

APR 26 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board


PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	PCB No. 01-104
v.)	(Enforcement - Water)
)	
CITY OF WAUKEGAN,)	
a Municipal Corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. Michael S. Blazer
The Jeff Diver Group, LLC
1749 South Naperville Road, Suite 102
Wheaton, Illinois 60187

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **Stipulation and Proposal for Settlement and Request for Relief from Hearing Requirement**, true and correct copies of which are attached hereto and herewith served upon you.

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

BY: 

MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel: (312)814-2069

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of a Stipulation and Proposal for Settlement and Request for Relief from Hearing Requirement were mailed, first class postage prepaid, to the person listed on the Notice of Filing on April 26, 2004.

BY: Michael C. ParTEE
MICHAEL C. PARTEE

It is also hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on April 26, 2004:

Pollution Control Board, Attn: Clerk
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

BY: Michael C. ParTEE
MICHAEL C. PARTEE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

APR 26 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
v.)
)
CITY OF WAUKEGAN,)
a Municipal Corporation,)
)
Respondent.)

PCB No. 01-104
(Enforcement - Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT WITH THE CITY OF WAUKEGAN

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, CITY OF WAUKEGAN ("City"), a municipal corporation, do hereby agree to this Stipulation and Proposal for Settlement (hereinafter referred to as the "Agreement") and submit it to the Board for acceptance. If the Board accepts and enters this Agreement, Respondent agrees to be bound by this Agreement and not to contest its validity in any subsequent proceeding to implement or enforce its terms, except for purposes of interpretation as provided for under Section VI of this Stipulation.

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).

and lift station discharges and in upgrading or replacing all dual pumps at 10 lift stations to guard against a recurrence of the type of incident that is the subject of this action.

9. The City's facility was not permitted by the Illinois EPA pursuant to the National Pollutant Discharge Elimination System ("NPDES") to discharge untreated sewage to waters of the State.

C. Allegations of Non-Compliance

Complainant contends that the Respondent violated the following provisions of the Act and Board's Water Pollution Regulations:

- Count I: Water pollution in violation of 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 309.102(a);
- Count II: Water pollution control system failure in violation of 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 306.102(a);
- Count III: Sanitary sewer overflow and bypass in violation of 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 306.304 and 306.305(c); and
- Count IV: Water pollution discharge without an NPDES permit in violation of 415 ILCS 5/12(c) and (f) (2002), and 35 Ill. Adm. Code 304.141(b) and 309.102(a).

D. Summary Judgment on the Alleged Violations

On August 23, 2001, the Board entered summary judgment in favor of Complainant and against Respondent on Counts I, II and IV. As to Count III, the Board found that Respondent violated Section 12(a) of the Act and Section 306.304 of the Board's Water Pollution Regulations, but Section 306.305(c) of the Board's Water Pollution Regulations did not apply to the facts in the present case and, therefore, Respondent did not violate Section 306.305(c).

IV.

APPLICABILITY

This Agreement shall apply to and be binding upon the Complainant and 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 to enforce this Agreement the failure of any of its officers, directors, agents or employees to take such action as shall be required to comply with the provisions of this Agreement.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Agreement in no way affects Respondent's responsibility to comply with any other federal, state or local laws or regulations, including, but not limited to, the Act and the regulations promulgated thereunder at 35 Ill. Adm. Code Subtitles A through H.

VI.

FORUM

The parties agree that the forum of any action commenced for the purposes of interpretation and enforcement of the terms and conditions of this Agreement shall be the Circuit Court of Lake County, Illinois.

VII.

SEVERABILITY

It is the intent of the parties that the provisions of this Agreement 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 provisions shall remain in full force and effect.

VIII.

FACTS AND CIRCUMSTANCES BEARING UPON THE REASONABLENESS OF THE ALLEGED NONCOMPLIANCE

1. Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides as follows:

- (c) 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:
 - (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 - (ii) the social and economic value of the pollution source;
 - (iii) 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;
 - (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
 - (v) any subsequent compliance.

2. Section 103.302 of the Board regulations, 35 Ill. Adm. Code 103.302, further provides that a written statement addressing the facts and circumstances listed in Section 33(c) of the Act must be contained in all Stipulations and Proposals for Settlement presented to the Board.

3. In response to the factors set forth in Section 33(c) of the Act, the parties state as follows:

a. Interference with the protection of health, general welfare and physical property of the People resulted from the discharge of approximately 31,600 gallons of sewage from Respondent's facility to the environment.

b. The City's facility has social and economic benefit because it is an integral part in delivering sewage to the treatment plant for proper treatment.

c. The City's facility is suitable for the general area in which it is located.

d. It is technically practicable and economically feasible to prevent the discharge of sewage from Respondent's facility by maintaining and operating two functioning sewage pumps at the facility.

e. Subsequent to the time frame of the alleged violations, Respondent installed two new pumps at the facility and implemented an operation and maintenance protocol to prevent a future lift station failure.

IX.

CONSIDERATION OF THE SECTION 42(h) FACTORS

1. Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides as follows:

Civil penalties.

* * *

(h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of 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.

2. In response to the factors set forth in Section 42(h) of the Act, the parties state as follows:

a. The duration of the violations was from April 1999, when the first pump failed at the facility, to July 28, 1999, when new pumps were installed at the facility and normal

operation resumed. The gravity of the violations is the discharge of approximately 31,600 gallons of sewage to a water of the State.

b. Following the time frame of the alleged violations, Respondent exhibited due diligence in its method of operation, complying with the requirements of the Act and regulations promulgated thereunder.

c. Some economic benefit likely accrued to the Respondent from the alleged noncompliance with the Act and regulations, but the State is presently unable to quantify the value of the benefit received.

d. Complainant contends that the civil penalty to be paid by Respondent will serve to deter future violations of the Act and regulations promulgated thereunder, and will enhance voluntary compliance with federal and state environmental laws.

e. Complainant is aware of two previously adjudicated matters involving violations of the Act by the Respondent. See Illinois EPA v. City of Waukegan, et al., PCB No. 71-298 (Dec. 21, 1971) (involved violations of various subsections of 415 ILCS 5/21 (1970) and the solid waste regulations promulgated thereunder at a waste disposal site in 1971); Illinois EPA v. City of Waukegan, et al., PCB No. 77-322 (Oct. 8, 1981) (involved violations of subsections 415 ILCS 5/12 and 5/21 (1980), and various water pollution and solid waste

regulations promulgated thereunder at a waste disposal site in mid-1970s).

3. The parties further state that the civil penalty to be paid by Respondent was determined in light of the penalty factors set forth under Section 42(h) of the Act, the statutory maximum civil penalty, and other, relevant civil and administrative settlements.

X.

TERMS OF SETTLEMENT

A. Penalty

1. The Respondent shall pay a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) within 30 calendar days after the date upon which the Board issues a final order accepting this Agreement.

2. Payment by the Respondent shall be made by check or money order, payable to the Illinois EPA for deposit in 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

The name, case number, and the City's Federal Employer Identification Number ("FEIN"), 36-6006137, shall appear on the face of the check or money order. A copy of the check or money order and the transmittal letters shall be sent to:

Michael C. Partee (or other designee)
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

3. For purposes of payment and collection, the Respondent's attorney may be reached at the following address:

Michael S. Blazer
The Jeff Diver Group, L.L.C.
1749 South Naperville Road, Suite 102
Wheaton, Illinois 60187

4. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees, as determined by the Circuit Court.

B. Interest on Penalties

1. As required by Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any penalty amount owed by 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 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 defaulting Respondent's FEIN shall appear on the

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

Michael C. Partee (or other designee)
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

C. Future Use

This Agreement may be used against the Respondent in any subsequent enforcement action or permit proceeding as evidence of a past adjudication of violation of the Act and the regulations promulgated thereunder, for purposes of Section 39(i) and/or 42(h) of the Act, 415 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 City's facility which is the subject of this Agreement, 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, to the extent allowable by law.

E. Cease and Desist

The Respondent shall comply with the Act and regulations promulgated thereunder, including but not limited to those sections of the Act and regulations that were the subject matter of the Complaint as outlined in Section III.C of this Agreement.

F. Release from Liability

In consideration of the Respondent's payment of a \$25,000.00 civil penalty and Respondent's commitment to comply with the Act and regulations promulgated thereunder, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for alleged violations of the Act and 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 simultaneous with this Agreement. The Complainant reserves, and this Agreement 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 Agreement.

Nothing in this Agreement 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 which is not bound by this

Agreement, as provided in Section IV (Applicability) of this Agreement.

G. Enforcement of Agreement

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

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

[The remainder of this page should be blank]

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

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS
by 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: _____
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: _____

DATE: _____

FOR THE RESPONDENT:

CITY OF WAUKEGAN

BY: Ray Vukobrat

ITS: Director of Gov't Services

DATE: 7-3-04

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

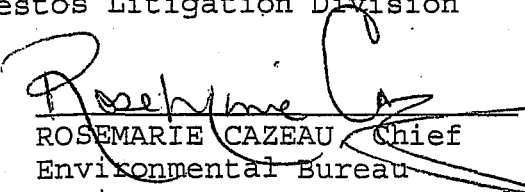
AGREED:

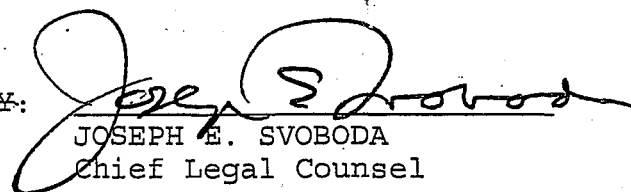
FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS
by 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: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 4/15/04

DATE: 4/12/04

FOR THE RESPONDENT:

CITY OF WAUKEGAN

BY: _____

ITS: _____

DATE: _____

RECEIVED
CLERK'S OFFICE

APR 26 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
v.) PCB No. 01-104
) (Enforcement - Water)
)
CITY OF WAUKEGAN,)
a Municipal Corporation,)
)
Respondent.)

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in this case pursuant to Section 31(c) (2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c) (2) (2002), and Section 103.300 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 103.300. In support of its Motion, the Complainant states as follows:

1. Section 31(c) (2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c) (2) provides as follows:

Notice; complaint; hearing.

* * *

(c) (2) 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). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) 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 proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act

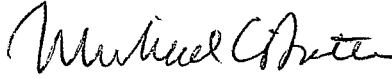
3. On April 23, 2004, the same date as this Request, a Stipulation and Proposal for Settlement with Respondent was filed with the Board.

4. No hearing is currently scheduled in this case and no third party has filed a written demand for a hearing.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

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



BY:

MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel: (312)814-2069

