

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 10-
)	(Enforcement - Water)
GARY L. PENRITH,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List.
(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 Complaint for Civil Penalties, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:


 Jennifer A. Van Wie
 Assistant Attorney General
 Environmental Bureau
 Illinois Attorney General's Office
 69 W. Washington Street, Suite 1800
 Chicago, Illinois 60602
 (312) 814-0609

DATE: April 29, 2010

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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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) (2008), moves that the Illinois Pollution Control Board ("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) (2008). In support of this motion, Complainant states as follows:

1. On April 29, 2010, a Complaint for Civil Penalties 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 (2008), against the Respondent.
2. The Complaint alleged violations of Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), and Section 312.101 of the Board Water Pollution regulations, 35 Ill. Adm. Code 312.101.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

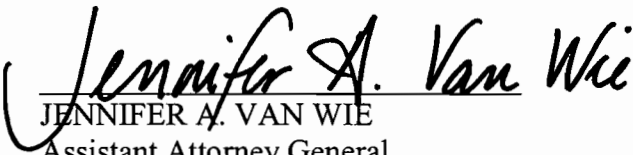
5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2008).

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) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609

DATE: April 29, 2010

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COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, GARY L. PENRITH, as follows:

COUNT I
FAILURE TO COMPLY WITH THE MONITORING AND RECORDING
REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM ("NPDES") PERMIT

1. This Complaint is brought 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 at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2008), and is an action for a cease and desist order and for civil penalties.

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2008), and is charged, *inter alia*, with the duty of enforcing the Act. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008).

3. At all times relevant to this Complaint, Respondent, GARY L. PENRITH ("Respondent"), was and is the owner of a wastewater treatment plant ("WWTP") located on the southeast corner of the intersection of U.S. Highway 41 and W. Wadsworth Road, Wadsworth,

Lake County, Illinois (“Site”).

4. The WWTP services the wastewater discharges of a Mobil Oil Service Station (“gas station”) and The Shanty restaurant (“restaurant”) located at the Site.

5. Treated effluent from the Site’s WWTP is discharged into the Des Plaines River pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. IL0078093 (“Respondent’s NPDES permit”).

6. Pursuant to Section 402(b) of the Federal Clean Water Act (“CWA”), 33 U.S.C. § 1342(b), the Illinois EPA administers and enforces the CWA’s NPDES permit program within the State of Illinois.

7. On September 15, 2008, an Illinois EPA inspector attempted to inspect the WWTP at the Site and found that most of the WWTP components at the Site are located within locked structures at the Site. A key was not available on-site for the WWTP facilities.

8. During the September 15, 2008 visit to the Site, the Illinois EPA inspector was able to note that all the vaults containing the septic tanks and chlorine contact tank were inaccessible or padlocked. The intermittent sand filters were located in a greenhouse-style structure and could only be partially observed.

9. After the September 15, 2008 inspection, the Illinois EPA inspector contacted the listed supervisor for the operation of the Site’s WWTP, Robert Krause, and requested backup data, including three months of monitoring data for the Site.

10. Mr. Krause supplied data from McHenry Analytical Water Laboratory that was addressed to Scott Secketa or Dimitri Kallianis at an address in Antioch, Illinois belonging to Mr. Secketa.

11. The Illinois EPA inspector then asked Mr. Krause for additional WWTP monitoring records for the Site required by Respondent's NPDES permit.
12. Mr. Krause provided monitoring records that included unsigned copies of log sheets for the period May through August 2008 and an operation and maintenance checklist. The monitoring records failed to include:
 - a) start or finish times for the automatic composite samplers;
 - b) information about grab sampling for fecal coliform; and
 - c) measurements for pH and dissolved oxygen.
13. After the September 15, 2008 inspection, the Illinois EPA inspector also requested from Mr. Krause a copy of the contract between Respondent and Mr. Krause for his services in the operation of the Site's WWTP.
14. Mr. Krause sent the Illinois EPA inspector an unsigned copy of the wastewater treatment operator contract between Mr. Krause and Respondent that had not been approved by the Illinois EPA.
15. On December 30, 2008, the Illinois EPA sent Respondent a violation notice for failure to comply with sampling and recording requirements of Respondent's NPDES permit and failure to have an Illinois EPA approved person supervising the operation of the Site's WWTP. The Illinois EPA did not receive a response from Respondent for the violation notice.
16. On April 14, 2009, the Illinois EPA sent Respondent a Notice of Intent to Pursue Legal Action ("NIPLA") letter.
17. In late April 2009, the exact date being better known by the Respondent, the Respondent contacted the Illinois EPA to seek clarification of the allegations detailed in the violation notice and NIPLA letter.

18. On May 12, 2009, Respondent sent a letter to the Illinois EPA informing them that his contract with Mr. Krause to supervise the operation of the Site's WWTP would expire May 31, 2009 and that he would hire Charles Hernandez to supervise the operation of the Site's WWTP.

19. On June 3, 2009, Respondent forwarded the executed contract with Mr. Hernandez to supervise the operation of the Site's WWTP to the Illinois EPA for approval.

20. On June 9, 2009, the Illinois EPA approved the contract between Respondent and Mr. Hernandez to supervise the operation of the Site's WWTP.

21. Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), provides as follows:

No person shall:

* * *

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

* * *

22. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

23. Respondent is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2008).

24. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

25. Ammonia-nitrogen and fecal coliform, which are discharged from the Site, are “contaminants” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2008).

26. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), provides the following definition:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

27. The Des Plaines River is “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2008).

28. Section 1362 of the CWA, 33 U.S.C.A. § 1362 (2008), provides the following definition:

The term “point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

29. The 001 Outfall from the WWTP, which discharges into the Des Plaines River, is a discernible, confined and discrete conveyance, and therefore constitutes a “point source” as that term is defined in Section 1362 of the CWA, 33 U.S.C.A. § 1362 (2008).

30. Standard Condition 10 of Respondent's NPDES permit provides, in pertinent part, as follows:

(10) Monitoring and Records

- a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records, and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of this permit, measurement, report or application. This period may be extended by request of the Agency at any time.
- c) Records of monitoring information shall include:
 - 1) The date, exact place, and time of sampling or measurements;
 - 2) The individual(s) who performed the sampling or measurement;
 - 3) The date(s) analyses were performed;
 - 4) The individual(s) who performed the analyses;
 - 5) The analytical techniques or methods used; and
 - 6) The results of such analyses.

* * *

31. From at least September 15, 2008 to June 8, 2009, or on dates better known to the Respondent, Respondent failed to comply with the monitoring and recording requirements of NPDES Permit No. IL0078093.

32. By failing to comply with the monitoring and recording requirements of NPDES Permit No. IL0078093, Respondent violated his NPDES permit, and thereby violated Section

12(f) of the Act, 415 ILCS 5/12(f) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, GARY L. PENRITH, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008);
3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008);
4. Order the Respondent to comply with all terms and conditions of NPDES Permit No. IL0078093;
5. Assess against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Grant such other relief as the Board deems appropriate and just.

COUNT II

FAILURE TO COMPLY WITH OPERATOR REQUIRMENTS

1-29. Complainant realleges and incorporates by reference Paragraphs 1 through 29 of Count I as Paragraphs 1 through 29 of this Count II.

30. Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

31. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), provides the following definition:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

32. Section 312.101 of the Illinois Pollution Control Board (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 312.101, provides as follows:

Prohibition

No person shall cause or allow the use or operation of any treatment works for which a permit is required by Part 309 unless the operation of such treatment works is under the direct and active field supervision of a person who has been certified by the Agency as being competent to operate the particular type or size of treatment works being used or operated.

33. From at least September 15, 2008 to June 8, 2009, or on dates better known to the Respondent, Respondent failed to have an Illinois EPA approved person supervising the operation of the Site’s WWTP.

34. Respondent, by failing to have a person certified by the Illinois EPA supervising the operation of the Site’s WWTP and ensuring compliance with the requirements of NPDES Permit No. IL0078093, threatened the discharge of contaminants into the waters of the State so as to cause or tend to cause water pollution.

35. By threatening the discharge of contaminants into waters of the State so as to cause or tend to cause water pollution, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

36. By failing to have a person certified by the Illinois EPA supervising the operation of the Site's WWTP, Respondent violated Section 312.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 312.101, and thereby also violated Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, GARY L. PENRITH, for the following relief:

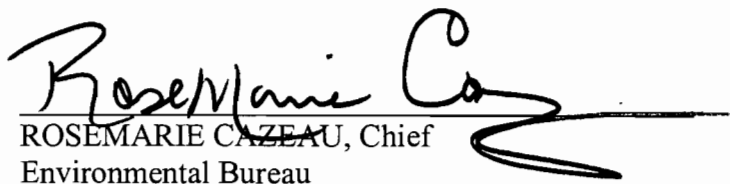
1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), and Section 312.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 312.101;
3. Order Respondent to cease and desist from any further violations of Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), and Section 312.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 312.101;
4. Order the Respondent to comply with all terms and conditions of NPDES Permit No. IL0078093;
5. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), and an additional Ten Thousand Dollars (\$10,000.00) for each day of violation;

6. Assess against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008);
7. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
8. Grant such other relief as the Board deems appropriate and just.

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

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

By:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
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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 Gary L. Penrith ("Respondent"), (collectively "Parties to the Stipulation"), 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.* (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On April 29, 2010, 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 (2008), 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 (2008).

3. At all times relevant to the Complaint, Gary L. Penrith, ("Respondent"), was and is the owner of a wastewater treatment plant ("WWTP") located on the southeast corner of the intersection of U.S. Highway 41 and W. Wadsworth Road, Wadsworth, Lake County, Illinois ("Site").

4. Treated effluent from the Site's WWTP is discharged into the Des Plaines River pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0078093.

B. Allegations of Non-Compliance

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

Count I: Failure to Comply with the Monitoring and Recording Requirements of the NPDES Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008); and

Count II: Failure to Comply with Operator Requirements, in violation of Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), and Section 312.101 of the Board Water Pollution regulations, 35 Ill. Adm. Code 312.101.

C. Admission of Violations

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

D. Compliance Activities to Date

On June 9, 2009, the Illinois EPA approved the contract between Respondent and Charles Hernandez to supervise the operation of the Site's WWTP.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of his agents, employees or successors or assigns to take such actions 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 (2008).

No change in ownership or operator of the Site's WWTP 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 thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Site's WWTP 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 Site may jointly request, and the Complainant, in its 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 Site permits.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), 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 the Stipulation state the following:

1. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment.
2. There is social and economic benefit to the WWTP.
3. Operation of the WWTP is suitable for the area in which it occurred.
4. Complying with the terms and conditions of NPDES Permit No. IL0078093 and the Board Water Pollution regulations at the WWTP is both technically practicable and

economically reasonable.

5. On approximately June 8, 2009, Respondent came back into compliance with the Act and the Board Water Pollution regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2008), 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 the Stipulation state as follows:

1. From at least September 15, 2008 to June 8, 2009, the Respondent failed to comply with the monitoring and recording requirements of NPDES Permit No. IL0078093 and to have an Illinois EPA approved person supervising the operation of the WWTP.

2. Respondent was diligent in attempting to come back into compliance with the Act and Board regulations after receiving the Illinois EPA's April 14, 2009 Notice of Intent to Pursue Legal Action letter.

3. Complainant has determined, based upon the specific facts of this matter, that a civil penalty of Five Thousand Dollars (\$5,000.00) will recoup any economic benefit realized by Respondent.

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

1. 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. Default and Interest

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 case 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:

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Effective immediately, Respondent shall comply with the terms and conditions of NPDES Permit No. IL0078093, the Act and the Board Water Pollution regulations.

2. Effective immediately, Respondent shall ensure that a set of keys for the WWTP is available on-site so that the Illinois EPA can inspect the WWTP upon demand.

3. 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 Site 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.

4. 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.

5. 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 \$5,000.00 penalty, his commitment

to cease and desist as contained in Section V.D.5 above, completion of all activities required hereunder, 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 April 29, 2010. 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 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. Correspondence, Reports and Other Documents

Any and all correspondence required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

Charles W. Gunnarson
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Chris Kallis
Bureau of Water, Field Operations Section
Illinois Environmental Protection Agency
Des Plaines Regional Office
9511 West Harrison Street
Des Plaines, Illinois 60016

As to the Respondent

Gary Penrith
38869 N. Oakcrest Lane
Wadsworth, Illinois 60083-9570

Ronald N. Mora
Gould & Ratner LLP
222 North LaSalle Street, Suite 800
Chicago, Illinois 60601

G. Enforcement 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.

H. Execution of Stipulation

The undersigned representatives for the Parties to the 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 the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

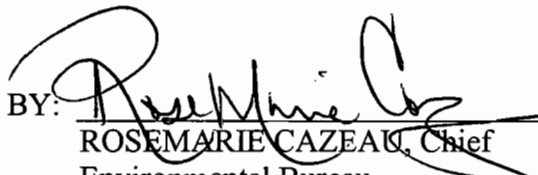
PEOPLE OF THE STATE OF ILLINOIS

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

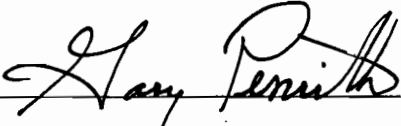
BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 4/22/10

DATE: 4/20/10

GARY PENRITH



DATE: 4-27-10

CERTIFICATE OF SERVICE

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 29th day of April, 2010, I caused to be served by U.S. Certified Mail, Return Receipt Requested, the foregoing Complaint for Civil Penalties, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


JENNIFER A. VAN WIE