

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
 Complainant,)
)
)
)
 v.)
)
 FIRST COUNTRY HOMES, LLC, an)
 Illinois limited liability company,)
 Respondent.)

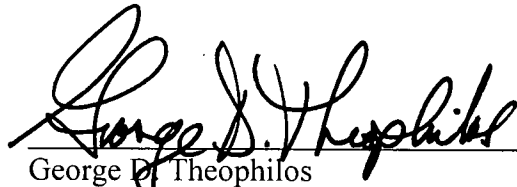
PCB 2006-173
 (Enforcement - Water)

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 11th day of February, 2008, 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
 69 West Washington St., 18th Flr.
 Chicago, IL 60602
 (312) 814-6986

DATE: February 11, 2008

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

Joe Greer
Gardiner Koch & Weisberg
53 W. Jackson Blvd., Suite 950
Chicago, Illinois 60604

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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) (2006), 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

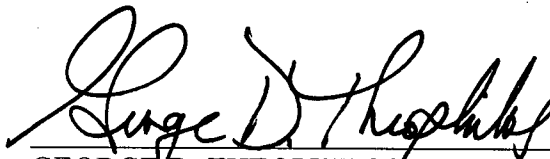
3. On May 16, 2006, the Complaint in this matter was filed with the Board.

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
69 W. Washington St, 18th Flr
Chicago, Illinois 60602
312-814-6986

DATE: February 11, 2008

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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 First Country Homes, LLC ("Respondent" or "First Country"), 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, First Country 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).

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 May 16, 2006, 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(2004), against First Country.

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. At all times relevant to the Complaint, First Country was and is an Illinois limited liability company that is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, First Country was the owner and developer of thirty residential lots located in Monee, Will County, Illinois and known as Country Meadows – Phase 8 (“Site”).

2. On December 28, 2004, Illinois EPA inspected the Site.

C. Allegations of Non-Compliance

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

- Count I: Failing to obtain a sewer construction permit prior to installing a sanitary sewer system, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), Section 12(b) of the Act, 415 ILCS 5/12(b) (2004) and 35 Ill. Adm. Code 309.202(a).
- Count II: Threatening to allow and/or allowing storm water discharges from the Site without first obtaining an NPDES storm water permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and 35 Ill. Adm. Code 309.102(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 does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

E. Compliance Activities to Date

A. On December 2, 2004, First Country submitted an application for storm water permit coverage for the Site.

B. On January 3, 2005, the Illinois EPA issued coverage to the Site under the NPDES general storm water permit.

C. On April 27, 2005, First Country submitted a complete and properly signed permit application for a sanitary sewer system construction permit at the Site.

D. On June 8, 2005, the Illinois EPA granted as-built permit coverage for the Site's sewer lines.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and First Country, and any officer, director, agent, or employee of First Country, as well as any successors or assigns of First Country. First Country 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.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of First Country under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, First Country 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 First Country 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. The State alleges that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by First Country's violations.

2. First Country's development of the Site provided social and economic benefit. The Site will increase the local tax base, provide needed residential housing in the area, and provide additional income to the local economy.

3. First Country's development of residential housing at the Site was suitable for the area.

4. The State contends that obtaining sewer construction and NPDES permits prior to beginning construction at the site and compliance with the terms of those permits was both technically practicable and economically reasonable. First Country contends that obtaining sewer construction and NPDES permits prior to beginning construction at the site and compliance with the terms of those permits was neither technically practicable nor economically reasonable

5. First Country 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)(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. First Country failed to obtain a permit for sewer construction prior to beginning sewer construction activities at the Site and threatened to allow storm water discharges from the Site without obtaining an NPDES storm water permit. These alleged violations began on or before December 28, 2004, or a date better known to First Country, and were resolved by Illinois EPA issuing an NPDES permit on January 3, 2005 and an as-built sewer construction permit on June 8, 2005.

2. Respondent attempted to come back into compliance with the Act and Board Regulations, once Illinois EPA notified it of its noncompliance, by seeking to obtain necessary signatures for its sewer construction permit application.

3. First Country obtained an economic benefit from advancing the completion of its development at the Site. The civil penalty obtained herein exceeds the economic benefit that First Country may have accrued as a result of its non-compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirty Thousand Dollars (\$30,000.00) 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. First Country shall pay a civil penalty in the sum of Thirty Thousand Dollars (\$30,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. First Country stipulates that payment has been tendered to First Country's attorney of record in this matter in a form acceptable to that attorney. Further, First Country stipulates that said attorney has been directed to make the penalty payment on behalf of First Country, 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 or money order 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 First Country's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

George D. Theophilos
Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

James Day
Assistant Counsel
Illinois Environmental Protection Agency
500 South Second Street
Springfield, Illinois 62702

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, First Country may be reached at the following address:

First Country Homes, LLC
25640 Jasmine Lane
Monee, IL 60449

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, First Country hereby agrees that this Stipulation may be used against First Country 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)(2004). Further, First Country 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

First Country 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 First Country's payment of the \$30,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the

Complainant releases, waives and discharges First Country 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 May 16, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against First Country 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 First Country.

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 Site which is the subject of this Stipulation, at all

reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

F. 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

George D. Theophilos
Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

James Day
Assistant Counsel
Illinois Environmental Protection Agency
500 South Second Street
Springfield, Illinois 62702

As to the Respondent

Cary M. Pumphrey, Esq.
Gardiner, Koch & Weisberg
53 W. Jackson Blvd, Suite 950
Chicago, Illinois 60604

H. 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. First Country 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.

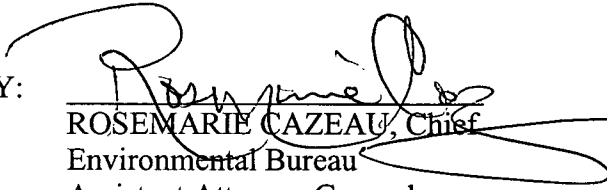
4. It is the intent of the Complainant and First Country that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or 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.

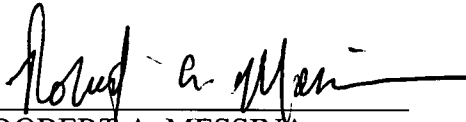
PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:  DATE: 1/3/08
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY:  DATE: 12/31/07
ROBERT A. MESSINA
Chief Legal Counsel

FIRST COUNTRY HOMES, LLC

BY: _____ DATE: _____
Name: _____
Title: _____

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: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

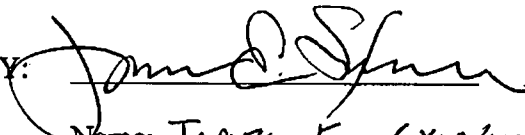
DATE: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

FIRST COUNTRY HOMES, LLC

BY: 
Name: JAMES E. SYLVESTER
Title: MANAGER

DATE: NOVEMBER 29, 2007

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused to be mailed, this 11th day of February, 2008, 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