

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 WINDSOR LAKE PARTNERSHIPS,)
 an Illinois Limited Partnership, JAMES)
 DURKEE, an individual, and SANDY)
 SOKOLICK, an individual,)
)
 Respondents.)

PCB 11-52
 (Enforcement—Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 23rd day of February, 2011, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
 Attorney General of the
 State of Illinois

By: *Krystyna Bednarczyk*
 KRYSZYNA BEDNARCZYK
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., 18th Fl.
 Chicago, IL 60602
 (312) 814-1511

DATE: February 23, 2011

SERVICE LIST

Windsor Lake Partnerships, LLP
c/o James Durkee, Registered Agent
233 Arlington Heights Rd.
Elk Grove Village, IL 60007-0000

James Durkee
P.O. Box 15232
Loves Park, IL 61111

Sandy Sokolick
4434 W. Devon
Lincolnwood, IL 60712

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

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PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)

v.)

WINDSOR LAKE PARTNERSHIPS,)
an Illinois Limited Partnership, JAMES)
DURKEE, an individual, and SANDY)
SOKOLICK, an individual,)

Respondents.)

PCB 11-52

(Enforcement—Water)

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 WINDSOR LAKE PARTNERSHIPS, JAMES DURKEE, and SANDY SOKOLICK (collectively, the "Respondents") (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.* (2010), 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 February 23, 2011, 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 (2010), 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 (2010).

3. At all times relevant to the Complaint, Windsor Lake Partnerships, an Illinois limited partnership operating as Windsor Lake Office Park Partners, owned a lift station lying immediately north of the commercial building located at 1752 Windsor Rd., Loves Park, Winnebago County, Illinois (the "Facility"). During all relevant times, Durkee and Sokolick have been and continue to be general partners in Windsor Lake Partnerships.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

- Count I: Water Pollution
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).
- Count II: Creation of a Water Pollution Hazard
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).
- Count III: Discharging Without a NPDES Permit
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).
- Count IV: Offensive Discharges
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010) and
Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 304.106.

Count V: Systems Reliability Violations
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010) and
Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm.
Code 306.102(a).

Count VI: Overflows
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010) and
Section 306.304 of the Board Water Pollution Regulations, 35 Ill. Adm.
Code 306.304.

C. Admission of Violations

Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

1. On dates better known to Respondents, but no later than June 8, 2009, no debris or foul odor was present in the vicinity of the Lift Station. Additionally, Respondents replaced all impacted soils, planted new seed grass, and deposited straw around the Lift Station.

2. On dates better known to Respondents, but no later than June 8, 2009, Respondents repaired the Lift Station's audio alarm system and installed a second, audio-visual alarm system.

3. On August 8, 2009, Respondents submitted to the Illinois EPA a maintenance and inspection plan, which set out the Respondents' plan for maintaining the Lift Station in proper working order. The Respondents implemented the following measures:

- a. Daily inspection of the Lift Station;
- b. Daily flushing of the Lift Station;
- c. Daily inspection of both Lift Station alarms;

- d. Regularly scheduled, twice-yearly inspection and maintenance of the Lift Station components by a plumbing professional, including but not limited to system flushing; and
 - e. At all times, maintenance on the Lift Station of a list of contact numbers of responsible person(s) in charge who may be contacted in case of a Lift Station malfunction or failure.
4. Effective immediately, Respondents shall at all times implement the maintenance and inspection plan enumerated in this Section I.D.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their 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 Respondents 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 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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. Human health and the environment were threatened by the Respondents' violations as alleged in the Complaint.
2. There was social and economic benefit to the Lift Station.
3. The Respondents' operation of a lift station was suitable for the area in which it was located.
4. Operating a Lift Station in compliance with all applicable statutory and regulatory requirements was both technically practicable and economically reasonable.
5. The Respondents have subsequently complied with the Act and the Board Regulations, once Respondents were notified of the alleged violations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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. Respondents' failure to properly maintain a Lift Station owned by them and serving their property resulted in an overflow of contaminants into a water of the State. The violations began in May 2009 and continued through at least June 8, 2009.

2. Respondents were not diligent in complying with the requirements of the Act and Board regulations before being contacted by Illinois EPA. However, Respondents were diligent in coming back into compliance with the Act and Board regulations after Illinois EPA notified Respondents of the overflow of debris, including untreated sewage, from the Lift Station.

3. Illinois EPA has determined that the economic benefit to the Respondents associated with the alleged violations was less than the penalty of Three Thousand Dollars

(\$3,000.00) referenced in paragraph 4, below.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Three Thousand Dollars (\$3,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Respondents did not voluntarily self-disclose the violations.

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

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondents shall pay a civil penalty in the sum of Three Thousand Dollars (\$3,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondents fail to make the payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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, 415 ILCS 5/42(g) (2010), interest shall accrue on any penalty amount owed by the Respondents 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 Respondents' 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:

Krystyna Bednarczyk
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

D. Future Compliance

1. Respondents shall continue at all times in the future to perform the compliance activities described in Section I.D.3 of this Consent Order. The compliance activities shall include but are not limited to:

- a. Daily inspection of the Lift Station;
- b. Daily flushing of the Lift Station;
- c. Daily inspection of both Lift Station alarms;
- d. Continuous maintenance of the Lift Station alarms so as to effect their purpose;

- e. Regularly scheduled, twice-yearly inspection and maintenance of the Lift Station components by a plumbing professional, including but not limited to system flushing; and
- f. Maintenance on the Lift Station of a list of contact numbers of responsible person(s) in charge who may be contacted in case of a Lift Station malfunction or failure.
- g. Effective immediately, the Defendants shall maintain written records of the dates and times of the Lift Station's inspections, flushing, and maintenance. Such records shall be maintained at Defendants' business office and be available to Illinois EPA for inspection upon request.

2. 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 Respondents' 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. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

4. The Respondents 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 Respondents' payment of the \$3,000.00 civil penalty and their

commitment to cease and desist as contained in Section V.D. above, and completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 February 23, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' 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 Respondents.

F. 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.

G. 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,

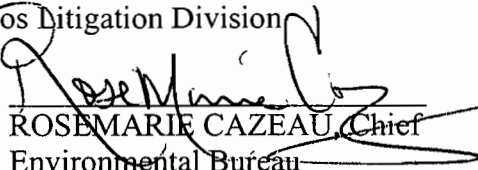
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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:


JOHN J. KIM
Chief Legal Counsel

DATE:

2/16/11

DATE:

2/15/11

WINDSOR LAKE PARTNERSHIPS, an
Illinois Limited Partnership

SANDY SOKOLICK

BY:

Name: JAMES DURKEE
Title: Managing Partner

BY:

Name: Sandy Sokolick

DATE:

DATE:

JAMES DURKEE

BY:

Name: James Durkee

DATE:

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Attorney General
State of Illinois

DOUGLAS P. SC OTT, Director
Illinois Environmental Protection Agency

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Environmental Enforcement/
Asbestos Litigation Division

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

WINDSOR LAKE PARTNERSHIPS, an
Illinois Limited Partnership

SANDY SOKOLICK

BY: James Durkee
Name: JAMES DURKEE
Title: Managing Partner

BY: Sandy Sokolick (I have read this document.)
Name: Sandy Sokolick

DATE: 2-18-11

DATE: 2-16-11

JAMES DURKEE

BY: James Durkee
Name: James Durkee

DATE: 2-18-11

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
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Complainant,)	
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SOKOLICK, an individual,)	
)	
Respondents.)	

**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 February 23, 2011, a Complaint was filed with the Pollution Control Board (“Board”) in this matter. On February 23, 2011, 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 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).


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)(2002).

Respectfully submitted,

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

By:


KRYSTYNA BEDNARCZYK
Assistant Attorney General
Environmental Bureau

69 W. Washington St. 18th Fl.
Chicago, IL 60602
(312) 814-1511

CERTIFICATE OF SERVICE

I, KRYSZYNA BEDNARCZYK, an Assistant Attorney General in this case, do certify that I caused to be served this 24th day of February, 2011, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 69 W. Washington St., Chicago, Illinois, at or before the hour of 5:00 p.m.



KRYSZYNA BEDNARCZYK