

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

TOWN OF CORTLAND,)

an Illinois municipal corporation,)

Respondent.)

PCB NO. 11-67
(Enforcement – Water)

VIA ELECTRONIC FILING

NOTICE OF FILING

TO: Roy M. Harsch
Drinker Biddle & Reath, LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board (“Board”) pursuant to Section 103.300(a) of the Board Procedural Rules, a Stipulation and Proposal for Settlement, an Agreed Motion for Relief from


THIS FILING IS SUBMITTED ON RECYCLED PAPER

the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
ZEMEHERET BEREKET-AB
Environmental Bureau
Assistant Attorney General
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-3816

DATE: July 24, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 11-67
)	(Enforcement – Water)
)	
TOWN OF CORTLAND,)	
an Illinois municipal corporation,)	
)	
Respondent.)	<u>VIA ELECTRONIC FILING</u>

**AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the parties filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2010) 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). . . .

3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2010).

WHEREFORE, Complainant and Respondent, request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



ZEMEHERET BERKET-AB
Environmental Bureau
Assistant Attorneys General
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-3094

DATE: July 24, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
)	
v.)	PCB No. 11-67
)	(Enforcement - Water)
TOWN OF CORTLAND, 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 Town of Cortland (“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. (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 April 7, 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 this Complaint, Respondent, the Town of Cortland ("Cortland"), is and had been a municipal corporation duly organized and existing under the laws of the State of Illinois.

4. Cortland has a population of approximately 4,000 citizens and is located approximately four (4) miles east of the City of DeKalb and south of the City of Sycamore in DeKalb County, Illinois.

5. Cortland owns and operates wastewater spray irrigation fields and rigs located east of the town, north of Maple Park Road, with Rigs A1, A2, A3 and A4 on the east of Airport Road and Rigs B1, B2 and B3 on the west side of Airport Road.

6. Cortland's spray irrigation system consists in part of:

- a 3-cell aerated lagoon system;
- a turbo-disc filtration system;
- an ultra-violet disinfection system;
- 6,690 feet of 12-inch irrigation piping;
- 1,860 feet of 8-inch irrigation piping;
- 1225 feet of 6-inch irrigation piping;
- a spray irrigation application area of approximately 86 acres designed for an application rate of 1.6 inches per week during the 215-day irrigation season; and

- eight groundwater monitoring wells.

7. On August 18, 2006, the Illinois EPA issued to Cortland Water Pollution Control Permit No. 2005-GA-3591 for the operation of Cortland's Sewage Treatment Plant Spray Irrigation Phase 1A ("State Operating Permit").

8. On July 17, 2009, the Illinois EPA's Rockford Regional Office received complaints of drift of wastewater from the northwest corner of the designated spray field into an adjacent field to the east for approximately sixty minutes. Cortland's State Operating Permit does not allow for wastewater to be sprayed on land other than the permitted spray fields.

9. On July 24, 2009, the Illinois EPA again received citizen complaints about Cortland's spray irrigation system. The irrigation system was spraying wastewater directly onto Airport Road for a period of approximately thirty minutes. Based on the design of the spray irrigation system, a thirty minute discharge would amount to approximately 9,000 gallons of wastewater. Cortland's State Operating Permit does not allow for wastewater to be sprayed on land other than the permitted spray fields.

10. At the point of the discharge onto Airport Road there exists a roadside stormwater ditch which drains to the Union Ditch #1 which is a tributary to the Kishwaukee River.

11. On September 24, 2009, the Illinois EPA sent a Violation Notice to Cortland for failure to comply with its State Operating Permit and unlawful discharge of wastewater.

12. Cortland responded to both the events set forth in the Violation Notice by stating that the July 17, 2009 drift occurred as a result of high winds which occurred after the spray irrigation system was placed into operation and that the July 24, 2009 spraying onto Airport Road was the direct result of some unknown third party physically removing bolts that held the

parts in place that restricted the spray irrigation system from directing spraying onto the road and that this tampering was not noticed at the time the spray irrigation system was placed into operation that day.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has 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: Failure to Comply with State Operating Permit: violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2010), and Special Condition 7 of State Operating Permit #2005-GA-3591;

Count III: Creation of Water Pollution Hazard: violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

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 I.B herein, and this Stipulation shall not be interpreted as including such admission.

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 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 (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 state the following:

1. Complainant alleges that wastewater from Respondent's wastewater spray irrigation system drifted onto an adjacent farm field outside of the permitted irrigation area and was also misdirected off the spray field to a road that was bordered by a ditch outside of the permitted irrigation area. However, Respondent maintains that given the short duration and climate conditions, there is no reasonable means by which it would be possible that the wastewater that was sprayed onto Airport Road on the date complained of could have reached Union Ditch #1 and the Kishwaukee River.

2. There is social and economic benefit to Respondent's wastewater spray irrigation system.

3. Operation of the facility was suitable for the area in which it occurred.

4. Complainant alleges that it was both technically practicable and economically reasonable to operate the wastewater spray irrigation system in accordance with permit conditions. However, Respondent maintains that the two events complained of were the direct cause of events beyond its reasonable control.

5. Respondent has subsequently complied with the Act and permit conditions.

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.
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. The violations were reported to the Illinois EPA on July 17 and July 24, 2009.
2. Respondent was diligent in attempting to come back into compliance with the Act and permit conditions once the Illinois EPA notified it of its noncompliance.
3. Economic benefits accrued by Respondent are accounted for in the \$3,000.00 penalty agreed herein.
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 permit conditions.
5. On March 19, 2010, a Consent Order was entered in People of the State of Illinois v. Town of Cortland, 10 CH 169. The Consent Order resolved Cortland's failure to adequately inspect and take steps to have the site owner and developer resolve construction site erosion control issues which were in violation of the General NPDES Permit for Stormwater Discharge from Construction Activity issued to the site owner and developer for its construction site which was within Cortland's municipal boundaries.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

8. On November 19, 2009, the Illinois EPA rejected the Compliance Commitment Agreement proposed by Respondent.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent 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 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

1. 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, Illinois 62794-9276

2. 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.
3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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 \$3,000.00 penalty, its commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on April 7, 2011. 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 (2010), or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

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

G. Execution of Stipulation

The undersigned representatives for 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.

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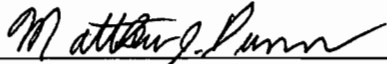
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
MATTHEW J. DUNN, Chief

BY: 
JOHN KIM, Interim Director

DATE: 7/9/12

DATE: 7/3/12

RESPONDENT

TOWN OF CORTLAND, an Illinois
municipal corporation,

BY: _____

DATE: _____

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

LISA MADIGAN
Attorney General
State of Illinois

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: _____
MATTHEW J. DUNN, Chief

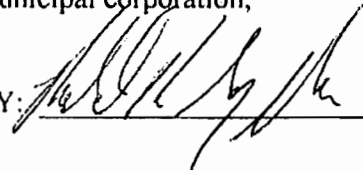
BY: _____
JOHN J. KIM, Interim Director

DATE: _____

DATE: _____

RESPONDENT

TOWN OF CORTLAND, an Illinois
municipal corporation,

BY:  _____

DATE: 7-11-12

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 24th day of July, 2012, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons 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.



ZEMEHERET BEREKET-AB