

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 09 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
LEONARD FOSTER, d/b/a RIVERCREST)
MOBILE HOME PARK,)
)
Respondent.)

PCB No. 06-04
(Enforcement)

NOTICE OF FILING

To: Leonard Foster
d/b/a Rivercrest Mobile Home Park
6933 South Route 45-52
Chebanse, IL 60922

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY 
KRISTEN LAUGHRIDGE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 6, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on September 6, 2005, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and STIPULATION AND PROPOSAL FOR SETTLEMENT:

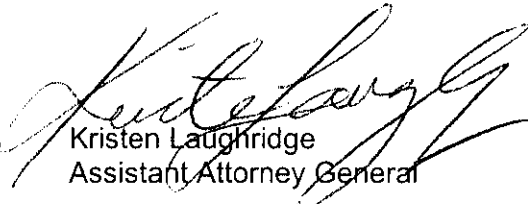
To: Leonard Foster
d/b/a Rivercrest Mobile Home Park
6933 South Route 45-52
Chebanse, IL 60922

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

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

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274



Kristen Laughridge
Assistant Attorney General

This filing is submitted on recycled paper.

SEP 09 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

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Complainant,)

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PCB 06-04

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(Enforcement)

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Leonard Foster d/b/a Rivercrest)

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Mobile Home Park,)

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Respondent.

STIPULATION AND PROPOSAL FOR SETTLEMENT**TABLE OF CONTENTS**

I.	JURISDICTION	2
II.	AUTHORIZATION	2
III.	STATEMENT OF FACTS	3
	A. Parties	3
	B. Site Description	3
	C. Allegations of Non-Compliance	4
	D. Admission of Violations	4
	E. Compliance Activities to Date	5
IV.	APPLICABILITY	6
V.	COMPLIANCE WITH OTHER LAWS AND REGULATIONS	7
VI.	IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE	7
VII.	CONSIDERATION OF 42(h) FACTORS	9
VIII.	TERMS OF SETTLEMENT	12
	A. Penalty	12
	B. Future Use	14
	C. Cease and Desist	15

D.	Release from Liability	15
E.	Right of Entry	17
F.	Correspondence, Reports, and Other Documents	17
G.	Enforcement of Board Order	18

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Respondent.		

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Leonard Foster d/b/a Rivercrest Mobile Home Park ("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, 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 July 6th, 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, Leonard Foster, has at all times relevant to this Complaint owned and operated the Rivercrest Mobile Home Park ("Park").

B. Site Description

1. The Rivercrest Mobile Home Park is located at 5800-5830 South River Road, Chebanse, Kankakee County, Illinois ("Park").

2. The Park includes a Public Water Supply ("PWS") that has 17 service connections and serves approximately 35 residents. The PWS is located on the east end of the Park and is designed so that water is pumped out of one well (Well #1) to a 500-gallon pressure tank, and distributed to the residences.

3. On October 21, 2003, Illinois EPA performed an engineering evaluation of the Park's PWS operations and observed multiple violations, including inadequate capacity and a rate of delivery, failure to chlorinate the water before it was distributed, and construction standards violations.

C. Allegations of Non-Compliance

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

- Count I: Section 18 of the Act, 415 ILCS 5/18(2002), 35 Ill. Adm. Code 601.101, 653.109(d) & (e), and 654.202, and Sections 3.2.1.1 and 3.2.1.2 of the 1982 Recommended Standards for Water Works.
- Count II: Section 18(a)(1) of the Act, 415 ILCS 5/18(a)(1)(2002), and 35 Ill. Adm. Code 606.101, 653.604(a), and 611.240(g).
- Count III: 35 Ill. Adm. Code. 653.103(a) and Sections 3.2.7.5 and 3.2.5.8 of the 1982 Recommended Standards for Water Works.

D. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

1. To resolve the inadequate capacity and rate of delivery, a second well was completed pursuant to Permit #0088-FY2005 on December 21, 2004. Illinois EPA inspected it and confirmed that the Well was properly constructed. The well discharge line contained a meter and sample tap.

2. The Defendant obtained an Operating Permit for chlorine disinfection at Wells #1 and #2 in January 2005. Monthly Operating Records and Coliform data sheets show that an acceptable chlorine residual is being maintained. Illinois EPA confirmed that the water discharged from the 2 wells is being chlorinated with sodium hypochlorite before entering a 2,000 gallon pressure tank for storage and distribution. Illinois EPA confirmed a 0.20 mg/l free chlorine residual during his June 13 inspection.

3. The Defendant extended the casing of Well #1 approximately 3-4 feet above ground level. A meter and sample tap were installed on the well's discharge line. The underground vault housing well #1 has been filled.

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 or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

1. No change in ownership, corporate status or operator of the facility 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 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 Complainant states the following:

1. Human health and the environment were threatened by the Respondent's violations.
2. There is social and economic benefit to the PWS at the Park.
3. Operation of the PWS is suitable for the area which it is in.
4. Operating a PWS with adequate capacity and rate of delivery, disinfecting the water with chlorine, and following the construction standards are both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board Regulations.

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 Respondent failed to have adequate capacity and rate of delivery and follow the proper construction standards from October 2003 until November 2004. Until Respondent received a permit, the Respondent failed to chlorinate its water before pumping it into the distribution system and failed to maintain a minimum of free chlorine residual of 0.2 mg/l or a minimum combined residual of 0.5 mg/l in all active parts of the distribution system.

2. Respondent eventually 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. No economic benefit was accrued.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of three thousand five hundred dollars (\$3,500.00) 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.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Three Thousand Five Hundred Dollars (\$3,500.00) 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 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:

Kristen Laughridge
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

Tom Andryk
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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:

Mr. Leonard Foster

6933 S. Route 45-52
Chebanse, Illinois 60922

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.F, 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 \$3,500.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.E 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 July 6th, 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 3.315 of the Act, 415 ILCS 5/3.315, 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 facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") of this Stipulation shall be submitted as follows:

As to the Complainant

Kristen Laughridge
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

Tom Andryk
Assistant Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Mr. Gregory Deck
Deck & Baron
200 East Court Street
Suite 408, P.O. Box 693
Kankakee, IL 60901-5133

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.

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.

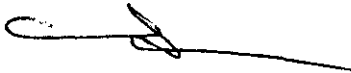
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:

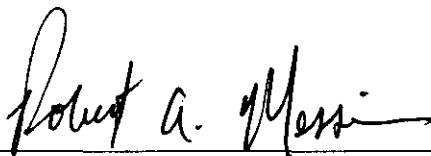


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 8/29/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

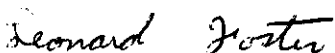
BY:



ROBERT A. MESSINA
Chief Legal Counsel

DATE: 9/1/05

BY:



Leonard Foster

DATE: 8-26-05