

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 29 2005

STATE OF ILLINOIS
Pollution Control Board

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

Complainant,)

v.)

RON FREEMAN, individually, and)
d/b/a HARBOR LITES-PISTAKEE)
FISHING CLUB,)

Respondent.)

PCB No. 05-221
(Enforcement - Water)

NOTICE OF FILING

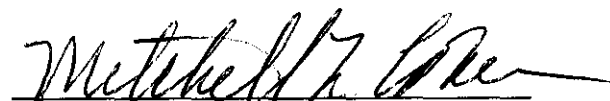
TO: See Attached Service List

PLEASE TAKE NOTICE that on July 25, 2005, we filed with the Illinois Pollution Control Board a "**Stipulation and Proposal for Settlement**" and "**Relief from the Hearing Requirement**", a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

SERVICE LIST

Attn: Ronald Freeman
Arcadia Village, Lot 532
2692 NE Highway 70
Arcadia, Florida 34266

Ronald Freeman
Harbor Lites-Pistake Fishing Club
33418 North Lakeshore Drive
Wildwood, Illinois 60030

Ronald Freeman
200 Mainsail Drive
Third Lake, Illinois 60030

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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) (2002), 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) (2002). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violation of the Section 9(a) of the Act, 415 ILCS 5/19(a) (2002), and section 611.356(d)(1) of the Board's regulations, 35 Ill. Adm. Code 611.356(d)(1) (2002).

2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.

3. The parties have reached agreement on all outstanding issues in this matter.

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

5. 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) (2002).


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) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:


MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

DATE: July 25, 2005

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

Complainant,)

vs.)

RON FREEMAN, individually, and)
d/b/a HARBOR LITES-PISTAKEE)
FISHING CLUB,)

Respondent.)

PCB No. 05-221
(Enforcement - Water)

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, RON FREEMAN ("FREEMAN"), individually, and d/b/a HARBOR LITES-PISTAKEE FISHING CLUB ("HARBOR LITES"), 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. 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. Insolvency of the Respondent by filing a petition for bankruptcy shall not be deemed a proceeding to contest the validity of this Stipulation.

I.

JURISDICTION

The Board has jurisdiction over 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 Agreement and to legally bind them to it.

III.

STATEMENT OF FACTS

A. Parties

1. On June 29, 2005, 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. Respondent is the owner of HARBOR LITES, a membership sports and recreation club.

B. Site Description

1. Respondent owns and operates a potable water distribution system serving approximately 100 residents, members and guests of the Harbor Lites - Pistakee Fishing Club ("Club") located at 33418 Lake Shore Drive, Grayslake, Lake County, Illinois 60030 ("Site").

2. Respondent's water distribution system at the Club is considered a public water supply ("PWS") under Illinois law.

C. Allegations of Non-Compliance

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

Count I: Monitoring and Reporting Violations
Violation of Section 19 of the Act, 415 ILCS 5/19(a) (2002), and 35 Ill. Adm. Code 611.356(d) (1).

D. Admission of Violations

The Respondent admits the violations alleged in this matter and referenced herein.

E. Compliance Activities to Date

1. Upon learning of it's failure to submit lead and copper samples, Respondent submitted lead and copper samples from its PWS in compliance with Illinois EPA regulations.

IV.

APPLICABILITY

This Stipulation Agreement 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.

1. No change in ownership, corporate status or operator of the Site shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. 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.

2. In the event that the Respondent proposes to sell or transfer any real property or operations subject to any order accepting and adopting the terms of this Stipulation and Proposal

for Settlement, the Respondent shall notify the Complainant 30 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 the prospective purchaser or successor's compliance with any Order accepting and adopting the terms of this Stipulation a condition of any such sale or transfer and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to any such successor in interest. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

V.

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.

VI.

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. The Parties state that the impact to the public resulting from Respondent's non-compliance was that the non-compliance (specifically, failing to submit lead and copper samples from a PWS) presented a potential for risk of harm to human health and the environment.

2. The Parties agree that Respondent's business is of social and economic benefit.

3. The parties agree that the Site was suitable to the area in which it is located when samples of the PWS' water is submitted for lead and copper testing.

4. The parties agree that complying with the requirements of the Act is both technically practicable and economically reasonable.

5. The parties state that Respondent now submits water samples for lead and copper testing.

VII.

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.
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to

undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state:

1. The Parties state that the duration of the violation for monitoring and reporting occurred from at least from July 1, 2002, until December 31, 2002.

2. The parties agree that Respondent demonstrated diligence in regard to this violation after the State notified Respondent of the violations. The Respondent subsequently began submitting water samples for lead and copper testing.

3. The Parties agree the Respondent received some economic benefit by delaying compliance with the lead and copper monitoring and reporting requirements. However the penalty assessed negates the economic benefit accrued.

4. The Parties agree that the appropriate penalty that will serve as a deterrence is \$3,000.00.

5. To Complainant's knowledge, the 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.

VIII.

TERMS OF SETTLEMENT

A. 1. a. The Respondent shall pay a civil penalty in the sum of Three Thousand Dollars (\$3,000.00). The Respondent by signing this Stipulation warrants that payment of the Three Thousand Dollars (\$3,000.00) required herein has been tendered to the Complainant in a form acceptable to the Complainant. The penalty described in this Stipulation shall be paid by certified check or money order payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund. Respondent's name and social security number shall appear on the check. The certified check or money order shall be sent with the original Stipulation And Proposal For Settlement signed by Respondent to:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, Illinois 60601

2. The Respondent may be reached at the following addresses:

Attn: Ronald Freeman
Arcadia Village, Lot 532
2692 NE Highway 70
Arcadia, Florida 34266

Ronald Freeman
Harbor Lites-Pistake Fishing Club
33418 North Lakeshore Drive
Wildwood, Illinois 60030

Ronald Freeman
200 Mainsail Drive
Third Lake, Illinois 60030

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondent hereby agrees that 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 promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h) (2002). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

The Respondent shall cease and desist from all future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

D. Release from Liability

In consideration of the Respondent's payment of the \$3,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and

Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for any 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 June 29, 2005. 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 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.

E. 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 Site 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.

F. 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.

G. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting

this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

C. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms therein.

D. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

WHEREFORE, Complainant and Respondent, by their
representatives, enter into this Stipulation and Proposal for
Settlement as written.

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

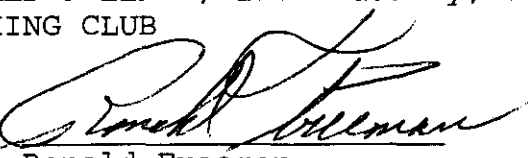
BY: _____
WILLIAM D. INGERSOLL,
Acting Chief Legal Counsel

DATE: _____

DATE: _____

FOR THE RESPONDENT:

RONALD FREEMAN, individually, and d/b/a HARBOR LITES-PISTAKE
FISHING CLUB

BY: 
Ronald Freeman

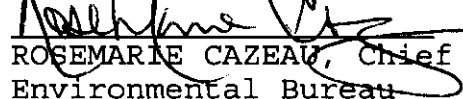
DATE: 7-6-05

WHEREFORE, Complainant and Respondent, by their
representatives, enter into this Stipulation and Proposal for
Settlement as written.

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: 7/26/05

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
WILLIAM D. INGERSOLL
Acting Chief Legal Counsel

DATE: July 12, 2005

FOR THE RESPONDENT:
RONALD FREEMAN, individually, and d/b/a HARBOR LITES-PISTAKE
FISHING CLUB

BY: _____
Ronald Freeman

DATE: _____

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 29TH day of July, 2005, I caused to be served by First Class Mail the foregoing **"Stipulation and Proposal for Settlement"** and **"Relief from the Hearing Requirement"** to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


MITCHELL L. COHEN