



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

FEB 07 2007

STATE OF ILLINOIS  
Pollution Control Board

**Lisa Madigan**  
ATTORNEY GENERAL

February 5, 2007

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. City of Gillespie, PCB 06-79***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief From Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Jennifer Bonkowski".

Jennifer Bonkowski  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

JB/pp  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 07 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
CITY OF GILLESPIE, )  
an Illinois municipal corporation, )  
)  
Respondent. )

PCB No. 06-79  
(Enforcement)

NOTICE OF FILING

To: Kevin Polo, Esq.  
Attorney at Law  
207 North Macoupin  
Gillespie, IL 62033


PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are 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:   
JENNIFER BONKOWSKI  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 5, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I did on February 5, 2007, 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, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Kevin Polo, Esq.  
Attorney at Law  
207 North Macoupin  
Gillespie, IL 62033

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  
Springfield, IL 62794

  
JENNIFER BONKOWSKI  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
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v. )  
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CITY OF GILLESPIE, )  
an Illinois municipal corporation, )  
)  
Respondent. )

PCB No. 06-79  
(Enforcement)

**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) (2004), moves that the Illinois Pollution Control 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) (2004). In support of this motion, Complainant states as follows:

1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. 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) (2004).

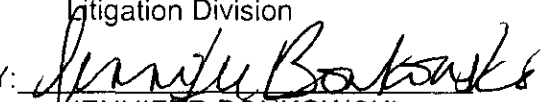
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY:

  
JENNIFER BONKOWSKI  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 5, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

FEB 07 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

-vs- )

CITY OF GILLESPIE, )

an Illinois municipal corporation, )

Respondent. )

PCB No. 06-79  
(Enforcement)

**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 CITY OF GILLESPIE, an Illinois municipal 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, 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. (2004).

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.

## II. STATEMENT OF FACTS

### A. Parties

1. A complaint was filed on November 18, 2005, 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(2004), 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 (2004).

3. The City of Gillespie ("City") is an Illinois municipal corporation located in Macoupin County, Illinois.

### B. Site Description

1. The City is the owner and operator of a municipal wastewater treatment plant ("WWTP").

2. The City's WWTP serves approximately 2,800 residents.

3. The Illinois EPA has issued to the City National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0022497 authorizing the discharge of treated effluent to an unnamed tributary of Bear Creek.

4. The Respondent is required by its NPDES permit to sample the discharge and to timely submit to the Illinois EPA monthly Discharge Monitoring Reports ("DMRs").

**C. Allegations of Non-Compliance**

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

Count I: The City failed to timely submit to the Illinois EPA monthly Discharge Monitoring Reports as required by its NPDES permit from December 2003 through December 2004.

By failing to comply with the reporting requirements of its NPDES permit, the Village has violated Section 305.102(b) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), and Section 12(f) of the Act, 415 ILCS 5/12 (2004).

**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**

An additional City employee has been certified to complete the DMRs, and the City has submitted back reports.

**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.

**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)(2004), 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. Complainant contends that the injury to, or interference with, the protection of the health, general welfare, and physical property of the People would be characterized as failure to comply with requirements meant to protect water quality in the State;
2. The parties agree that Respondent's WWTP is of social and economic benefit;
3. Respondent's facility is suitably located in the City of Gillespie, Macoupin County, Illinois.
4. The parties agree that complying with the Act and regulations is technically

practicable and economically reasonable; and

5. Respondent implemented measures subsequent to the alleged violations that are the subject of the Complaint in this matter in order to operate in compliance with the Act.

## VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), 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 failure to timely submit DMRs occurred from December 2003 through December 2004. Submitting DMRs is the cornerstone of the NPDES self-reporting system;
2. Subsequent to the City's receipt of the violation notice, Gillespie significantly improved its past neglect in meeting DMR requirements;
3. The Respondent accrued a nominal economic benefit in this matter.
4. Complainant has determined that a monetary penalty of \$2,000.00, in addition to the supplemental environmental project ("SEP") outlined in number 7 below, will serve to deter further violations and aid in future voluntary enforcement of the Act and applicable regulations.
5. The Illinois EPA has previously referred Gillespie for water pollution control ("WPC") and public water supply ("PWS") violations. In 1988, Gillespie was referred for WPC violations and ordered to pay a \$3,500.00 penalty. Gillespie was again referred for WPC violations in 1989 for the unauthorized cutting of a berm and discharge of effluent. Gillespie settled for and paid a \$1,000.00 penalty in 1995. In 1998, Gillespie was referred for PWS violations and paid a penalty of \$8,000.00;
6. The Respondent did not voluntarily self-disclose the non-compliance to the Illinois EPA; and
7. The settlement of this matter does include a SEP in addition to the monetary penalty. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, Respondent shall implement a SEP that consists of a \$5,000.00 grant to the Gillespie Soccer Association, designated for securing the Little Dog Coal Mine site.

## **VIII. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of two thousand dollars

(\$2,000.00) 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 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:

Peggy Poitevint  
Office of the Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), 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 (2004). 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:

Kevin A. Polo  
City Attorney  
City of Gillespie  
115 North Macoupin Street  
Gillespie, IL 62033

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. Supplemental Environmental Project**

In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, Respondent shall perform the following SEP. The City will implement the SEP within sixty (60) days from the date the Board adopts and accepts this Stipulation.

**Project Name:** Securing of Little Dog Coal Mine site through grant to the Gillespie Soccer Association

**Type of Project:** Environmental Restoration and Protection

**Estimated Cost:** \$5,000.00 grant to the Gillespie Soccer Association designated for securing the Little Dog Coal Mine site; entire cost of project will greatly exceed \$5,000.00 with the Gillespie Soccer Association paying the remainder.

**Description of Proposed Project:** The grant will fund a project that involves the construction of a fence surrounding environmentally sensitive areas of the former Little Dog Coal Mine (currently owned/operated by the Gillespie Soccer Association with designated areas being used as sporting fields).

**Expected Environmental Benefit:** The fencing is needed to protect the sensitive areas from being driven on by vehicles and ATV's, this activity having caused rutting and erosion on the environmentally sensitive slopes. The sloped areas consist of a thin layer of soil covering waste material of the former mining operation. When exposed through rutting and erosion caused by vehicle traffic, the waste material has been

leaching into Bear Creek. The fencing would be an attempt to reduce or eliminate the erosion and leaching.

**Region:** The project would be located wholly with Macoupin County, Illinois.

**Specific Location:** The site is located at the former Little Dog Coal Mine site on the north side of the City of Gillespie. The project would be located partially within the municipal boundaries of the City of Gillespie, partially within the municipal boundaries of the Village of East Gillespie and partially within the unincorporated area of Gillespie Township. The site drains into the Bear Creek watershed.

**Name, Address, City, State, Zip Code of group submitting the project idea:** City of Gillespie, 115 North Macoupin, Gillespie, Illinois 62033

**Contact Persons:**

Joshua Ross, Mayor (217) 839-2919  
Kevin A. Polo, City Attorney (217) 839-2000 ([kevinapolo@yahoo.com](mailto:kevinapolo@yahoo.com))

**C. 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.E, 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 (l) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(l) and/or 5/42(h)(2004). 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.

**D. 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.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$2,000.00 penalty and any specified costs and accrued interest, completion of the SEP, to Cease and Desist as contained in Section VIII.D 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 18, 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.

**F. 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.

**G. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jennifer Bonkowski  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706

Joey Logan-Wilkey  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62794

As to the Respondent

Kevin A. Polo  
City Attorney  
City of Gillespie  
115 North Macoupin Street  
Gillespie, IL 62033

**H. Modification of Stipulation**

The parties may, by mutual written consent, agree to extend any SEP implementation



dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.G. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

**I. 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.

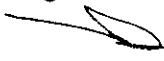
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,


LISA MADIGAN,  
Attorney General  
State of Illinois,

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

Dated: 1/16/07

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Dated: 1/29/07

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY  
BY:   
ROBERT A. MESSINA  
Chief Legal Counsel  
Division of Legal Counsel

Dated: 01/08/07

CITY OF GILLESPIE,  
an Illinois municipal corporation  
BY: 