

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB</b>
	)	
<b>CITY OF GENEVA,</b>	)	<b>(Enforcement - Water)</b>
<b>an Illinois municipal corporation,</b>	)	
	)	
<b>Respondent,</b>	)	

**NOTICE OF FILING**

TO: Charles A. Radovich  
Radovich & Radovich  
Attorneys at Law  
312 W. State St.  
P.O. Box 464  
Geneva, IL 60134

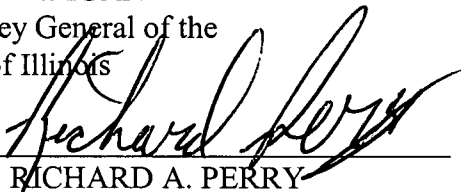
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that on the 25<sup>th</sup> of June, 2008, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement, and Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the  
State of Illinois

By: \_\_\_\_\_



RICHARD A. PERRY  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-2069

Date: June 25, 2008

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<b>Complainant,</b>	)	
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<b>v.</b>	)	<b>PCB</b>
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<b>CITY OF GENEVA,</b>	)	<b>(Enforcement - Water)</b>
<b>an Illinois municipal corporation,</b>	)	
	)	
<b>Respondent,</b>	)	

**MOTION TO REQUEST RELIEF  
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On June 25, 2008, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On June 25, 2008, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

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 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).

3. No hearing is currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the


Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2), effective, June 25, 2008:

Respectfully submitted,

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

By: \_\_\_\_\_



RICHARD A. PERRY  
Assistant Attorney General

Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-2069



**I. STATEMENT OF FACTS**

**A. Parties to the Stipulation**

1. On May 1, 2008, 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 (2006), 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 (2006).

3. At all times relevant to the Complaint, Respondent was and is an Illinois municipal corporation that is authorized to transact business in the State of Illinois.

At all times relevant to the Complaint, Respondent owned and operated a public water supply system located in the City of Geneva in Kane County, Illinois (the "Site").

4. The Kirk Road Business Center is located in the eastern part of the City of Geneva, at 429 North Kirk Road (the "Kirk Business Center").

5. On or about March 2006, Geneva allowed a developer to construct and install a water main at the Kirk Business Center (the "Water Main").

6. The Water Main was intended to serve a new two building office complex in the City of Geneva. The Water Main is an extension of and an addition to the larger water supply system for the City of Geneva (the "Geneva Water Supply"). The Geneva Water Supply serves or is intended to serve at least 15 service connections used by residents or regularly services at least 25 residents at least 60 days a year.

7. The construction and installation of the Water Main was completed on May 4,

2006.

8. At no point prior to or during the construction or installation of the Water Main did Geneva, its authorized representative, the developer, or any administrator or custodian of the Water Main possess a permit from the Illinois EPA authorizing the construction or installation of the Water Main.

9. The Illinois EPA issued an "as-built" construction permit to the Respondent on October 4, 2007.

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Failure to obtain a construction permit before allowing the construction of a water main,, in violation of Sections 18(a)(2), 18(a)(3), and 15(a) of the Act, 415 ILCS 5/18(a)(2)-(3) (2006), and 35 Ill. Adm. Code 602.101(a) and 652.101(a);

**C. Admission of Violations**

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

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA 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. 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 for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

## III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 to this Stipulation state the following:

1. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations, which may affect the general welfare of the People.
2. There is social and economic benefit to the operation of the Water Main at the Kirk Business Center.
3. Operation of the Water Main and the Kirk Business Center was suitable for the area in which it occurred.
4. Obtaining a permit prior to construction at the Site and compliance with its terms is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

**IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

1. Construction of the Water Main began on or about March of 2006, was completed on or about May 4, 2006, and an as as-built permit was issued by the Illinois EPA on June 6, 2006; the duration of the violation was at least three (3) months. Regarding gravity, it is important for the Illinois EPA to know about and monitor potable water supply construction and modification projects to ensure they are properly designed and constructed to protect public health.
2. Respondent was diligent in correcting the permit violation once the Illinois EPA notified it of its noncompliance.
3. The Respondent received no economic benefit from noncompliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Thousand Dollars (\$5,000.00) 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.

#### V. TERMS OF SETTLEMENT

##### A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of Five Thousand Dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

##### B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Richard A. Perry  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602

**D. Future Compliance**

1. 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.

2. In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her employees 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 conducting inspections and evaluating compliance status. 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.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$5000.00 penalty pursuant to the specific terms of this Stipulation, commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 1, 2008. 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. Enforcement and Modification of Stipulation**

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

**G. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation 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.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

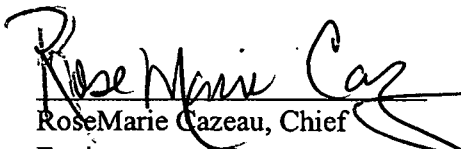
PEOPLE OF THE STATE OF ILLINOIS

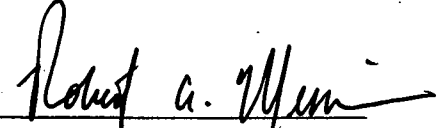
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

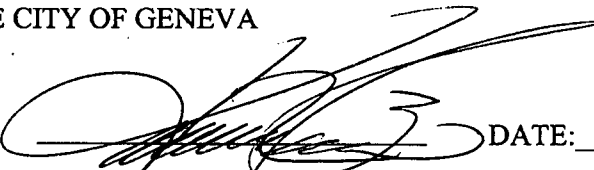
BY:   
RoseMarie Cazeau, Chief  
Environmental Bureau

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 6/3/08

DATE: 5/28/08

THE CITY OF GENEVA

BY: 

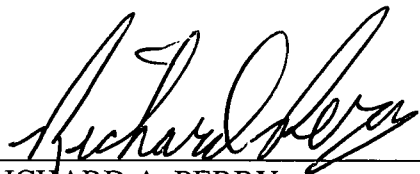
DATE: 6/17/08

Name: Kevin R. Burns  
(Print)

Title: Mayor

CERTIFICATE OF SERVICE

I, RICHARD A. PERRY, an Assistant Attorney General in this case, do certify that I caused to be served this 25<sup>th</sup> day of June, 2008, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the person listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
\_\_\_\_\_  
RICHARD A. PERRY