Payment shall be made as follows:

b. Payment shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and 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

c. The name, case number, and the Respondent's Federal Employer Identification Number ("FEIN"), 36-6009435, shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Katherine A. Kelly (or other designee)
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, Illinois 60601
(312) 814-3153

3. For purposes of payment and collection, the

Respondent's attorney may be reached at the following address:

James E. Stevens
Barrick, Switzer, Long, Balsley & Van Evera
P.O. Box 17109
Rockford, Illinois 61110-7109

4. For purposes of payment and collection, Respondent may be reached at the following address:

Village of Cherry Valley
c/o Stephen Appell
Village President
202 East State Street
Cherry Valley, Illinois 61016

5. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

B. Interest on Penalties

1. Pursuant to Section 42 (g) of the Act, 415 ILCS 5/42 (g)(2002), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003 (a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (a) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. 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. All interest on penalties owed the Complainant shall be

paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Katherine A. Kelly (or other designee)
Assistant Attorney General
Environmental Bureau
188 West Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3153

C. Future Use

Notwithstanding any other language in this Stipulation to the contrary, this Stipulation may be used against the Respondent in any subsequent enforcement action as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Section 39 (i) and/or 42 (h) of the Act, 414 ILCS 5/39 (i) and/or 5/42 (h)(2002).

D. 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 the Respondent'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.

E. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations, including but not limited to those sections of the Act and Board regulations that were the subject matter of the Complaint as outlined in Section III.C. of this Stipulation.

F. Release from Liability

In consideration of the Respondent's payment of a $3,000.00 penalty, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 April 15, 2003. 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 Agreement.

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 3.26 of the Act, 415 ILCS 5/3.26 (2002), or entity other than the Respondent.

G. Retention of Jurisdiction

The Board shall retain jurisdiction of this matter for the purpose of interpreting and enforcing the terms and conditions of the Stipulation.

H. Enforcement of Stipulation

1. Upon the entry of this Stipulation, any party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing the terms and conditions of this Stipulation. This Stipulation is a binding and enforceable order of the Board and may be enforced by the Illinois Circuit Court through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce this Stipulation may be made by mail and waives any requirement of service of process.

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. 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: 9/24/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: _____
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 8/29/03

FOR THE RESPONDENT:

THE VILLAGE OF CHERRY VALLEY

BY: _____

Its _____

DATE: 9/22/03

ENTERED: _____
JUDGE

DATE: _____

CERTIFICATE OF SERVICE

I, KATHERINE A. KELLY, an Assistant Attorney General, do certify that I caused to be mailed this 24th day of September, 2003, the foregoing STIPULATION AND PROPOSAL FOR SETTLEMENT and NOTICE by first-class certified mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois, 60601.

Katherine A. Kelly

KATHERINE A. KELLY