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MAY 28 2002

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

May 22, 2002

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

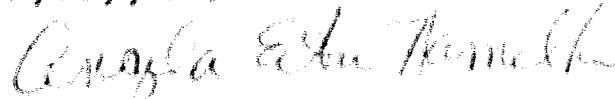
Re: *People v. City of Golconda, et al.*
PCB No. *02-06*

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies 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 original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,



Angela Eaton Hamilton
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

AEH/pp
Enclosures

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CLERK'S OFFICE

MAY 28 2002

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

PCB No. *09-36*

CITY OF GOLCONDA,
An Illinois municipal corporation,
BROWN, ROFFMANN & ROBERTS,
INC., an Illinois corporation, and
FORBY EXCAVATING, INC., an
Illinois corporation,

Respondents.

NOTICE OF FILING

To: Frederick Turner, Jr.
Attorney at Law
On Main Street
P.O. Box 512
Golconda, IL 62938

Brown, Roffmann & Roberts, Inc.
c/o Jim Brown, Registered Agent
1 West Ridge Road
Harrisburg, IL 62946

Forby Excavating, Inc.
8725 Bennett Road
Benton, IL 62812

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

JAMES E. RYAN
Attorney General of the
State of Illinois

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

BY: *Angela Eaton Hamilton*
ANGELA EATON HAMILTON
Assistant Attorney General
Environmental Bureau

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MAY 28 2002

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CITY OF GOLCONDA,)
An Illinois municipal corporation,)
BROWN, ROFFMANN & ROBERTS,)
INC., an Illinois corporation, and)
FORBY EXCAVATING, INC., an)
Illinois corporation,)
)
Respondents.)

PCB No. 02-36
(Enforcement-Public Water Supply)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, 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) (2000), 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) (2000). In support of this motion, Complainant states as follows:

1. On September 19, 2001, Complainant filed a Complaint with the Board, alleging violations by the Respondent of the public water supply requirements.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2000).

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) (2000).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
JAMES E. RYAN
ATTORNEY GENERAL

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

BY: *Angela Eaton Hamilton*
ANGELA EATON HAMILTON
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 5/22/07

MAY 28 2002

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 CITY OF GOLCONDA,)
 An Illinois municipal corporation,)
 BROWN, ROFFMANN & ROBERTS,)
 INC., an Illinois corporation, and)
 FORBY EXCAVATING, INC., an)
 Illinois corporation,)
)
 Respondents.)

PCB No. 02-36
(Enforcement-Public Water Supply)

STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, CITY OF GOLCONDA, an Illinois municipal corporation, BROWN, ROFFMAN & ROBERTS, INC., an Illinois corporation, and FORBY EXCAVATING, INC., an Illinois corporation, and hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties agree that this Settlement is a compromise of a disputed claim. The parties further stipulate that this statement of facts is made and agreed upon for the purposes of settlement only and that neither the fact that a party has entered into the Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. This agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the Settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 *et seq.* (2000). The Complaint states a cause of action upon which relief may be granted.

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondents and any officers, directors, agents, employees or servants of Respondents, as well as the Respondents' successors and assigns. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Settlement the failure of its officers, directors, agents, servants, or employees to take such action as shall be required to comply with the provisions of this Settlement.

IV.

STATEMENT OF FACTS

1. The Illinois Environmental Protection Agency ("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 (2000), and is charged, *inter alia*, with the duty of enforcing the Act.

2. Respondent, CITY OF GOLCONDA, is an Illinois municipal corporation and a public water supply as that term is defined under 415 ILCS 5/3.28 (2000).

3. The Respondent, CITY OF GOLCONDA, serves approximately 834 consumers through 340 direct connections.

4. The Respondent, BROWN, ROFFMAN & ROBERTS, INC., is an Illinois corporation with its principal place of business at 1 West Ridge Road, Harrisburg, Saline County, Illinois. The City of Golconda employed Brown, Roffman & Roberts, Inc., to serve as a consulting engineer to design a water main installation.

5. Respondent, FORBY EXCAVATING, INC., is an Illinois corporation with its principal place of business at 8725 Bennett Road, Benton, Franklin County, Illinois. The City of Golconda employed Forby Excavating, Inc., to perform construction work on the water main installation.

6. The Illinois EPA issued Construction Permit No. 0482-FY1999 for the installation of eight thousand feet of six-inch diameter water main to the Respondents on November 5, 1998.

7. Complainant alleges that Respondents replaced a water main at the intersection of Adams Street and the first alley south of Main Street and ninety feet east thereof; one hundred and forty six feet west of the intersection of Market Street and the first alley south of Main Street; and the intersection of Madison and Franklin Streets and one hundred and forty feet east thereof without maintaining the required 10-foot lateral physical separation from the City of Golconda's sewer system in violation of Section 18 of the Act, 415 ILCS 5/18 (2000) and 35 Ill. Adm. Code 601.101, 607.104(b) and 653.119.

V.

FUTURE PLANS OF COMPLIANCE

Respondents shall continue to diligently conform to the Act, 415 ILCS 5/1 *et seq.* (2000), and the Board's Water Supply Regulations, 35 Ill. Adm. Code Subtitle F.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), provides;

- c. 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:
- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 - ii. the social and economic value of the pollution source;
 - iii. 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;
 - iv. the technical practicality and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
 - v. any subsequent compliance.

In response to these factors, the parties state as follows:

1. Complainant contends that the Respondents' failure to maintain the required separation between the sewer system and the water main was significant, as it posed a threat to consumers by exposing them to drinking water that could have become micro biologically contaminated.
2. The parties agree that the City of Golconda's facility is of social and economic benefit;
3. As violations that are the subject of the State's Complaint result from Respondents' failure to maintain the required separation between a sewer system and a water main, the suitability or unsuitability of a specific pollution source to an area is not a significant factor.

4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable; and

5. Respondents implemented measures subsequent to the alleged violations that are the subject of the Complaint in this matter in order to operate in compliance with the Act and the Board's Public Water Supply Regulations.

VII.

CONSIDERATION OF SECTION 42(H) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1996), provides:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of 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 violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. The alleged violations occurred between June, 1999 and November, 1999.
2. In response to communications from and between the Respondents, the Attorney General's Office and the Illinois EPA, the Respondents worked with the Illinois EPA to resolve the problem by retreating the water main

3. The Respondents did not realize an economic benefit.

4. Complainant has determined, in this instance, that a penalty of one thousand five hundred dollars (\$1,500.00) against the Respondents, BROWN, ROFFMAN & ROBERTS and FORBY EXCAVATING, INC., and a civil penalty of eight hundred dollars (\$800.00) against Respondent, CITY OF GOLCONDA, will serve to deter further violations and aid in future voluntary enforcement of the Act and applicable regulations.

5. The Respondents, BROWN, ROFFMAN & ROBERTS and FORBY EXCAVATING, INC., have no known history of prior violations. The Respondent, CITY OF GOLCONDA, entered into a Consent Order with the State of Illinois regarding water pollution violations on August 10, 1998. Subsequent violations of the water pollution requirements have resulted in a complaint being filed by the Illinois Attorney General's Office in Circuit Court in Pope County on November 21, 2000 ((00)-CH-6).

VIII.

TERMS OF SETTLEMENT

A. Respondents admit the water main at issue was initially installed in violation of Section 18 of the Act.

B. The Respondents, BROWN, ROFFMAN & ROBERTS and FORBY EXCAVATING, INC., shall each pay a penalty of one thousand five hundred dollars (\$1,500.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days of the Board's acceptance of this Stipulation and Proposal for Settlement. The Respondent, CITY OF GOLCONDA, shall pay a penalty of eight hundred dollars (\$800.00) to the Environmental Protection Trust Fund within thirty (30) days of the Board's acceptance of this Stipulation and Proposal for Settlement. Payments shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Respondent's Federal Employer Identification Number ("FEIN") shall be written upon the certified check or money order. Brown, Roffman & Roberts' FEIN is 37-1277166; Forby Excavating, Inc.'s FEIN is 37-1343676; and City of Golconda's FEIN is 37-6006653.

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

In the event the penalty is not paid in a timely fashion interest shall accrue and be paid by Respondents at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a)(2000), pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g)(2000).

C. Respondents shall desist from future violations of any federal, state, or local environmental statutes and regulations, including, but not limited to, the Act, 415 ILCS 5/1 et seq. (2000), and the Board's rules and regulations, 35 Ill. Adm. Code, Subtitles A through H.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondents to comply with any federal, state, or local regulations, including but not limited to the Act, 415 ILCS 5/1 et seq. (2000), and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

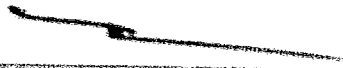
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

JAMES E. RYAN,
Attorney General
State of Illinois,

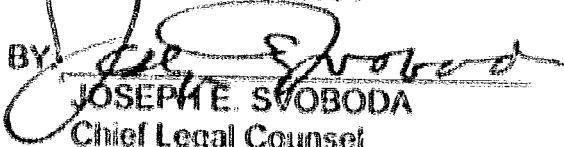
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Dated: 5/22/02

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Dated: 4/18/02

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

CITY OF GOLFONDA,
an Illinois municipal corporation

Dated: _____

BY: 
Mayor

BROWN, ROFFMAN & ROBERTS,
an Illinois corporation

BY: 
JIM BROWN, President

FORBY EXCAVATING, INC.,
an Illinois corporation

BY: 
GARY FORBY, President

CERTIFICATE OF SERVICE

I hereby certify that I did on May 22, 2002, 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 instrument entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT

To: Frederick Turner, Jr.
Attorney at Law
On Main Street
P.O. Box 512
Golconda, IL 62938

Brown, Roffmann & Roberts, Inc.
c/o Jim Brown, Registered Agent
1 West Ridge Road
Harrisburg, IL 62946

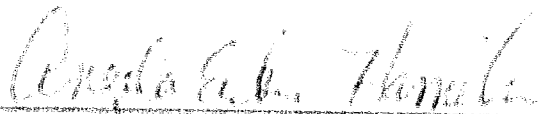
Forby Excavating, Inc.
8725 Bennett Road
Benton, IL 62812

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

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois 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: Steven C. Langhoff
Hearing Officer
Illinois Pollution Control Board
600 South Second Street, Ste. 402
Springfield, IL 62704


Angela Eaton Hamilton
Assistant Attorney General

This filing is submitted on recycled paper.