

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 27 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)

Complainant,)

v.)

PARAMOUNT DEVELOPERS, INC.)
an Illinois Corporation,)

Respondent.)

No. 04-84
(Enforcement - Water)

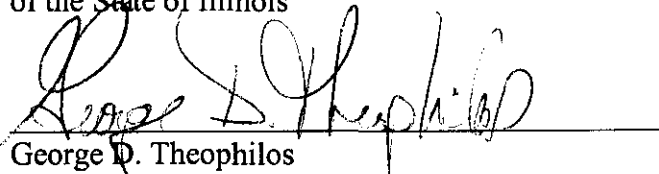
NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 27th day of July, 2005, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and a **STIPULATION AND PROPOSAL FOR SETTLEMENT**, true and correct copies of which are attached hereto and is hereby served upon you.

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

By:



George D. Theophilos
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Fl.
Chicago, IL 60601
(312) 814-6986

DATE: July 27, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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

Mr. Charles Gunnarson, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Mr. Kim R. Denkwalter, Esq.
Paramount Developers, Inc.
5215 Old Orchard Rd., Suite 1010
Skokie, IL 60077

JUL 27 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 v.)
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 PARAMOUNT DEVELOPERS, INC., an)
 Illinois Corporation,)
)
 Respondent.)

PCB 04-84

(Enforcement - Water)

MOTION FOR 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 hereby moves for 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 this 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 November 24, 2003, the Complaint in this matter was filed with the Board.

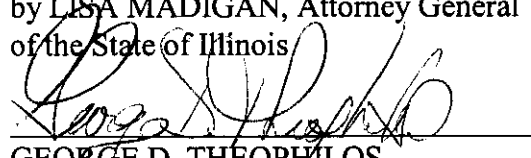
4. Subsequently, the parties to this action reached agreement on a Stipulation and Proposal For Settlement, which is being filed with the Board concurrently with this motion. No hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY:


GEORGE D. THEOPHILOS
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
312-814-6986

DATE: July 27, 2005

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois)
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 Complainant,)
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 v.)
)
 PARAMOUNT DEVELOPERS, INC.,)
 an Illinois Corporation.)
)
 Respondent.)

PCB No. 04-84

(Enforcement - Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois and the Illinois Environmental Protection Agency ("ILLINOIS EPA"), and PARAMOUNT DEVELOPER'S, INC., an Illinois Corporation, ("Respondent"), 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 hearing 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, the Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their 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 November 24, 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 Illinois

Environmental Protection Act ("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 was and is an Illinois corporation in good standing, and is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Respondent was a developer of residential homes, at the Hatch Farm development located in Section 15, Township 38 North, Range 10 East in Lisle, DuPage County, Illinois ("Site"). Water from storm sewers and other areas of the Site discharges into a pond and wetland area. Water from the pond and wetland area discharges into the East Branch of the DuPage River.

2. The Illinois EPA granted Respondent coverage under the general National Pollutant Discharge Elimination System storm water permit for construction site activities ("general NPDES permit"). The permit was effective from June 1, 1998 until May 31, 2003.

3. The provisions and conditions of Respondent's general NPDES permit required Respondent to, *inter alia*, develop and implement a water pollution plan in accordance with good

engineering practices for each construction site covered by the permit.

4. Complainant contends that:

a. Respondent failed to monitor the Site as required by the general NPDES permit;

b. Respondent failed to install adequate stormwater controls when excessive erosion was evident, as required by the general NPDES permit;

c. On or about July 19, 2001, Respondent caused, threatened, or allowed erosion of loose dirt and silt, and poor to nonexistent erosion control measures at the Site;

d. As of August 7, 2001, Respondent had taken few, if any, actions to install improved erosion control measures at the Site, there was no silt fencing around large piles of dirt on the Site, filters on storm sewer inlets were either shredded or improperly installed, and there was substantial soil erosion at the Site;

e. On August 16, 2001, Respondent had caused, threatened or allowed an excessive amount of loose dirt and silt at the Site to wash off into unprotected storm sewers and that the Respondent had not installed any improved erosion control measures;

- f. On May 9, 2002, Respondent had not installed silt fencing sufficient to adequately control erosion; and
- g. On May 12, 2003, areas of the Site remained either without control measures or with inadequate controls to prevent Site silt discharges to Illinois waters.

C. Allegations of Non-Compliance

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

- Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).
- Count II: Water Pollution, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).
- Count III: NPDES Storm Water Permit Violation, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Sections 309.102(a) and 309.146(a)(1) and (2) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.146(a)(1) and (2).
- Count IV: Failure to Maintain Reliable Pollution Control Systems, in violation of 12(a) of the Act, 415 ILCS 5/12(a) (2002), and Section 306.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a).

D. 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 neither admits nor denies the violations alleged in the Complaint and referenced in Section III. C. herein.

E. Compliance Activities to Date

Erosion control from construction activities is no longer a concern because the Respondent's site has now been developed with residential homes.

IV. APPLICABILITY

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, employees, successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. No change in ownership, corporate status or operator of the company shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. Respondent shall continue

to be bound by and remain liable for performance of all obligations under this Stipulation.

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 ALLEGED NON-COMPLIANCE

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 the following:

1. The discharge of pollutants in stormwater associated with construction activities at the Site posed, at a minimum, a threat to the environment.
2. There is a social and economic benefit to the residential development constructed by the Respondent.
3. The residential development involved in this matter is suitable for the area where the discharges occurred.
4. Complying with the requirements of the Act, Board regulations, and permit conditions was both technically practicable and economically reasonable.
5. With the completion of the development and the ceasing of development operations, Respondent is no longer in violation of the Act.

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 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.

In response to these factors, the parties state as follows:

1. The Complainant alleges that Respondent's failure to implement adequate erosion control measures was in direct contravention of the general NPDES

permit. It appears that many areas of the site remained without erosion control measures or with inadequate controls during the period of time between July 19, 2001, and May 12, 2003.

2. In failing to take adequate stormwater pollution prevention controls at the Site over the course of approximately 22 months, the Respondent demonstrated an absence of due diligence.
3. The Respondent likely enjoyed some financial benefit, but the penalty obtained negates the economic benefit accrued as a result of the delay in compliance.
4. The Complainant believes that a \$12,000.00 civil penalty should deter the Respondent and similarly situated developers from allowing poor erosion control practices and excessive silt-laden stormwater discharges associated with construction activities in the future.
5. Complainant is presently unaware of prior enforcement action against Respondent.
6. Self-disclosure did not occur in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Twelve Thousand Dollars (\$12,000) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN) shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

George Theophilos
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

Kim R. Denkewalter, Esq.
Paramount Developers, Inc.
5215 Old Orchard RD, STE 1010
Skokie, Illinois, 60077-0000

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including,

but not limited to, reasonable costs of collection and reasonable attorney's fees.

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 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 Twelve-Thousand Dollar (\$12,000.00) penalty and any specified costs and accrued interest, commitment 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 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 November 24, 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.

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 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

E. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, which 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.

3. 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 herein.

4. 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,

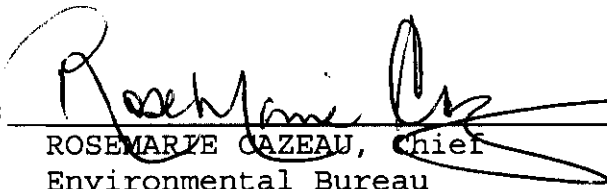
and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:  DATE: 7/5/05
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

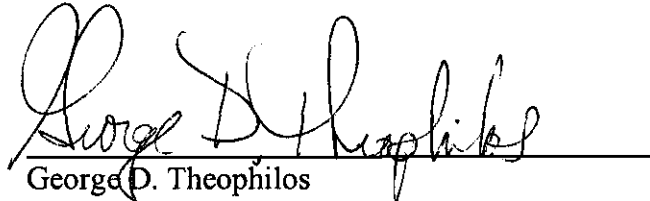
BY:  DATE: June 30, 2005
WILLIAM D. INGERSOLL
Acting Chief Legal Counsel

PARAMOUNT DEVELOPERS, INC.

BY: 
KIM R. DENKEWALTER
President

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused to be mailed, this 27th day of July, 2005, the foregoing **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and **STIPULATION AND PROPOSAL FOR SETTLEMENT** to the persons listed on said Service List by first class mail in a postage pre-paid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


George D. Theophilos