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DEC 09 2008

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 5, 2008

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. City of Coffeen***
PCB No. 08-102

Dear Clerk:

Enclosed for filing please find the original and one copy 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 envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "J.L. Homan", is written over a horizontal line. The signature is stylized and cursive.

J. L. Homan
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JLH/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

CITY OF COFFEEN,)
an Illinois municipal corporation,)

Respondent.)

PCB No. 08-102
(Enforcement)

NOTICE OF FILING

To: John E. Evans
Attorney at Law
McPhail & Evans, P.C.
106 E. Wood Street
Hillsboro, IL 62049

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Pollution Control Board

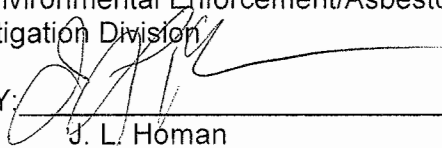
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

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: 

J. L. Homan
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on August 19, 2008, 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:

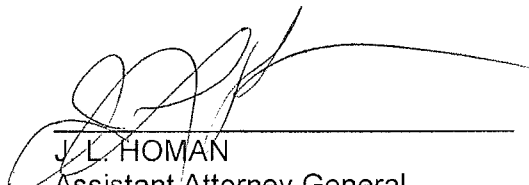
To: John E. Evans
Attorney at Law
McPhail & Evans, P.C.
106 E. Wood Street
Hillsboro, IL 62049

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

To: John T. Therrault, Assistant 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


J.L. HOMAN
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CITY OF COFFEEN,)
an Illinois municipal corporation,)
)
Respondents.)

PCB No. 08-102
(Enforcement)

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DEC 09 2008

STATE OF ILLINOIS
Pollution Control Board

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) (2006), 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) (2006). 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) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

J. L. HOMAN
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 5, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB NO. 2008-102
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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 CITY OF COFFEEN, 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 a 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 to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On June 27, 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. The Complaint was subsequently amended to include Count III.

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 has maintained its own waste water treatment plant (“WWTP”) serving approximately 706 residents in the City of Coffeen, Montgomery County, Illinois (“site”).

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: Violations of Section 12(a)(f), 415 ILCS 5/12(a)(f)(2006), 35 Ill. Adm. Code 305.102(b) of the Board’s Water Pollution Regulations, and the City’s NPDES permit;
- Count II: Violations of Section 12(f), 415 ILCS 5/12(f)(2006), 35 Ill. Adm. Code 305.102(b);
- Count III: Violations of Section 18 and 19 of the Act, 415 ILCS 5/18, 19 (2006), and Section 611.831 and 653.605 of the Board’s Public Water Supplies Regulations, 35 Il.Adm.Code 611.831, 653.605

C. Non-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.

D. Compliance Activities to Date

In response to the notification of violations by the Illinois Attorney General's Office and the Illinois Environmental Protection Agency, the Respondent has engaged a new operator and has attempted to locate and submit missing reports. Some older reports have been provided to the Agency. The Respondent is attempting to provide both the outstanding discharge monitoring reports and monthly operating reports in a more timely manner, including filing future reports electronically.

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).

The Respondent shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondent shall

provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant and the Illinois EPA thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant and the Illinois EPA, in their discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Providing the records as required by the NPDES permit and taking any and all necessary samples in a timely manner was 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. The Respondent failed to provide the records and take the necessary samples as required by the terms of the NPDES permit, the regulations and the Act. The violations began on or around April 15, 2003, and many were individually resolved at various times in the following years.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois Attorney General's Office and Illinois EPA notified it of its noncompliance.

3. Respondent realized an economic benefit by failing to file the records on time and failing to run the necessary tests in a timely fashion.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of one thousand eight hundred ninety dollars and no cents (\$1,890.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA'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

1. The Respondent shall pay a civil penalty in the sum of one thousand eight hundred ninety dollars (\$1,890.00) 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 complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of twenty-five (\$25) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of

the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. 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.

3. 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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. In addition to any other authorities, 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.

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 one thousand eight hundred ninety dollar (\$1,890.00) 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 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 June 27, 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

1. 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,

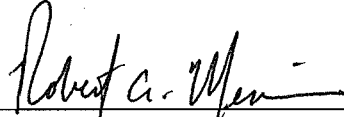
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 12/05/08

DATE: 11/26/08

CITY OF COFFEEN

BY: 

DATE: 10-20-08

Name: DALE NOWLAN

Title: MAYOR

RESOLUTION NO. 2008-02

RESOLUTION TO ENTER INTO STIPULATION AND PROPOSAL FOR SETTLEMENT WITH IEPA

WHEREAS, the City Council of the City of Coffeen, Montgomery County, Illinois (the "City Council"), has the responsibility to manage and operate the affairs of said City; and

WHEREAS, the City of Coffeen maintains its own wastewater and water treatment facilities, and

WHEREAS, the City of Coffeen has been designated Respondent in a Complaint and First Amended Complaint filed by the Attorney General of the State of Illinois on behalf of the People of the State of Illinois and the Illinois Environmental Protection Agency citing certain violations in the operation of said facilities; and

WHEREAS, the City Council has investigated the allegations of said Complaint and First Amended Complaint finding the allegations to have merit; and

WHEREAS, the Attorney General has tendered a proposed Stipulation and Proposal for Settlement setting forth certain conditions and requirements to be followed by the City as well as the payment of a penalty of \$1,890.00 as a prerequisite to the release of the City from any further liability or penalties for the alleged violations that were the subject matter of the Complaint; and

WHEREAS, the City Council hereby finds and determines that the best interests of the City require the acceptance of the conditions and payment of the penalty set forth in the proposed Stipulation and Proposal for Settlement attached hereto and made a part hereof;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Coffeen as follows:

Section 1: The Mayor is herewith authorized and directed to sign the proposed Stipulation and Proposal for Settlement on behalf of the City binding the City thereto.

Section 2: The City Clerk is authorized to obtain a certified check or money order in the amount set forth in said Stipulation and Proposal for Settlement and to remit to the proper recipient agency as designated in said Stipulation and Proposal.

Section 3: That this Resolution shall be in full force and effect forthwith upon its adoption.

Passed and adopted by the City Council of the City of Coffeen, State of Illinois on the 20th day of October 2008, by the following roll call vote.

Ayes: 4

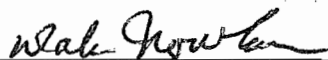
Nays: 0

Absent: 0

Introduced: October 20, 2008

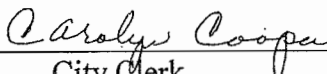
Passed: October 20, 2008

Approved: October 20, 2008



Mayor

ATTEST:



City Clerk