

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 22 - 34
)	(Enforcement - Water)
CITY OF HOOPESTON, an Illinois municipal)	
corporation,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Notice of Filing, Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement, and Certificate of Service, copies of which are attached and hereby served upon you.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, *et seq.*] to correct the alleged violations.

Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

BY: /s/ Kevin D. Bonin
KEVIN D. BONIN, #6294877
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South 2nd Street
Springfield, Illinois 62706
(217) 782-5055
kevin.bonin@ilag.gov

Service List

For the Respondent

David K. Cox
Attorney for Respondent
110 North Charter Street
Monticello, Illinois 61856
mayorcox@cox-lawfirm.com
Via E-Mail

For the Illinois Pollution Control Board

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
carol.webb@illinois.gov
Via E-Mail

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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and the CITY OF HOOPESTON (“Respondent”), (collectively “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.* (2022), 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 January 13, 2022, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2022), 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 (2022).

3. At all times relevant to the Complaint, Respondent was and is an Illinois municipal corporation located in Vermilion County with approximately 5,351 residents.

4. At all times relevant to this Complaint, Respondent owned and operated a publicly-owned treatment works located on South Sixth Avenue, Hoopeston, Vermilion County, Illinois (“Hoopeston POTW”).

5. Respondent operates Hoopeston POTW pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit Number IL0024830 (“the Permit”).

B. Allegations of Non-Compliance

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

Count I: Failure to Timely Apply for NPDES Permit Renewal
Section 12(f) of the Act, 415 ILCS 5/12(f) (2022); and
Sections 309.102(a) and 309.104(a) of the Board’s regulations, 35 Ill.
Adm. Code 309.102(a) and 309.104(a).

Count II: Failure to Submit Required Reports
Section 12(f) of the Act, 415 ILCS 5/12(f) (2022);
Sections 305.102(b) and 309.102(a) of the Board’s regulations, 35 Ill.
Adm. Code 305.102(b) and 309.102(a); and
Special Conditions 14 and 15 of the Permit.

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

1. On May 1, 2020, Illinois EPA reissued the Permit to the Respondent.
2. Respondent's outstanding obligations to submit delinquent reports were incorporated into the terms of the reissued Permit.

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 (2022).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), 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 Illinois EPA's information gathering responsibilities were hindered by the Respondent's alleged violations thereby threatening human health and the environment.
2. There is social and economic benefit to the facility.
3. Operation of the facility was and is suitable for the area in which it is located.
4. Applying for the reissuance of an NPDES permit prior to the deadline established by the Board's regulations and compliance with the reporting conditions of an NPDES permit are both technically practicable and economically reasonable.
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) (2022), 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;
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; and
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. Respondent allegedly failed to comply with the reporting conditions of the Permit and allegedly failed to reapply for reissuance of the Permit in compliance with the deadlines required by the Board’s regulations. The alleged violations began on or around February 1, 2018 and were resolved on May 1, 2020.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.

3. The civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Hundred Dollars (\$500.00) 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. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.
8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of Five Hundred Dollars (\$500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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

1. 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, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kevin Bonin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General’s Office
500 South 2nd Street
Springfield, Illinois 62701

4. Payment of the civil penalty shall be approved by the Respondent’s City Council (“Approval”) prior to the tendering of payment. A copy of the Approval is attached hereto and incorporated by reference into this Stipulation as Exhibit A.

D. Future Compliance

1. The Respondent shall comply with the terms and conditions of the Permit.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his 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, his employees and representatives, may take photographs, samples, and collect

information, as they deem necessary.

3. 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.

4. 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 \$500.00 penalty, its commitment to comply with the terms and conditions of the Permit as contained in Section V.D.1 above, its commitment to cease and desist as contained in Section V.D.4 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 January 13, 2022. 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 (2022), or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

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. Opportunity For Public Comment

Pursuant to 35 Ill. Adm. Code 103.300(b)(2), the Board shall publish notice of this Stipulation for at least 30 days prior to the Board accepting the Stipulation. If public comments are submitted to the Board regarding this Stipulation, the Complainant reserves the right to withdraw its consent if the comments regarding the Stipulation disclose facts or considerations which indicate that the Stipulation is inappropriate, improper, or inadequate. Respondent consents to the entry of this Stipulation without further notice and agrees not to withdraw from or oppose acceptance of this Stipulation or to challenge any provision of the Stipulation, unless the Complainant has notified Respondent in writing that it withdraws or withholds its consent for the Stipulation. In the event the Complainant notifies the Respondent that it withdraws or withholds its consent for the Stipulation, then the terms of the agreement may not be used as evidence in any litigation between those entities.

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.

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS
by KWAME RAOUL
Attorney General of the
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

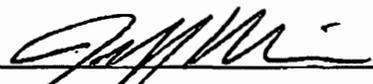
BY: 
CHARLES GUNNARSON
Chief Legal Counsel

DATE: 09/07/2023

DATE: 9/6/23

FOR THE RESPONDENT:

CITY OF HOOPESTON

BY: 
Its: Mayor
[title of signatory]

DATE: 8-17-23

EXHIBIT A

Electronic Filing: Received, Clerk's Office 09/12/2023

CITY OF HOOPESTON

REGULAR COUNCIL MEETING

TUESDAY AUGUST 15, 2023

7:00 PM CITY HALL

- I. CALL TO ORDER-CALL TO ORDER AND PLEDGE LED BY CLERK LANE
- II. ROLL CALL- FIVE COUNCIL MEMBERS WERE PRESENT: Eyrich, K. Ferrell, M. Ferrell, Lawson and Porth. Garrett and Highfill were absent. Mayor Wise was by remote.

Eyrich made a motion to nominate Lawson for Mayor Pro Tem with a second by K. Ferrell. The council voted five to zero for Lawson as Mayor Pro Tem.

- III. APPROVAL OF AGENDA- Porth moved to approve the agenda seconded by K. Ferrell. The agenda was approved 5-0.
- IV. MINUTES OF PREVIOUS MEETING- Porth moved to approve minutes of the previous meeting, seconded by M. Ferrell. The minutes were approved 5-0.
- V. PAYMENT OF BILLS- K. Ferrell moved to approve payment of bills, seconded by M. Ferrell. Roll call vote was taken, and bills were approved for payment five to zero.
- VI. NO PRESENTATIONS
- VII. NO PETITIONS TO COUNCIL
- VIII. NO PUBLIC COMMENT
- IX. NO EXECUTIVE SESSION
- X. REPORT OF OFFICERS
 - a) Eyrich made a motion to approve the EPA settlement agreement PCB No. 22-34. K. Ferrell seconded the motion. Roll call vote was taken. Eyrich, K. Ferrell, M. Ferrell, Lawson and Porth all voted aye. No nay votes making it 5 to 0 in favor of the settlement.
 - b) K. Ferrell announced the Electronics recycling collection October 14 from 10 am to 2pm at the Mcferren Park Annex.
 - c) M. Ferrell reported the fire department has had an issue with the ladder truck. It will be repaired or replaced.
 - d) Garrett – absent
 - e) Highfill – absent
 - f) Lawson- An Agreement for School Resource Officer services has been discussed and she made the motion to approve the agreement for this school year. Eyrich seconded the motion. Roll call vote was taken, and the motion was passed five to zero. The Animal Control agreement with Vermilion County has not been working out. The committee will be looking at other options. Lawson also made a motion to appoint Bobbi (Redden) Harbacek to the police auxiliary. Eyrich seconded the motion. Roll call vote was taken, and the motion was approved five to zero.
 - g) Porth had nothing to report.
- XI. NO COMMUNICATIONS TO COUNCIL
- XII. NO UNFINISHED BUSINESS
- XIII. NO NEW BUSINESS
- XIV. COMMENTS BY MAYOR-No appointment currently for Ward III Alderman.

Electronic Filing: Received, Clerk's Office 09/12/2023

Acceptance of the MFT proposal with SNC Construction is needed. The total amount is \$71,336.71. K. Ferrell moved to accept the proposal seconded by Eyrich. Roll call vote was taken. Eyrich, K. Ferrell, M. Ferrell, Lawson and Porth voted aye to accept the proposal. There were no nay votes. The motion passed 5 to 0.

A number of yield signs at intersections all around town will be installed. An ordinance nameing these intersections will be written so the council can vote for approval at the next meeting.

The city will remove the "No Trucks" sign from 1st Ave.

Because it is difficult to get residents from each Ward to run for aldermen, the mayor is suggesting a discussion and possible vote to go to "at large" councilpersons rather than by wards.

To redeem all the Tax Sales on 220 E. Main St., K. Ferrell moved to accept the Real Estate Redemption for the property in the amount of \$3358.61 by August 25, 2023. Eyrich seconded the motion. Roll call vote was taken. All five council members present vote aye. No nay votes. The motion passed.

Lawson made the motion to accept the "Agreement for Deed in Lieu of Foreclosure" for the property at 306 E. Main St for \$1,000. K. Ferrell seconded the motion. Roll call vote was taken. Eyrich, K. Ferrell, M. Ferrell, Lawson and Porth voted aye with no nay votes. The motion was approved five to zero.

Phase 1 and phase 2 of asbestos removal of the properties being demolished will be done.

XV. ATTORNEY COMMENTS

The procedures for going from wards to at large will be checked into.

XVI.ADJOURN

K. Ferrell moved to adjourn seconded by M. Ferrell.

Council adjourned at 7:38 pm.

Gail Lane, City Clerk

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
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Complainant,)	
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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, 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) (2022), moves that the Illinois Pollution Control Board (“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) (2022). In support of this motion, Complainant states as follows:

1. The Complaint in this matter was filed on January 13, 2022, and alleges violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022); Sections 305.102(b), 309.102(a), and 309.104(a) of the Board’s regulations, 35 Ill. Adm. Code 305.102(b), 309.102(a), and 309.104(a); and Special Conditions 14 and 15 of NPDES Permit No. IL0024830.
2. Filed contemporaneously with this motion is a Stipulation and Proposal for Settlement (“Stipulation”) executed between Complainant and Respondent, CITY OF HOOPESTON.
3. The parties have reached agreement on all outstanding issues in this matter.

4. The parties agree that a hearing on the Stipulation 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) (2022).

5. No hearing is scheduled in this matter.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2022).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

BY: /s/ Kevin D. Bonin
KEVIN D. BONIN, #6294877
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South 2nd Street
Springfield, Illinois 62706
Ph: (217) 782-5055
Fax: (217) 524-7740
kevin.bonin@ilag.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2023, I served by electronic mail true and correct copies of the documents entitled Notice of Filing, Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement, and Certificate of Service to:

David K. Cox
Attorney for Respondent
110 North Charter Street
Monticello, Illinois 61856
mayorcox@cox-lawfirm.com
Via E-Mail

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
carol.webb@illinois.gov
Via E-Mail

s/ Lilia M. Brown
Lilia M. Brown
Administrative Secretary

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

s/ Lilia M. Brown
Lilia M. Brown
Administrative Secretary