

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
- vs -	)	PCB No. 08-55
	)	(Enforcement - Public
VILLAGE OF MERRIONETTE PARK, an	)	Municipal Water Supply)
Illinois municipal corporation,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Paul O'Grady  
 Querrey & Harrow  
 175 West Jackson Boulevard, Suite 1600  
 Chicago, IL 60604-2827  
 (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation And Proposal For Settlement, a Motion to Request Relief from Hearing Requirement and Certificate of Service a copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
 Attorney General  
 State of Illinois

BY: *Nancy J. Tikalsky (SSS)*  
 NANCY J. TIKALSKY  
 Assistant Attorney General  
 Environmental Bureau  
 69 West Washington Street, 18<sup>th</sup> Floor  
 Chicago, Illinois 60602  
 312-814-8567

DATE: August 25, 2008

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
	)	PCB No. 08-55
v.	)	(Enforcement- Public
	)	Municipal Water Supply)
VILLAGE OF MERRIONETTE PARK, an Illinois	)	
municipal corporation,	)	
	)	
Respondent.	)	

**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 March 24, 2008, Complaint number PCB 08-55 was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. On August 25, 2008, a Stipulation and Proposal for Settlement was filed with the Board.
3. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), 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.
4. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2006), provides as follows:

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).

5. No hearing is currently scheduled in the instant case.

6. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

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)(2006).

Respectfully submitted,

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

BY: *Nancy J. Tikalsky (SSS)*  
NANCY J. TIKALSKY

Assistant Attorney General  
Environmental Bureau North  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602  
312-814-8567

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
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Complainant,	)	
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v.	)	PCB No. 08-55
	)	(Enforcement- Public
	)	Municipal Water Supply)
VILLAGE OF MERRIONETTE PARK, an Illinois	)	
municipal corporation,	)	
	)	
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 VILLAGE OF MERRIONETTE PARK, 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties of this Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties to the Stipulation**

1. On March 24, 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, Village of Merrionette Park ("Merrionette") has been and is an Illinois municipal corporation in good standing and duly authorized to do business in the State of Illinois. Merrionette's office is located at 11720 South Kedzie Avenue, Merrionette Park, Cook County, Illinois. Respondent is the owner and custodian of potable water storage tanks at a pump station on 113<sup>th</sup> Street and Whipple Street, Merrionette Park, Cook County, Illinois ("System").

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board Public Water Supply Regulations as follows:

Count I: DISTRIBUTING A PUBLIC WATER SUPPLY IN VIOLATION OF ITS PERMIT

Sections 18(a) and 19 of the Act, 415 ILCS 5/18(a) and 5/19(2006), and Section 611.356(d)(4)(C)(i) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 611.356(d)(4)(C)(i).

**C. Admission of Violations**

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced within Section I.B. herein.

**D. Compliance Activities to Date**

In or about October 2007, Respondent submitted to the Illinois EPA 10 sample results for lead and copper concentrations from the System ("Sample Results") obtained between June 1, 2007 through September 30, 2007, and tested by a certified laboratory, demonstrating compliance with the Act and Board regulations.

**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 Complainant asserts that human health and the environment were threatened when Respondent failed to timely obtain sample results for lead and copper from the System during its triennial reporting period of approximately June 1, 2002 through May 31, 2007.
2. The System has social and economic benefits.
3. Operation of the System was suitable for the area in which it operated.

4. Obtaining the requisite Sample Results from the System between approximately June 1, 2002 through May 31, 2007, and compliance with the Act and Board Public Water Supply Regulations, was both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board Public Water Supply 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. The Respondent failed to timely obtain Sample Results from the System during its triennial period of approximately June 1, 2002 through May 31, 2007. On November 18, 2005, the Illinois EPA issued a Violation Notice No. W-2005-00510 to Respondent for failing to submit, as required, the 2005 Sample Results for the Respondent's triennial reporting period of June 1, 2002 through September 30, 2005. On March 31, 2006, in a commitment letter from the Respondent, Merrionette, to the Illinois EPA, the Respondent agreed to obtain and submit the 2006 Sample Results. On April 11, 2006, in correspondence to Respondent, the Illinois EPA accepted Respondent's Commitment Compliance Agreement to obtain and submit the 2006 Sample Results, which required the 2006 Sample Results to be submitted by Respondent by October 10, 2006. In February 2007, the Illinois EPA determined that the 2006 Sample Results had not been submitted by Respondent as required by the Commitment Compliance Agreement. The alleged violations at the System began in or around June 2002 and were resolved in or about October 2007. This constituted approximately 5 years and 3 months of non-compliance at the System.

2. The Complainant asserts that the Respondent did not timely provide the requisite Sample Results for the System's triennial reporting period in October 2005 pursuant to the Act and Board Public Water Supply Regulations. In addition, the Respondent did not timely provide the Illinois EPA the Sample Results for the System's triennial reporting period in October 2006 pursuant to its Compliance Commitment Agreement accepted by the Illinois EPA and pursuant to the Act and Board Public Water Supply Regulations.

3. The Respondent realized a nominal economic benefit from the delay of payment of charges of a certified laboratory for water sample results in 2005 and 2006 when it failed to obtain water Sample Results. However, the penalty of \$5,000.00 obtained far exceeds any economic benefit derived by the Respondent.

4. Complainant and the Illinois EPA have 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 enhance future voluntary compliance with the Act and Board Regulations.

5. The Respondent has no known previously adjudicated violation of the Act.

6. Complainant did not voluntarily disclose the violations that are the subject matter of the complaint.

7. The settlement of this matter does not include a supplemental environmental project.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

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

**B. 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:

Nancy J. Tikalsky  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. 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.

2. 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.

**E. Release from Liability**

In consideration of the Respondent's payment of the Five Thousand dollars (\$5,000.00) penalty 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, Board Regulations and Illinois EPA 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 March 24, 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, this 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.

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**Electronic Filing - Received, Clerk's Office, August 25, 2008**

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,

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  
Assistant Attorney General

BY: ROBERT A. MESSINA  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

VILLAGE OF MERRIONETTE PARK

BY: *Denis M. Magre*

Name: DENIS MAGRE

Title: VILLAGE OF MERRIONETTE PK

DATE: AUG 13, 2008

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

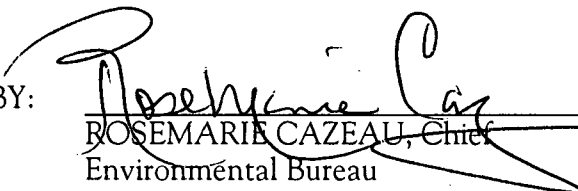
PEOPLE OF THE STATE OF ILLINOIS,

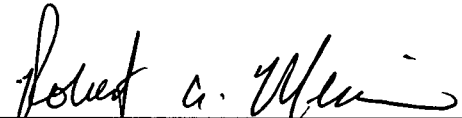
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Asbestos Litigation Division

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 7/21/08

DATE: 7/16/08

VILLAGE OF MERRIONETTE PARK

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_



**CERTIFICATE OF SERVICE**

I, NANCY J. TIKALSKY, an Assistant Attorney General, do certify that I caused to be served on this 25<sup>th</sup> day of August, 2008, the foregoing Notice of Filing, Stipulation And Proposal For Settlement and a Motion to Request Relief from Hearing Requirement upon the person listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.

  
NANCY J. TIKALSKY