

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB
)	
)	(Enforcement –Water)
THE VILLAGE OF VOLO,)	
an Illinois municipal corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, April 21, 2015, filed the Complaint, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement, with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. True and accurate copies of the documents so filed are attached herewith and served upon you.

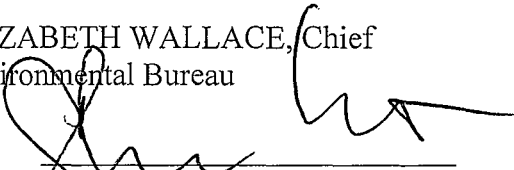
PEOPLE OF THE STATE OF ILLINOIS

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Attorney General of the
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
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Complainant,)	
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v.)	PCB
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THE VILLAGE OF VOLO,)	(Enforcement – Water)
an Illinois municipal corporation,)	
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Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, the VILLAGE OF VOLO, as follows:

COUNT I
WATER POLLUTION

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 Environmental Protection Act (“Act”), 415 ILCS 5/31 (2014).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Act and regulations promulgated by the Illinois Pollution Control Board (“Board”).

3. Respondent, THE VILLAGE OF VOLO (“Volo”), is an Illinois municipal corporation located in Lake County, Illinois.

4. On or about November 19, 2012, Volo commenced construction and installation of a 16" water main extension on land abutting the east side of US Route 12 between Volo Village Road on the south and Molidor Road on the north ("Construction Area").

5. Wetland areas and ponds are present along the east border of the Construction Area. Fish Lake lies approximately one-half mile east of US Route 12. A tributary creek leading to Fish Lake ("Tributary") flows through the Construction Area from west to east between US Route 12 and Fish Lake.

6. Installation of the water main extension required both open trenching and subsurface horizontal boring of approximately 8600 lineal feet within the Construction Area. Approximately 2,100 lineal feet of the 16" water main piping was installed in open trenches excavated within the Construction Area. Approximately 6,500 lineal feet of the water main piping was installed through subsurface horizontal boring.

7. Subsurface horizontal boring ("Horizontal Boring") is performed by directional drilling at a predetermined depth, and eliminates the need to trench the entire length of a pipeline installation. Horizontal Boring requires the use of large quantities of a formulated aqueous drilling lubricant ("Drilling Mud").

8. The Drilling Mud used for Horizontal Boring at the Construction Site consisted of water mixed with a proprietary blend of bentonite clays, silicas, wetting agents, and additives including isopropyl alcohol, petroleum distillates, anionic surfactants, and other chemical products.

9. If spilled into surface waters, Drilling Mud and its components and additives can harm or be fatal to aquatic wildlife.

10. Hydraulic and mechanical pressure generated during Horizontal Boring can result in the unintended release of Drilling Mud from within the excavated boring to surface soils above the excavation. These unintended releases of Drilling Mud to the surface are referred to as “frac-outs”.

11. Between at least February 18, 2013 and April 11, 2013, numerous frac-out incidents occurred which resulted in the discharge of Drilling Mud onto land within the Construction Area.

12. On February 18, 2013, an inspector from the Lake County Storm Water Management Commission (“LCSMC”) observed drilling mud accumulations from frac-out incidents on a slope draining to the adjacent wetland area, approximately one-eighth of a mile north of Volo Village Road.

13. On March 8, 2013, an LCSMC inspector observed four frac-out incidents in the Construction Area approximately three-quarters of a mile north of Volo Village Road. Drilling Mud from the frac-outs was deposited on the ground in the Construction Area and had flowed into the adjacent wetland at least 200 feet east of the Construction Area.

14. On March 8, 2013, the LCSMC inspector observed that Drilling Mud had also migrated from the Construction Area into the Tributary, and had traveled downstream approximately 500 feet toward Fish Lake. The water within the Tributary was unnaturally turbid, and Drilling Mud deposits were present on the stream bed of the Tributary.

15. On March 11, 2013, an LCSMC inspector observed that Drilling Mud had spilled on the ground in the Construction Area approximately one-quarter mile north of Volo Village Road. Silt fencing had been installed adjacent to the spilled Drilling Mud, but had failed to stop

the migration of Drilling Mud. The inspector observed that a large quantity of Drilling Mud had flowed to the east underneath the silt fencing and entered the wetland.

16. On March 14, 2013, an LCSMC inspector observed that Drilling Mud from the Construction Area had migrated downstream in the Tributary approximately 800 feet east of Route 12. The inspector observed a turbid plume of drilling mud within the Tributary, and an unnatural accumulation of Drilling Mud on the stream bed. Vegetation within the Tributary was coated with Drilling Mud.

17. On March 18, 2013, an LCSMC inspector observed a frac-out in the Construction Area approximately three-quarters of a mile north of Volo Village Road. A large quantity of Drilling Mud was present on the surface in an upland area that drained into a wetland. No silt fencing, straw bales, or other sedimentation control devices had been installed to prevent migration of the Drilling Mud into the wetland.

18. On March 22, 2013, inspectors from LCSMC and the Illinois EPA observed four new frac-out incidents within the Construction Area approximately one mile north of Volo Village Road. Drilling Mud had discharged to the surface of an upland area which drained into the adjacent wetland. No silt fencing, straw bales, or other sedimentation control devices had been installed to prevent migration of the Drilling Mud into the wetland.

19. Horizontal Boring at the Construction Area was completed on or about April 11, 2013.

20. Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), provides, in pertinent part, 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.

21. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), 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.

22. Respondent Volo, a political subdivision, is a “person” as that term is defined by 415 ILCS 5/3.315 (2014).

23. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides the following definition:

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

24. The Drilling Mud used at the Construction Area is a “contaminant” as that term is defined by 415 ILCS 5/3.165 (2014).

25. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), provides the following definition:

“Waters” means all accumulation 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.

26. The wetland areas adjacent to the Construction Area, the Tributary, and Fish Lake are “waters” of the State as that term is defined by 415 ILCS 5/3.550 (2014).

27. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), 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.

28. The discharge of Drilling Mud from the Construction Area rendered, or threatened to render, the water in the wetland areas, the Tributary, and Fish Lake harmful or detrimental to public health, livestock, fish and other aquatic life, or created a nuisance. The discharge of Drilling Mud into these waters therefore constituted “water pollution” as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2014).

29. By causing, threatening, and allowing the discharge of Drilling Mud into the wetland areas, the Tributary, and Fish Lake, Volo caused, threatened or allowed water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF VOLO, on Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(a) of the Act;
3. Ordering the Respondent to cease and desist from future violations of Section 12(a) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the

Respondent for each violation of Section 12(a) of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II
WATER POLLUTION HAZARD

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 19 and paragraphs 21 through 28 of Count I as paragraphs 1 through 27 of this Count II.

28. Section 12(d) of the Act, 415 ILCS 5/12(d) (2014), provides, in pertinent part, as follows:

No person shall:

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

29. On multiple occasions between at least February 18, 2013 and April 11, 2013, Volo caused and allowed Drilling Mud to be deposited onto land within the Construction Area, without installing effective measures or taking effective action to prevent the Drilling Mud from flowing or migrating into the wetland area, the Tributary, and potentially Fish Lake.

30. By discharging Drilling Mud, a contaminant likely to be harmful and injurious to public health and aquatic life, onto land within the Construction Area, the Respondent allowed the deposition of a contaminant upon the land in such a place and manner as to create a water pollution hazard.

31. By discharging and depositing Drilling Mud onto land within the Construction Area as alleged herein, the Respondent thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF VOLO, on Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(d) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of Section 12(d) of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day that each violation continued;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III
OFFENSIVE CONDITIONS

1-24. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 and paragraphs 25 through 26 of Count I as paragraphs 1 through 24 of this Count III.

25. Pursuant to Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2014), the

Board has promulgated rules and regulations to establish general water quality standards, codified at 35 Ill. Adm. Code, Subtitle C, Part 302 (“Board Water Quality Standards”).

26. Section 302.203 of the Board Water Quality Standards, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.

27. On at least March 8, 2013 and March 14, 2013, Volo caused and allowed an unnatural accumulation of Drilling Mud to be deposited on the stream bed of the Tributary. The Drilling Mud rendered the water unnaturally turbid, and caused deposits of Drilling Mud on the stream bed and on vegetation within the Tributary. Volo thereby caused or allowed “offensive conditions” in the Tributary in violation of Section 302.203 of the Board Water Quality Standards, 35 Ill. Adm. Code 302.203, and thereby also violated Sections 12(a) of the Act, 415 ILCS 5/12(a) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF VOLO, on Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent violated Sections 12(a) of the Act, and 35 Ill. Adm. Code 302.203;
3. Ordering the Respondent to cease and desist from any further violations of Sections 12(a) of the Act, and 35 Ill. Adm. Code 302.203;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of Section 12(a) of the Act, and 35 Ill. Adm. Code 302.203, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day that each violation continued;

5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
OFFENSIVE DISCHARGES

1-27. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 27 of Count III as paragraphs 1 through 27 of this Count IV.

28. Pursuant to Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2014), the Board has promulgated rules regulating the discharge of effluent into waters of the State of Illinois, codified at 35 Ill. Adm. Code, Subtitle C, Part 304 (“Board Effluent Standards”).

29. Section 304.105 of the Board Effluent Standards, 35 Ill. Adm. Code 304.105 provides, in pertinent part, as follows:

Section 304.105 Violation of Water Quality Standards

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard....

30. Section 304.106 of the Board Effluent Standards, 35 Ill. Adm. Code 304.106 provides, as follows:

Section 304.106 Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

31. Section 301.275 of the Board regulations, 35 Ill. Adm. Code 301.275, provides the following definition:

Section 301.275 Effluent

"Effluent" means any wastewater discharged, directly or indirectly, to the waters of the State....

32. Section 301.425 of the Board regulations, 35 Ill. Adm. Code 301.425, provides as follows:

Section 301.425 Wastewater

"Wastewater" means sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff.

33. Section 301.285 of the Board regulations, 35 Ill. Adm. Code 301.285, provides, as follows:

Section 301.285 Industrial Wastes

"Industrial Wastes" means any solid, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business or from the development, processing, or recovery, except for agricultural crop raising, of any natural resource.

34. The Drilling Mud which flowed onto the ground from each frac-out incident within the Construction Area is "industrial waste", and therefore "wastewater" as that term is defined by Section 301.425 of the Board regulations.

35. The Drilling Mud from the frac-out incidents that entered the wetlands adjacent to the Construction Area, the Tributary, and threatened to enter Fish Lake, is "effluent" as that term is defined by Section 201.275 of the Board regulations, 35 Ill. Adm. Code 201.275.

36. On at least March 8, 2013 and March 14, 2013, Volo's discharge of Drilling Mud caused or allowed offensive conditions in the Tributary, in violation of 35 Ill. Adm. Code 302.203, a water quality standard. By discharging effluent which caused a violation of a water quality standard, the Respondent violated Section 304.105 of the Board Effluent Standards, 35 Ill. Adm. Code 304.105, and thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

37. On multiple occasions between February 18, 2013 and April 11, 2013, the Respondent caused and allowed effluent containing settleable solids to be discharged into the Wetland, the Tributary, and potentially into Fish Lake. The Respondent thereby violated Section 304.106 of the Board Effluent Standards, 35 Ill. Adm. Code 304.106, and thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF VOLO, on Count IV:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(a) of the Act, and 35 Ill. Adm. Code Sections 304.105 and 304.106;
3. Ordering the Respondent to cease and desist from any further violations of Section 12(a) of the Act, and 35 Ill. Adm. Code Sections 304.105 and 304.106;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of Section 12(a) of the Act, and 35 Ill. Adm. Code Sections 304.105 and 304.106, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each

day that each violation continued;

5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

NPDES PERMIT VIOLATION: FAILURE TO OBTAIN COVERAGE UNDER GENERAL STORM WATER PERMIT FOR CONSTRUCTION ACTIVITIES

1-25. Complainant realleges and incorporates by reference herein paragraphs 1 through 19 and paragraphs 21 through 26 of Count I as paragraphs 1 through 25 of this Count V.

27. During construction of the water main extension project, the Respondent excavated open trenches for installation of approximately 2,100 lineal feet of water main. Excavation of the open trenches disturbed approximately 2 acres of land within the Construction Area.

28. The Respondent initiated construction prior to or on November 19, 2012. However the Respondent did not seek or obtain coverage under Illinois EPA's General NPDES Storm water Permit for construction activities at any time.

29. Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), 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.

30. Section 309.102 of the Board regulations, 35 Ill. Adm. Code 309.102, provides, in pertinent part, as follows:

Section 309.102 NPDES Permit Required

- a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

31. The Federal Clean Water Act, 33 U.S.C. §1251 et seq., (“CWA”) regulates the discharge of pollutants into navigable waters and prohibits such discharges without a National Pollutant Discharge Elimination System (“NPDES”) permit. The United States Environmental Protection Agency (“USEPA”) administers the NPDES program in each state unless the USEPA has delegated the authority to do so in that State.

32. The USEPA has delegated NPDES authority to the Illinois EPA, which is charged with the duty to abate violations of the NPDES permit program under the CWA, 33 U.S.C. § 1342(b) (7).

33. Illinois EPA’s NPDES program includes issuing permits for storm water discharges regulated by 40 CFR § 122.26, which requires entities to obtain coverage under an Illinois EPA General NPDES permit for Storm water Discharges from Construction Site Activities (“General NPDES Permit”) prior to commencing certain construction operations.

34. 40 CFR § 122.26 provides, in pertinent part, as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

* * *

(9) (i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

(A) The discharge is from a small MS4 required to be regulated pursuant to § 122.32;

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b) (15) of this section;

* * *

(b) Definitions.

* * *

(15) *Storm water discharge associated with small construction activity* means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres....

35. The Respondent's excavation of the open trench disturbed approximately two acres of land within the Construction Area. The excavation was a "small construction activity" as that term is defined by 40 CFR §122.26(b) (15).

36. The Respondent was required under Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and 40 CFR §122.26 to seek and obtain coverage under Illinois EPA's General NPDES Storm Water Permit for Construction Site Activities prior to initiating construction of the water main extension.

37. By failing to apply for and obtain coverage under Illinois EPA's General NPDES Storm water Permit for its water main extension project at any time, the Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and 35 Ill. Adm. Code 309.102.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF VOLO, on Count V:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(f) of the Act and 35 Ill. Adm. Code 309.102;
3. Ordering the Respondent to cease and desist from future violations of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102 ;
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) against the Respondent for each day of violation of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VI
VIOLATION OF MS4 NPDES PERMIT CONDITIONS

1-32. Complainant realleges and incorporates by reference herein paragraphs 1 through 32 of Count V as paragraphs 1 through 32 of this Count VI.

33. Volo is the owner and operator of a small municipal separate storm sewer system (“MS4”).

34. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA for storm water discharges regulated by 40 C.F.R. 122.26 and 40 C.F.R. 122.32, which require small MS4 operators to obtain a NPDES permit to lawfully discharge storm water.

35. On September 7, 2011, Illinois EPA issued Municipal Separate Storm Sewer System National Pollution Discharge Elimination System permit No. ILR00657 (“MS4 NPDES Permit”) to Volo.

36. From at least February 18, 2013 to at least March 22, 2013, when an Illinois EPA inspector visited the Construction Area, the Respondent failed to provide oral or written notice to Illinois EPA of the multiple Drilling Mud discharges to the wetland areas or Tributary adjacent to the Construction Area.

37. Condition I.B of Respondent’s MS4 NPDES Permit provides, in pertinent part, as follows:

B. Eligibility

1. This Permit authorizes discharges of storm water from small municipal separate storm sewer systems (MS4s) as defined in 40 CFR 122.26(b)(16) as designated for permit authorization pursuant to 40 CFR 122.32.

* * *

38. Condition I.C of Respondent's MS4 NPDES Permit provides, in pertinent part, as follows:

C. Limitations on Coverage.

The following discharges are not authorized by this permit:

- 1. Storm water discharges that are mixed with non-storm water associated with industrial activity unless such discharges are:
 - a. In compliance with a separate NPDES permit....

39. The Standard Conditions to Respondent's MS4 NPDES Permit provide, in pertinent part, as follows:

* * *

Agency means the Illinois Environmental Protection Agency

* * *

12. Reporting Requirements.

* * *

(e) Twenty-four hour reporting.

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances....the Agency may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

40. Between at least February 18, 2013 and April 11, 2013, the Respondent discharged storm water containing Drilling Mud into the wetland, the Tributary, and potentially into Fish Lake, without having obtained coverage under an NPDES permit. The Respondent

thereby violated Condition C(1)(a) of its MS4 NPDES Permit, and thereby also violated Section 12(f) of the Act, 415 ILCS 5/12(a) (2014).

41. On numerous occasions between February 18, 2013 and at least March 22, 2013, the Respondent caused or allowed the unpermitted discharge of storm water mixed with Drilling Mud from the Construction Area, in violation of its MS4 Permit. However, the Respondent failed to provide oral or written notice of this noncompliance with its MS4 Permit to Illinois EPA prior to March 22, 2013. The Respondent thereby violated Standard Condition 12(e) of its MS4 Permit, and thereby also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and 35 Ill. Adm. Code 309.102.

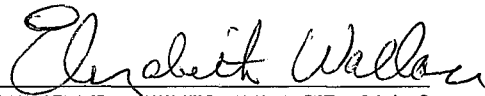
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, VILLAGE OF VOLO, on Count VI:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(f) of the Act, and 35 Ill. Adm. Code 309.102;
3. Ordering the Respondent to cease and desist from any further violations of Section 12(f) of the Act, and 35 Ill. Adm. Code 309.102;
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000) against the Respondent for each day of violation of Section 12(f) of the Act, and 35 Ill. Adm. Code 309.102;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting 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

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Environmental Enforcement/Asbestos
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BY: 
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Of Counsel:
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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 Respondent THE VILLAGE OF VOLO (“Respondent” or “Volo”) (“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.* (2014), 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 21, 2015, 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 (2014), 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 (2014).

3. At all times relevant to the Complaint, the Respondent was an Illinois municipal corporation, organized and operating under the laws of the State of Illinois.

4. Between at least November 19, 2012 and at least April 11, 2013, the Respondent was engaged in installation of a 16" water main along the east side of US Route 12, between Volo Village Road and Molidor Road, Volo, Lake County, Illinois ("Construction Area").

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 415 ILCS 5/12(a) (2014);

Count II: WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2014);

Count III: OFFENSIVE CONDITIONS, violation of 415 ILCS 5/12(a) (2014), and 35 Ill. Adm. Code 302.203;

Count IV: OFFENSIVE DISCHARGES, violation of 415 ILCS 5/12(a) (2014), and 35 Ill. Adm. Code Sections 304.105 and 304.106;

Count V: NPDES PERMIT VIOLATION: FAILURE TO OBTAIN COVERAGE UNDER GENERAL STORM WATER PERMIT FOR CONSTRUCTION ACTIVITIES,

415 ILCS 5/12(f) (2014), and 35 Ill. Adm. Code 309.102;

Count VI: VIOLATION OF MS4 NPDES PERMIT CONDITIONS, 415 ILCS 5/12(f) (2014), and 35 Ill. Adm. Code 309.102.

C. Non-Admission of Violations

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

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 5/42 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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. Complainant alleges that discharges of drilling fluid from the Construction Area entered wetland areas and the tributary to Fish Lake ("Tributary"), causing unnatural accumulations of bottom deposits and threatening aquatic life within the Tributary and threatening water quality in Fish Lake. Complainant also asserts that Respondent's alleged failure to comply with NPDES permitting requirements interfered with Illinois EPA's oversight responsibilities under the delegated NPDES program.

2. Installation of the water main within the Construction Area has a social and economic benefit. The horizontal drilling used by Respondent for installation of the water main can provide an environmental benefit over open-trench excavation provided that drilling mud excursions are carefully controlled.

3. The Construction Area is suitable for installation of the water main provided sufficient safeguards are used to prevent migration of contaminants into waters of the State of Illinois.

4. Water main installation without the discharge of contaminants into waters of the State is technically feasible and economically reasonable.

5. The Respondent has removed the drilling mud from waters of the State and restored affected areas.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), 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 there from 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. Complainant alleges that the discharge-related violations occurred intermittently

between February 18, 2013 and April 11, 2013. Complainant alleges that the NPDES Permit violations alleged in Count V occurred from at least November 19, 2012 until at least April 11, 2013. Complainant alleges that the NPDES MS4 Permit Violations alleged in Count VI occurred from at least February 18, 2013 to at least March 22, 2013.

2. Due in part to inclement weather during the installation of the water main, the Respondent did not effectively address contaminant migration resulting from 'frac-out' incidents. However, the Respondent initiated restoration of affected areas in April, 2013.

3. Complainant is unaware of a substantial economic benefit to Respondent related to the alleged violations, and asserts that assessment of a civil penalty of \$8,000.00 will recover any potential economic benefit realized by the Respondent.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of \$8,000.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. The Respondent has one previously adjudicated violation. In *People v. Village of Volo and Smith Engineering Consultants, Inc.* PCB 06-90, Complainant alleged violations related to construction permits for Volo's Public Water Supply. On May 4, 2006, the Board accepted a Stipulation and Proposal for Settlement submitted by Complainant and Respondents, requiring the Respondents to pay a civil penalty of \$8,000.00 and to cease and desist from the violations alleged in the Complaint.

6. The Respondent did not self-disclose the alleged violations. However, Respondent cooperated with Illinois EPA and Lake County Stormwater Management Commission ("LCSMC") inspectors who visited the Site during installation of the water main,

and attempted to mitigate the alleged violations following the Illinois EPA and LCSMC inspections.

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

8. The Parties did not enter into a Compliance Commitment Agreement.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Eight Thousand Dollars (\$8,000.00) 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, 415 ILCS 5/42(g) (2014), 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 and case 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:

Christopher J. Grant
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. 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.

2. 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 \$8,000.00 penalty, its commitment to cease and desist as contained in Section V.D.2 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 21, 2015. 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 (2014), or entity other than the Respondent.

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 of the
State of Illinois

LISA BONNETT, Director
Illinois Environmental Protection Agency

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

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 3/23/15

DATE: 3/18/15

THE VILLAGE OF VOLO

BY: Bunnell Russell

TITLE: Village President

DATE: 3-30-15

People of the State of Illinois v. The Village of Volo PCB No.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB
)	
)	(Enforcement –Water)
THE VILLAGE OF VOLO,)	
an Illinois municipal corporation,)	
)	
Respondent.)	

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing the initial Complaint in this matter, and a Stipulation and Proposal for Settlement executed between Complainant and Respondent the Village of Volo.

2. Section 31 of the Act, 415 ILCS 5/31 (2014), provides, in pertinent part, as follows:

* * *

(c)(2) 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 now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2014).

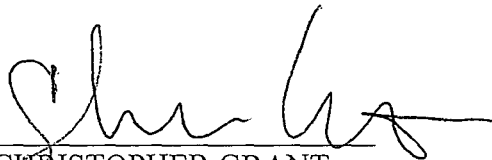
Respectfully submitted,

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

ELIZABETH WALLACE, Chief
Environmental Bureau

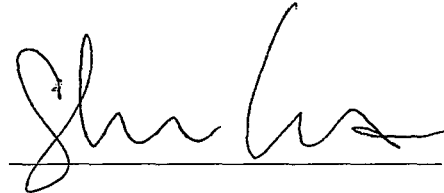
BY:



CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
Chicago, Illinois 60602
(312) 814-5388

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 21st day of April, 2015, the Complaint, Stipulation and Proposal for Settlement, Motion to Request Relief from the Hearing Requirement, and Notice of Electronic Filing, upon the person listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.

A handwritten signature in black ink, appearing to read 'Chris Grant', written over a horizontal line.

CHRISTOPHER GRANT

SERVICE LIST:

VILLAGE OF VOLO

Mr. Burnell Russell
Village President
500 S. Fish Lake Road
Volo IL 60073
(by Certified Mail)

Mr. William J. Anaya
Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, IL 60606
(by First Class Mail)