



One Arizona Center  
Phoenix, AZ 85004-2202  
602.382.6000  
602.382.6070 (Fax)  
www.swlaw.com

ORANGE COUNTY  
PHOENIX  
SALT LAKE CITY  
TUCSON

Bradley S. Carroll  
Of Counsel  
602.382.6578  
bcarroll@swlaw.com

March 12, 2008

Arizona Corporation Commission  
**DOCKETED**

MAR 12 2008

DOCKETED BY  
NB

**VIA HAND-DELIVERY AND E-MAIL**

Blessing Chukwu  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Keith Layton, Staff Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Re: **Perkins Mountain Water Company and Perkins Mountain Utility Company  
Docket Nos. W-20380A-05-0490 and SW-20379A-05-0489  
Fourth Supplemental Response to Staff's Second Set of Data Requests Dated  
February 8, 2008**

Dear Ms. Chukwu and Mr. Layton:

Perkins Mountain Water Company and Perkins Mountain Utility Company ("Applicants") hereby submit the attached Supplemental Response to BNC 2.12 of Staff's Second Set of Data Requests dated February 8, 2008. An electronic version of this response is also being sent to you via e-mail. This supplement to the response provides information regarding the state of Illinois, as well as information regarding one additional matter for the state of Louisiana. Please note that the documents attached to this Supplemental Response relate only to the supplemental information provided herein.

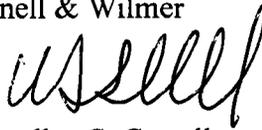
RECEIVED  
2008 MAR 12 P 4: 48  
AZ CORP COMMISSION  
DOCKET CONTROL

Blessing Chukwu  
Keith Layton  
March 12, 2008  
Page 2

Please do not hesitate to contact me if you have any questions.

Sincerely,

Snell & Wilmer



Bradley S. Carroll

BSC/dcp

Enclosure

cc: Docket Control (Original plus 15 copies)  
Robin Mitchell, Esq. (Via e-mail only)  
Michele Finical (Via e-mail only)

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 12, 2008)**

---

**BNC 2.12** In March 2007, the Illinois Commerce Commission in Docket No. 06-0360, cited five (5) affiliates of Utilities, Inc., for failure to comply with Commission Orders and with Commission Rules. Please provide a history of Citations issued by regulatory agencies in other jurisdictions against Utilities, Inc. and/or any of its respective affiliates since the year 2000.

Response: Utilities, Inc. is a holding company that owns the stock of approximately 90 operating utilities in 17 states. As such, to the best of my knowledge and belief, there have been no citations that have been issued by regulatory agencies against Utilities, Inc. in connection with utility compliance obligations. With respect to its utility operating company affiliates, the requested information is set forth below for each of the applicable states:

Arizona None

Georgia None

Kentucky None

Louisiana On August 11, 2004, the Louisiana Department of Environmental Quality issued a Compliance Order to *Louisiana Water Service, Inc.* following an inspection by the Department. A copy of the Compliance Order is attached.

On May 21, 2002, the Louisiana Department of Environmental Quality issued a Compliance Order to *Utilities, Inc. of Louisiana* following an inspection by the Department. A copy of the Compliance Order is attached.

Mississippi None

New Jersey None

Ohio None

Tennessee None

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 12, 2008)**

---

Nevada – On October 25, 2000, the Public Utilities Commission of Nevada (“Commission”) issued an order in Docket No. 98-0-5008 relating to an application by *Spring Creek Utilities Company* to withdraw from its Capital Projects and Hydrant Fund. During the review of this application, the Commission’s Regulatory operations Staff identified three compliance issues including a failure to obtain a permit to construct pursuant to the Nevada Utility Environmental Protection Act (“UEPA”) for construction of a 500,000 gallon storage tank. *Spring Creek Utilities Company* entered into a Stipulation wherein it agreed to pay a \$5,000 fine that would be suspended for three years and expunged if the utility obtained all necessary construction permits and there were no further violations of the UEPA. A copy of the order is attached.

On October 17, 2006, the Commission issued an order approving a Settlement Agreement and Stipulation Agreement between the Commission Staff and *Spring Creek Utilities Company* relating to a Petition for an Order to Show Cause that alleged that *Spring Creek Utilities Company* failed to provide reasonably continuous and adequate service to its customers. A copy of the order is attached.

Maryland     None

Pennsylvania     None

Indiana - On August 24, 2004, as part of an order involving the sale of assets and approval of an acquisition adjustment, the Indiana Utility Regulatory Commission (“Commission”) found in Cause No. 41873 that certain records of *Indiana Water Services, Inc. (“IWSI”)* were being kept out of state (in Northbrook, Illinois) contrary to the requirement that a utility's books be kept in the state and not be removed except upon conditions prescribed by the Commission. *IWSI* did this because one of its Indiana affiliates, Twin Lakes Utilities, had already been given permission by the Commission to keep its books in Illinois. The Commission found that notwithstanding its authorization for the affiliate to keep its books and records out of state, *IWSI* should have asked for permission. The Commission did not require *IWSI* to transfer the books and records back to Indiana, but merely ordered that *IWSI* would have to pay the costs of the Commission and the Office of Utility Consumer Counselor related to any necessary visits to Northbrook.

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 12, 2008)**

---

Virginia - On January 21, 2005 *Massanutten Public Service Corporation* ("MPSC") filed an application with the Virginia State Corporation Commission ("Commission") under the state's Affiliates Act requesting approval of a water services agreement with Water Service Corporation ("WSC") (an affiliate of MPSC) under which MPSC and WSC had already been operating. At the time MPSC and WSC had entered into the agreement, MPSC was exempt from the Affiliates Act because it did not meet the financial threshold that would have required approval of the agreement. On April 20, 2005, MPSC filed a request to withdraw its application because certain provisions of the agreement needed to be revised. On April 21, 2005, the Commission granted the application and dismissed the case without prejudice. By order dated June 7, 2005, MPSC was directed to file a new application with a Revised Agreement. MPSC filed a new application for approval of the Revised Agreement in Case No. PUE-2005-0063. On October 19, 2005, the Commission issued an order granting approval of the Revised Application. In its order approving the Revised Agreement, the Commission found that MPSC and WSC had been operating under the prior agreement which had not been approved by the Commission and ordered that MPSC "take the necessary steps to ensure that prior approval is obtained by the Commission under the Affiliates Act for any future affiliate transactions." A copy of the order is attached for your convenience.

On March 15, 2006, MPSC, entered into a Consent and Special Order ("Consent Order") with the Virginia Department of Environmental Quality to resolve alleged violations of environmental laws and regulations. MPSC without admitting or denying the factual findings or conclusions of law contained in the Consent Order, agreed to perform the actions described in Appendix A to the Consent Order and to pay a civil charge of \$19,700. A copy of the Consent Order is attached.

Illinois - On January 3, 2007, the Illinois Environmental Protection Agency ("EPA") accepted a Compliance Commitment Agreement proposed by *Galena Territory Utilities, Inc.* ("Galena") to resolve a notice of alleged violations under the Illinois Environmental Protection Act. A copy of the EPA's acceptance letter is attached as BNC 2.12 IL-A.

On March 21, 2007, the Illinois Commerce Commission ("Commission") issued an order in Docket No. 06-0360 relating to *Apple Canyon Utility Company, Cedar Bluff Utilities, Inc., Charmar Water Company, Cherry Hill Water Company* and *Northern Hills Water Company* ("collectively

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 12, 2008)**

---

"Companies"). The Commission found, in part, that the *Companies* failed to maintain and file on April 7, 2005, continuing property reports ("CPRs") as was required by the Commission. The *Companies* had testified that the in-house data base system that was designed to track the CPRs did not interface properly with other older systems and there was a delay in getting the data entry work completed in time for the April 7, 2005 deadline. Notwithstanding, the Commission issued an order that required that future rate base additions for the *Companies* must be supported by CPRs and assessed a civil penalty totaling \$5,000. A copy of the order is attached as BNC 2.12 IL-B.

On May 18, 2007, Circuit Court for the 15th Judicial Circuit of Stephenson County, Illinois, entered an order (No. 0CH96) approving a Consent Order between the Illinois Environmental Protection Agency and *Northern Hills Water and Sewer Company* ("*Northern Hills*") wherein *Northern Hills*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$9,750. The allegations of the complaint were that *Northern Hills* had violated various provisions of the Illinois Environmental Protection Act relating to its waste water treatment plant in Freeport, Illinois. A copy of the Consent Order is attached as BNC 2.12 IL-C.

On August 30, 2006, the Commission issued an order in Docket No. 05-0452 relating to an application for a 2.95 acre extension of the CC&N for *Galena Territory Utilities, Inc.* ("*Galena*") to provide sanitary sewer service to an existing 71-unit condominium development contiguous to its existing service territory. In approving the application, the Commission found, in part, that *Galena* had provided service prior to the issuance of the CC&N and ordered *Galena* to pay a \$1,000 fine. A copy of the order is attached as BNC 2.12 IL-D.

On July 12, 2005, Circuit Court for the Nineteenth Judicial District of Lake County, Illinois, entered an order (No. 05CH1009) approving a Consent Order between the Illinois Environmental Protection Agency and *Charmar Water Company* ("*Charmar*") wherein *Charmar*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$5,000. The allegations of the complaint were that *Charmar* had failed to obtain a construction permit for a hydropneumatic storage tank and

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 12, 2008)**

---

operate such tank without a permit. A copy of the Consent Order is attached as BNC 2.12 IL-E.

On or about November 6, 2003, the United States Environmental Protection Agency and *Northern Hills Water and Sewer Company* ("*Northern Hills*") entered into a Consent Agreement and Final Order ("*Consent Agreement*") in Docket No. CERCLA-05-2004 wherein *Northern Hills*, without admitting or denying the factual allegations of the complaint, agreed to pay a civil penalty of \$1,000 for failing to timely report release of chlorine from its Freeport facility. A copy of the Consent Agreement is attached as BNC 2.12 IL-F.

Prepared by: Michael T. Dryjanski  
Manager, Regulatory Accounting  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

**BNC 2.12 LA**

MFY-29-2002 15:25

UTILITIES, INC.

047 498 6498 P.04/10

STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF

UTILITIES INC. OF LOUISIANA  
ST. TAMMANY PARISH  
ALT ID NO. LA0066559

\*  
\*  
\* ENFORCEMENT TRACKING NO.  
\*  
\* WE-C-01-0685  
\*  
\* AGENCY INTEREST NO.  
\*  
\*  
\*  
\*  
\*

PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT,  
La. R.S. 30:2001, ET SEQ.

\*  
\* 19041  
\*  
\*  
\*

COMPLIANCE ORDER

The following COMPLIANCE ORDER is issued to UTILITIES INC. OF LOUISIANA (RESPONDENT) by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C) and 30:2050.2.

FINDINGS OF FACT

I.

The Respondent owns and/or operates the Arrowwood Wastewater Treatment Plant located at the end of Cherokee Street in Covington, St. Tammany Parish, Louisiana. Louisiana Pollutant Discharge Elimination System permit LA0066559 was issued on May 21, 1997, and will expire on May 20, 2002. An LPDES permit application was received on October 24, 2001.

FY-25-2002 15:25

UTILITIES, INC.

347 458 6498 P.03/18

LPDES permit LA0066559 authorizes the Respondent to discharge treated sanitary wastewater into the Abita River, waters of the state.

## II.

Inspections conducted by the Department on or about February 17, 1998, and on or about November 9, 2001, revealed the Respondent failed to keep records of the pH sample and analysis times and pH calibration log. Each failure to maintain records is in violation of LPDES permit LA0066559 (Part III, Section A.2, C.3, and C.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.2, LAC 33:IX.2355.J.3, and LAC 33:IX.2775.

## III.

Inspections conducted by the Department on or about February 17, 1998, and on or about November 9, 2001, revealed the Respondent failed to calculate its loading concentration correctly. The Respondent does not use a representative sample of daily flows to calculate daily loadings as required by its permit. Each failure to correctly calculate loading concentration is in violation of LPDES permit LA0066559 (Part III, Section A.2 and C.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.J.1.

## IV.

A review of the Discharge Monitoring Reports (DMRs) conducted on or about April 24, 2002, revealed the following effluent violations from 5/97 through 03/02:

Date	Parameter	Permit Limit	Sample Results
1/99	Fecal Coliform, 7 day avg.	400 colonies /100 ml	980 colonies/100 ml
2/02	TSS 7 day avg.	23 mg/L	24 mg/L

Each effluent excursion is in violation of LPDES permit LA0066559 (Part I, Page 2 of 2 and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

NY-29-2202 15:28

UTILITIES, INC.

847 458 5436 P.06/10

6/6/01	Helenburg	Faulty electrical breaker on pump #1
6/7/01	Helenburg	Heavy rain from tropical storm
6/8/01	Holiday Square	Electrical step-down transformer on the control voltage went out
6/12/01	Crestwood	Float ball faulty
8/12/01	Helenburg	Heavy rains
10/7/01	Crestwood	Malfunctioning float control
10/14/01	Crestwood	Belt went out on one of the pumps and the other was left off by accident
10/17/01	Crestwood	Restriction in force main
12/03/01	Texas on Hwy 190	Circuit breakers to all three pumps had tripped out due to a power surge

Each failure to properly operate and maintain systems of treatment and control is a violation of

LPDES permit LA00665509 (Part III, Section A.2 and Part III, Section B.3.a), La. R.S. 30:2076

(A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E

### COMPLIANCE ORDER

Based on the foregoing, the Respondent is hereby ordered:

I.

To immediately take, upon receipt of the COMPLIANCE ORDER, any and all steps necessary to meet and maintain compliance with LPDES permit LA0066559.

II.

To submit to the Enforcement Division, within thirty (30) days after receipt of this COMPLIANCE ORDER, a complete written report that shall include a detailed description of the circumstances of the cited violations, and the actions taken to achieve compliance with this COMPLIANCE ORDER.

NY-25-2202 15:27

UTILITIES, INC.

947 498 6499 P.07/18

V.

A file review conducted by the Department on or about April 23, 2002, revealed the following overflows as reported by the Responder from 5/97 through 4/02:

DATES OF OVERFLOWS	LOCATION OF LIFTSTATION	COMMENTS
5/5/97	Cinema 10	Motor went to ground and shorted out two 60 amp fuses
5/27/97	Village Drive	Mechanical problem with the float control
6/11/97	Ms. Dee's	Pumps not working
7/4/97	Forest Loop	Loss of vacuum in the suction lift pumps
7/5/97	Cinema 10	Corrosion in the control panel
7/6/97	North Bent Tree Court	Bad circuit breaker in the control panel
12/1/97	Cinema 10	Transformer burnt up
1/5/98	Rutherford	Ball check in pumps sticking
1/7/98	Crestwood	Severe weather
1/7/98	Arrowwood STP	Hydraulic overload due to severe weather
1/22/98	Crestwood	Heavy rainfall and electrical problems
6/8/98	Helenburg Road	Control float hung up which prevented the pumps from starting
6/27/98	Wal-Mart parking lot	Blockage in manhole
7/19/98	Helenburg Road	Electrical malfunction with Control float junction box.
7/29/98	Helenburg Road	Power outage
7/98	Fairway Drive	Air relief line come untied on pump
9/29/98	Roseburg	Power outage due to Hurricane George
4/18/99	Helenburg Road	Control float malfunction
5/6/99	Helenburg Road	Floating material disabled float system from engaging pumps.
9/29/99	Holiday Square	Control float malfunction
11/99	Crestwood	Phase monitor inside the control panel failed, shutting down lift station
1/3/00	Helenburg Road	Air relief stopped up
3/27/00	River Oaks	Tee on Sewer force main broke off preventing lift station to pump
4/5/00	River Oaks	Breaker left off by electrician
7/21/00	Helenburg Road	Power outage due to fallen limb
3/27/01	River Oaks/Bentree North	Debris in the wet well clogging up the pump
4/24/01	Crestwood	Lost of power from supplier
5/6/01	Helenburg	Main circuit breaker tripping on one of the two pumps causing other to burn up

NY-29-2002 15:27

UTILITIES, INC.

847 450 6456 P.08/10

**THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:****I.**

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

**II.**

The request for adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the **Enforcement Tracking Number** and **Agency Interest Number**, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality  
Office of the Secretary  
Post Office Box 82282  
Baton Rouge, Louisiana 70884-2282  
Attn: Hearings Clerk, Legal Division  
Re: Enforcement Tracking No. WE-C-01-0685  
Agency Interest No. 19041

**III.**

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

05-29-2002 15:29

UTILITIES, INC.

847 498 6498 P.09/13

## VIII.

This COMPLIANCE ORDER is effective upon receipt.

Baton Rouge, Louisiana, this 21<sup>st</sup> day of May, 2002.



R. Bruce Hammond  
Assistant Secretary  
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
P.O. Box 82215  
Baton Rouge, LA 70884-2215  
Attention: Mrs. Cheryl Nolan

c: Mr. Jerry Saunders  
U.S. Environmental Protection Agency

Mr. Bill Hathaway  
Department of Health and Hospitals

Mr. Doug Vincent  
Department of Health and Hospitals

**BNC 2.12 IL-A**

BMC 2-12



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

217/785-0561

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

January 3, 2007

CERTIFIED MAIL # 7004 2510 0001 8620 9472  
RETURN RECEIPT REQUESTED

Chris Montgomery  
Midwest Regional Office  
334 N. 575 E.  
Valparaiso, In 46383

Re: UTL INC-GALENA TERRITORY UTILITES, IL0855050  
Compliance Commitment Acceptance  
Violation Number: W-2006-00381

Dear Mr. Montgomery:

The Illinois Environmental Protection Agency ("Illinois EPA") **accepts** the Compliance Commitment Agreement ("CCA") proposed by Utl Inc-Galena Territory Utilites dated December 18, 2006 in response to the Violation Notice dated November 1, 2006.

Commitment

Scheduled Date

Hire an engineer (already completed)

August 10, 2006

Submit compliance report with  
chosen treatment option

March 15, 2007

Begin Construction

April 15, 2007

Complete Construction and Obtain  
Operating permit

September 30, 2007

Demonstrate Compliance - Running Annual  
Average of Sample Results below the  
Radionuclide MCL(s)

October 10, 2008

Failure to fully comply with each of the commitments and the schedules for achieving each commitment as contained in the CCA may, at the sole discretion of the Illinois EPA, result in referral of this matter to the Office of the Attorney General, the State's Attorney of Jo Daviess County, or the United States Environmental Protection Agency.

Page 2

UTL INC-GALENA TERRITORY UTILITES  
VN W-2006-00381

The CCA does not constitute a waiver or modification of the terms and conditions of any license or permit issued by the Illinois EPA or any other unit or department of local, state or federal government or of any local, state, or federal statute or regulatory requirement. All required permits or licenses necessary to accomplish the commitments stated above and comply with all local, state or federal laws, regulations, licenses or permits must be acquired in a timely manner. The need for acquisition of any licenses or permits does not waive any of the times for achieving each commitment as contained in the CCA. This CCA does not impact the eligibility or confer acceptance or rejection for an Illinois EPA State Revolving Fund low interest loan.

Please notify the Illinois EPA in writing within 10 days of the completion of each scheduled commitment outlined above. Questions regarding this matter should be directed to Jay Timm at 217/785-0561. Written communications should be directed to Beverly Booker at Illinois EPA, Bureau of Water, CAS #19, P.O. Box 19276, Springfield, Illinois 62794-9276. All communications must include reference to Violation Notice number, W-2006-00381.

Sincerely,



Michael S. Garretson, Manager  
Compliance Assurance Section  
Bureau of Water

cc: Tim Brant

**BNC 2.12 IL-B**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :  
On Its Own Motion :  
-vs- :  
Apple Canyon Utility Company; Cedar :  
Bluff Utilities, Inc.; Charmar Water : 06-0360  
Company; Cherry Hill Water Company; :  
Northern Hills Water and Sewer Company :  
:  
Citation for failure to comply with :  
Commission Order and with Commission :  
rules. :

ORDER

By the Commission:

**The Procedural History**

On April 7, 2006, the Staff of the Financial Analysis Division ("Staff") of the Illinois Commerce Commission ("Commission") issued a Staff Report regarding whether Apple Canyon Utility Company; Cedar Bluff Utilities, Inc.; Charmar Water Company; Cherry Hill Water Company; and Northern Hills Water and Sewer Company (collectively "the Companies") maintained continuing property records, as was required by the final Order in docket 03-0398. All of these companies are subsidiaries of a holding company, Utilities, Inc. ("UI"). In that Report, Staff recommended that the Commission initiate a citation proceeding to determine whether the Companies complied with the Commission's final Order in Docket No. 03-0398, as well as with 83 Ill. Adm. Code 605, and 83 Ill. Adm. Code 615, and to determine what penalties should attach, if any.

The Commission then issued a Citation Order, dated May 3, 2006, requiring a proceeding to commence to determine whether the Companies failed to maintain continuing property records, as was required by that Order and Commission regulations. (83 Ill. Adm. Code 605.10, and 83 Ill. Adm. Code 615, Appendix A). The Citation Order also required a determination as to whether penalties should be imposed pursuant to Section 5-202 of the Public Utilities Act, if any. The Companies filed a Verified Answer on June 12, 2006.

Pursuant to proper legal notice, an evidentiary hearing was held in this matter before a duly authorized Administrative Law Judge of the Commission on December 6, 2006. Steven M. Lubertozzi, the Chief Regulatory Officer for UI and its subsidiaries, testified on behalf of the Companies. Diana Hathorn, an accountant in the Commission's Financial Analysis Division, testified on behalf of Commission Staff. At

the conclusion of the hearing on December 6, 2006, the record was marked "Heard and Taken."

## **The Parties' Positions**

### **Staff's Position**

Ms. Hathhorn testified that on April 7, 2004, the Commission entered a final Order in 03-0398 approving a general increase in water and/or sewer rates. (Staff Ex. 1.0 at 2-3.) That Order attached several conditions to approval of the Companies' proposed rate increases, including:

Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company, and Northern Hills Water and Sewer Company shall establish and maintain continuing property records ["CPRs"] in compliance with the Commission's rules, and must file a report with the Manager of the Commission's Accounting Department as to the successful implementation of the property record program within 12 months after the final order in this proceeding.

(Order, docket No. 03-0398 at 26). The deadline specified for filing this Report was April 7, 2005. However, the Companies did not file a Report until July 13, 2006, well over one year after the deadline. (*Id.* at 3.)

Ms. Hathhorn explained that the CPR Report filed by the Companies on July 13, 2006, establishes that the Companies now have CPRs that are updated for the years 2004, 2005, and 2006 to date. However, the Companies confirmed in Staff data request response DLH-2.01 that their database for continuing property records has not yet been updated for the years before 2004. (Staff Ex. 1.0 at 3).

Ms. Hathhorn also testified as to the reason utilities are required to keep continuing property records. Continuing property records show the history of individual assets. According to the Uniform System of Accounts for Water Utilities, 83 Ill. Adm. Code 605, continuing property records are a system of preserving the original cost of plant in a manner so that it is possible to identify, locate, and obtain the cost and age of all used and useful property. Proof of the value of utility assets should be readily available on the books of a regulated utility. This information is required when a determination is made as to whether an investment is prudent and thus should be capitalized. It also is required when quantifying capitalization. (ICC Staff Ex. 1.0 at 3-4). She stated that without continuing property records, the Companies violated 83 Ill. Adm. Code 615. (*Id.*)

Ms. Hathhorn stated that, in the past rate cases, UI subsidiaries have failed to maintain continuing property records. This failure resulted in personnel at UI subsidiaries being unable to locate invoices to support rate base additions. Thus, in UI rate case previous to docket 03-0398, the Commission disallowed unsupported rate base. (Staff Ex. 1.0 at 5). A continued failure to establish and maintain CPRs will result in the same problem being repeated in the next rate case filed by a UI subsidiary. (*Id.*)

Ms. Hathhorn explained that the Companies have made progress with their CPRs but, they are not yet complete. (*Id.*) Therefore, she recommended that the Commission find in this docket that the procedure that has been used in the past rate cases, to disallow rate base additions that have no CPR evidentiary support, will be followed in future rate cases. (*Id.*)

She also asserted testified that the Commission has the authority to impose civil penalties upon the Companies pursuant to Section 5-202 of the Act, in accordance with the criteria set forth in Section 5-203 of the Act. Those criteria are: (a) the appropriateness of the penalty to the size of the business of the public utility; (b) the gravity of the violation; (c) any other mitigating or aggravating factors as the Commission may find to exist; and (c) the good faith of the public utility in attempting to achieve compliance after notification of a violation. (Staff Ex. 1.0 at 6).

With regard to the size of the Companies, Ms. Hathhorn noted that the Companies here are wholly-owned subsidiaries of UI, and together, these five companies provide water and/or sewer service to approximately 1,500 customers in various Illinois counties. (Staff Ex. 1.0 at 6). Ms. Hathhorn stated that the parent company here, UI, is not a "small utility" as is defined by the Public Utilities Act. It has 24 Illinois subsidiaries, with 17,400 customers in this state. Also, UI owns and operates approximately 81 water and/or wastewater systems in seventeen different states. In Ms. Hathhorn's opinion, the size of the Companies' parent, UI, is an aggravating factor that the Commission should consider. (*Id.*)

As for the gravity of the violation, she testified that failure to maintain continuing property records in compliance with Parts 605 and 615 results in the Companies being unable to support increases to plant for plant additions that were made since the Companies' last rate case. (*Id.*, at 7). Ms. Hathhorn explained that if the Companies continue to maintain the CPRs on a prospective basis, they will have evidentiary support for all plant additions from 2004 to the present. (*Id.*)

Regarding good faith, Ms. Hathhorn asserted that the final order in docket 03-0398 was not the first time that the Commission has required a UI subsidiary to maintain a CPR system. (Staff Ex. 1.0 7-8). The Commission's Order in Apple Canyon Utility Co., docket 94-0157, (March 22, 1995, 1995 Ill. PUC Lexis 203) required some UI subsidiaries to maintain Continuing Property Records using the "Will County Continuing Property Records" as a model. (*Id.*) In addition, Ms. Hathhorn stated that the Companies were not diligent in complying with the final Order in docket 03-0368, because that Order required the Companies to file a report establishing successful implementation of CPRs by April 7, 2005. However, the Companies did not meet that deadline and instead filed several motions for extension of time to comply with the Order. (*Id.*)<sup>1</sup>

---

<sup>1</sup> The Administrative Law Judge was never served with a copy of any of these motions. As a result, these motions were never granted.

Ms. Hathhorn recommended that the Commission impose a penalty on each of the five Companies in the amount of \$1,000, for a total of \$5,000. (Staff Ex. 1.0 at 9). She stated that it was not Staff's desire to impose a large fine. Rather, imposition of the fine here is to make it clear that this Commission requires utilities to follow its rules and orders. (Tr. 39). She further recommended that, in the final Order in this proceeding, the Commission advise the Companies that all of UI's Illinois subsidiaries must comply with the Commission's rules regarding the maintenance of CPRs, or, risk being subject to disallowances of plant additions to rate base in future rate cases.

### **The Companies' Position**

Mr. Lubertozi testified that after the final Order in docket 03-0398, UI created an in-house database system, which would interface with UI's existing systems and its software and hardware. This database system was designed to contain the information required for CPRs for UI's subsidiaries. (UI Ex. 1.0 at 2-3). However, there was an unanticipated delay in getting the data entry work done. The hardware and software that UI and its subsidiaries use to track certain general ledger additions is a very old system. It was not designed to be able to add the information that is required for continuing property records. (Tr. 45). Therefore, UI's management had its IT Department create a log-in screen. UI's IT Department also created ways that personnel can track and try to control who implemented data and match that information with information found on the general ledger. (*Id.*).

The biggest problem encountered was tracking invoices and general ledger additions for 400 subsidiaries throughout the United States. It often took four to five hours, or more, to search the system just to find one invoice in order to match up a vendor with the corresponding dollar amount. Thus, dealing with problems with the older system took much longer than the amount of time that was originally anticipated. (*Id.*). As a result, the Companies were unable to meet the April 7, 2005 deadline for CPR implementation set forth in the final Order in docket 03-0398. (*Id.*).

Mr. Lubertozi explained that UI subsidiaries have now developed a CPR system that is currently in place and functioning. This system has been implemented retroactively through 2004. (UI Ex. 1.0 at 3). In the Companies' CPR Report, the Companies explained that UI's management team has met with various consulting firms to discuss acquiring new data management systems, including a new general ledger and billing systems. Also, the new data management and billing systems can create, track, store and generate continuing property records. (*Id.*).

The Companies contended, in their Answer, that it made good faith attempts to inform the Commission of the delay, which is a mitigating factor. (*Id.* at 4-5). Also, UI, the Companies' parent, was also recently acquired by a new parent, Hydrostar, LLC. (UI Ex. 1.01). This new parent is committed to upgrading the hardware and software of data management systems to improve functionality and to improve the reporting process, which will prevent data processing bottlenecks for UI's subsidiaries in the future. (*Id.*).

With respect to Staff's recommendations, the Companies agreed that all of UI's regulated Illinois subsidiaries will not seek rate base additions that are not supported by CPRs. (UI Ex. 1.0 at 4). Further, for the purposes of resolving this proceeding, the Companies agreed to pay civil penalties of \$1,000 per Company, for a total of \$5,000 for all of the Companies in question. (*Id.*).

The Companies also asserted that implementation of the CPR system described in UI Exhibit 1.01 will occur for all of its Illinois subsidiaries. They further agree that no UI subsidiary will seek rate base additions that are not supported by CPRs. (UI Ex. 1.0 at 4).

### **Analysis and Conclusions**

Based on the record, the Commission finds that the five UI subsidiaries at issue, Apple Canyon Utility Company; Cedar Bluff Utilities, Inc.; Charmar Water Company; Cherry Hill Water Company; and Northern Hills Water and Sewer Company, failed to file the CPR Report on April 7, 2005 as was required by the final Order in docket 03-0398. In fact, this Report was not filed until July 13, 2006, fifteen months after the time it was due to be filed. However, the Companies now have CPRs in place for 2004 to the present. Therefore, the Companies are now in partial compliance with the final Order in docket 03-0398, as well as the Commission's rules regarding CPRs, at least with respect for the year 2004, and forward.

With respect to CPRs for the years before 2004, the Companies contend that they, and their sister companies, intend to implement CPRs for the years previous to 2004. In light of this, the Commission finds that Staff's proposal, which the Companies have accepted, to disallow rate base additions that have no CPR evidentiary support in future rate cases filed by UI subsidiaries, is reasonable.

This Commission has authority pursuant to Section 5-202 of the Public Utilities Act to assess penalties upon any public utility when it violates or fails to comply with any provision of the Public Utilities Act, or fails to comply with any Commission Order, rule, or regulation. (220 ILCS 5/5-202). Staff recommended civil penalties of \$1,000 for each of the Companies, for a total of \$5,000 for all the Companies. The Companies have agreed to pay these penalties.

Penalties are assessed pursuant to Section 203(a) of the Public Utilities Act, which provides, in pertinent part:

In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, corporation other than a public utility, or person acting as a public utility charged, the gravity of the violation, such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility, corporation other than a public utility, or person acting as a public utility charged in attempting to achieve compliance after notification of a violation.

(220 ILCS 5/4-203(a)). We note that Staff reported that the five Companies together provide water and/or sewer service to approximately 1,500 customers in various Illinois counties. The Companies are thus "small utilities" under Section 4-502 of the Act. (220 ILCS 5/4-502).

As for to the gravity of the violation, Staff posits that failure to maintain CPRs results in an inability on the part of the Companies to support increases to plant for plant additions made since their last rate cases. However, according to the Companies, except when a utility makes a rate filing, failing to maintain CPRs has no significant adverse impact on customers. We note that there is no evidence establishing that customers were harmed. However, the Companies must fully comply with the Act, the Commission's rules, and its Orders.

With regard to other aggravating factors, Staff asserted that the parent company, UI, is not a small utility as defined by the Act, as it has twenty-four subsidiaries, with 17,400 customers in Illinois. This fact, Staff maintains, is an aggravating factor. However, Mr. Lubertozi's testimony established that the Companies encountered unexpected difficulty when entering data for the CPRs, causing delay. (See, Tr. 44-46). We also note that the Companies have expressed a commitment to support all plant additions in all rate cases filed by UI subsidiaries. The Commission concludes that the commitment expressed in this proceeding to implement CPRs across all of UI's Illinois subsidiaries, as well as the commitment not to seek rate base additions that are not supported by CPRs, is sufficient to alleviate Staff's concerns. We also note that, irrespective of the commitment expressed, the law requires utilities to maintain CPRs. (83 Ill. Adm. Code 605.10, 83 Ill. Adm. Code 615 Appendix A).

With regard to good faith, Staff questioned the Companies' diligence and good faith in coming into compliance with the CPR requirements, noting that Commission Orders dating back to 1995 have required implementation of CPRs. We also note that a series of motions requesting extensions of time to file the Report in question were filed. Because none of these motions were served on the Administrative Law Judge, none were granted. The diligence of these Companies is questionable, when they continued to file motions seeking extension of time, even after previous motions seeking extensions had not been granted. However, the Companies have agreed to pay the penalty recommended by Staff. Therefore, the Commission finds that the assessment and the amount of the penalties appropriate for the gravity of the violation here. We therefore conclude that the penalty of \$1,000 per Company is reasonable.

We note that the parties are in agreement as to the two issues here, whether a fine should be imposed, and how much that fine should be. Yet, they filed prefiled testimony. The attorneys are advised, in future situations of this nature, to consider stipulations, and other types of resource-saving procedures, such as, motions brought pursuant to Sections 2-615(e) or 2-1005 of the Illinois Code of Civil Procedure. (735 ILCS 5/2-615(e) and 2-1005)).

### Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company provide water and/or sewer service to the public within the State of Illinois, and, as such, are "public utilities" within the meaning of the Public Utilities Act;
- (2) the Commission has subject-matter jurisdiction and jurisdiction over Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;
- (4) in future rate cases involving any subsidiary of Utilities, Inc., including, but not limited to, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company, rate base additions shall be supported with continuing property record evidentiary support;
- (5) pursuant to Section 5-202 of the Act, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company are each required to pay a civil penalty of \$1,000 each, for a total of \$5,000.

IT IS THEREFORE ORDERED by the Commission that in future rate cases involving Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company, or any other Utilities, Inc. subsidiary, rate base additions shall be supported with continuing property records.

IT IS FURTHER ORDERED that pursuant to Section 5-202 of the Public Utilities Act, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company are each hereby assessed a fine in the amount of \$1,000.00, for a total amount of \$5,000.00. Said fines shall be paid by check payable to the Illinois Commerce Commission and delivered to the Financial Information Section of the Commission's Administrative Services Division within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company shall file with the Commission's Chief Clerk a certification

attesting that each Company has paid the ordered fine. Said certification is to be filed in Docket No. 06-0360, served upon the parties to this docket and a copy is to be provided to the Manager of the Commission's Water Department within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that any petitions, objections or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 21st day of March, 2007.

(SIGNED) CHARLES E. BOX

Chairman

**BNC 2.12 IL-C**

IN THE CIRCUIT COURT FOR THE 15TH JUDICIAL CIRCUIT  
STEPHENSON COUNTY, ILLINOIS  
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS *ex rel.* )  
LISA MADIGAN, Attorney General of the State )  
of Illinois, )

Plaintiff, )

v. )

NORTHERN HILLS WATER and SEWER )  
COMPANY, an Illinois corporation, )

Defendant. )

No. 07 CH 96

**FILED**  
STEPHENSON COUNTY, IL

MAY 18 2007

*Bonnie K. Curran*  
CLERK OF THE CIRCUIT COURT

**CONSENT ORDER**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendant, NORTHERN HILLS WATER and SEWER COMPANY ("Northern Hills"), have agreed to the making of this Consent Order and submit it to this Court for approval. 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 trial were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Consent Order, nor any of the facts

stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If this Court approves and enters this Consent Order, Defendant agrees to be bound by the Consent Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms. However, it is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter, subject to the provisions of Section VIII.K ("Release from Liability") and Section VIII.M ("Modification of Consent Order").

### **I. JURISDICTION**

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

### **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 Consent Order and to legally bind them to it.

### **III. STATEMENT OF FACTS**

#### **A. Parties**

1. On May 18, 2007, 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 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e)(2004), against the Defendant.

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(2004).

3. At all times relevant to the Complaint, Defendant was and is an Illinois corporation in good standing that is authorized to transact business in the State of Illinois.

**B. Site Description**

At all times relevant to the Complaint, Defendant owned and operated a waste water treatment plant ("WWTP"), which services 183 homes in the Northern Hills subdivision of Freeport, Illinois, and is located at 1438 West Fairview Road, Freeport, Stephenson County, Illinois (the "Facility"). The Defendant's corporate address is 6110 Abington Drive, Rockford, Illinois.

**C. Allegations of Non-Compliance**

Plaintiff contends that the Defendant has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Water Pollution Regulations:

Count I: Water Pollution, violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004);

Count II: Water Quality violations, violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004) and Sections 302.203, 304.105, and 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105, and 304.106;

Count III: Creating a Water Pollution Hazard, a violation of Section 12(d) of the Act, 415 ILCS 5/12(d)(2004);

Count IV: Permit Violations, violations of Section 12(f) of the Act, 415 ILCS 5/12(f)(2004) and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

**D. Admission of Violations**

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Consent Order shall not be interpreted as including such admission.

**E. Compliance Activities to Date**

Defendant has taken the following actions at the Facility:

1. Installed an alarm system to provide notice of equipment failures and any deviations in flow;
2. Established an inventory of replacement parts and a replacement clarifier drive unit on site;
3. Conducts quarterly inspections of the clarifier drive unit; and
4. Completed a Phase I Engineering Feasibility Study.

**IV. APPLICABILITY**

**A.** This Consent Order shall apply to and be binding upon the Plaintiff and the Defendant, and any officer, director, agent, or employee of the Defendant, as well as any successors or assigns of the Defendant. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order 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 Consent Order.

**B.** No change in ownership, corporate status or operator of the facility shall in any way alter

the responsibilities of the Defendant under this Consent Order. In the event of any conveyance of title, easement or other interest in the facility, the Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, the Defendant and a proposed purchaser or operator of the facility may jointly request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, the Defendant.

C. In the event that the Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, the Defendant shall notify the Plaintiff 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Defendant shall make the prospective purchaser or successor's compliance with this Consent Order a condition of any such sale or transfer and shall provide a copy of this Consent Order to any such successor in interest. This provision does not relieve the Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

D. The Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than 30 days after the date of entry of this Consent Order. In addition, the Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime

vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

#### **V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Consent Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations, 35 Ill. Adm. Code, Subtitles A through H.

#### **VI. VENUE**

The parties agree that the venue of any action commenced in the circuit court for the purposes of interpretation and enforcement of the terms and conditions of this Consent Order shall be in the Circuit Court of Stephenson County, Illinois.

#### **VII. SEVERABILITY**

It is the intent of the Plaintiff and Defendant that the provisions of this Consent Order shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

#### **VIII. JUDGMENT ORDER**

This Court, having jurisdiction over the parties and subject matter, the parties having appeared, due notice having been given, the Court having considered the stipulated facts and being advised in the premises, this Court finds the following relief appropriate:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

##### **A. Penalty**

1. a. The Defendant shall pay a civil penalty of Nine Thousand Seven Hundred Fifty Dollars (\$9,750.00). Payment shall be tendered at time of entry of the consent order or before, to the Assistant Attorney General.

b. Payment shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

c. The name, case number and the Defendant's Federal Employer Identification Number ("FEIN"), shall appear on the face of the certified check or money order.

**B. Future Compliance**

1. Within 30 days of the entry of this Consent Order, Defendant shall retain an engineer to prepare Plans, Specifications and a construction permit application that shall include upgrades to the Facility that address all compliance issues("WWTP Project").

2. Within 90 days of the entry of this Consent Order, Defendant shall submit the Plans, Specifications and a complete construction permit application for the WWTP Project to the Illinois EPA, Division of Water Pollution Control Permit Section, for its approval. In addition, a copy of this application shall be forwarded to the following:

Charles Gunnarson  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

3. Within 60 days of the Illinois EPA's approval and issuance of a Construction Permit, Defendant shall bid and award the WWTP project for construction.

4. Within 24 months of the Illinois EPA's issuance of a final Construction Permit, Defendant shall complete the WWTP Project and achieve compliance with all applicable permits and regulations ("Final Compliance Date").

5. Within 3 months of the Illinois EPA's issuance of a final Construction Permit, and thereafter, once every 6 months, Defendant shall submit a Progress Report on the construction of the WWTP Project to the Plaintiffs as described in Section VIII.H of this Order, until the Project is completed and operational.

6. From the date of the entry of this Consent Order until the date the WWTP Project is completed and operational, the Defendant shall employ its best efforts to ensure the existing WWTP is maintained and operated in compliance with all applicable standards, and to produce final effluent in compliance with its NPDES Permit. Such efforts include, but may not be limited to, continuing to maintain an inventory of replacement parts and a replacement clarifier drive on site and conducting quarterly inspections of the clarifier drive unit.

7. Once the WWTP Project is complete, Defendant shall at all times operate its upgraded wastewater treatment plant in accordance with the terms of its NPDES Permit.

**C. Stipulated Penalties**

1. If the Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in Section VIII.B of this Consent Order, the Defendant shall provide notice to the Plaintiff of each failure to comply with this Consent Order. In addition, the Defendant shall pay to the Plaintiff, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of \$100.00 until such time that

compliance is achieved.

2. Following the Plaintiff's determination that the Defendant has failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. Failure by the Plaintiff to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties.

3. All penalties owed the Plaintiff under this section of this Consent Order that have not been paid shall be payable within thirty (30) days of the date the Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

4. a. All stipulated penalties shall be paid by certified check or money order, payable to the Illinois EPA for deposit into the EPTF and 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

b. The name and number of the case and the Defendant's FEIN shall appear on the face of the check. A copy of the certified check or money order shall be sent to:

Paula Becker Wheeler  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602

5. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

**D. Interest on Penalties**

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a)(2004).

2. 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 by the Illinois EPA.

3. 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.

4. All interest on penalties owed the Plaintiff shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA for deposit in the EPTF and shall be submitted 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

5. The name, case number, and the Defendant's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order shall be sent to:

Paula Becker Wheeler  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602

**E. Future Use**

Notwithstanding any other language in this Consent Order to the contrary, and in consideration of the mutual promises and conditions contained in this Consent Order, including the Release from Liability contained in Section VIII.K, below, Defendant hereby agrees that this Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h). Further, Defendant agrees to waive, in any subsequent enforcement action, any right to contest whether these alleged violations were adjudicated.

**F. Force Majeure**

1. For the purposes of this Consent Order, *force majeure* is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Consent Order. For purposes of this Consent order *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant.

2. When, in the opinion of the Defendant, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the

Defendant shall orally notify the Plaintiff within forty-eight (48) hours of the occurrence.

Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence.

3. Failure by the Defendant to comply with the notice requirements of the preceding paragraph shall render this Section VIII.F voidable by the Plaintiff as to the specific event for which the Defendant has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

4. Within ten (10) calendar days of receipt of the written *force majeure* notice required under Section VIII.F.2, the Plaintiff shall respond to the Defendant in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order pursuant to the modification procedures established in this Consent Order. The Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

5. If the Plaintiff does not accept the Defendant's claim of a *force majeure* event, the Defendant may submit the matter to this Court within twenty (20) calendar days of receipt of Plaintiff's determination for resolution to avoid payment of stipulated penalties, by filing a

petition for determination of the issue. Once the Defendant has submitted such a petition to the Court, the Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon the Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

6. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant under the provisions of this Section VIII.F of this Consent Order from a failure to comply with such a requirement.

**G. Dispute Resolution**

1. Unless otherwise provided for in this Consent Order, the dispute resolution procedures provided by this section shall be the only process available to resolve all disputes arising under this Consent Order, including but not limited to the Illinois EPA's approval, comment on, or denial of any report, plan or remediation objective, or the Illinois EPA's decision regarding appropriate or necessary response activity. The following are expressly not subject to the dispute resolution procedures provided by this section: disputes regarding *force majeure*, which has separate procedures as contained in Section VIII.G above; where the Defendant has violated any payment or compliance deadline within this Consent Order, for which the Plaintiff

may elect to file a petition for adjudication of contempt or rule to show cause; and, disputes regarding a substantial danger to the environment or to the public health of persons or to the welfare of persons.

2. The dispute resolution procedure shall be invoked upon the written notice by one of the parties to this Consent Order to another describing the nature of the dispute and the initiating party's position with regard to such dispute. The party receiving such notice shall acknowledge receipt of the notice; thereafter the parties shall schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

3. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall be for a period of thirty (30) calendar days from the date of the first meeting between representatives of the Plaintiff and the Defendant, unless the parties' representatives agree, in writing, to shorten or extend this period.

4. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written summary of the Plaintiff's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include

the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, the Defendant's petition before the court and the Plaintiff's response to the petition.

5. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution.

6. This Court shall make its decision based on the administrative record and shall not draw any inferences nor establish any presumptions adverse to any party as a result of invocation of this section or the parties' inability to reach agreement with respect to the disputed issue. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

7. As part of the resolution of any dispute, the parties, by agreement, or by order of this Court, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

#### **H. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Consent Order, except for payments pursuant to Sections VIII.A. and C. of this Consent Order shall be submitted as follows:

As to the Plaintiff

Paula Becker Wheeler  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800

Chicago, Illinois 60602

Charles Gunnarson  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Nancy Sisson  
Field Operations Section  
Illinois EPA  
4302 N. Main  
Rockford, IL 61103

As to the Defendant

Lisa Crossett  
2335 Sanders Road  
Northbrook, Illinois 60062-6196

Paul Burris  
2335 Sanders Road  
Northbrook, Illinois 60062-6196

Madonna F. McGrath  
Baker & Daniels LLP  
300 N. Meridian St., Suite 2700  
Indianapolis, IN 46204

**I. Right of Entry**

In addition to any other authority, 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 Defendant's facility which is the subject of this Consent Order, at all reasonable times for the purposes of carrying out inspections. 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.

**J. Cease and Desist**

The Defendant shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. of this Consent Order.

**K. Release from Liability**

In consideration of the Defendant's payment of a \$9,750 penalty and any specified costs and accrued interest, completion of all activities required hereunder, and its commitment to Cease and Desist as contained in Section VIII.J above, the Plaintiff releases, waives and discharges the Defendant from any further liability or penalties for 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 Plaintiff's Complaint filed on May 18, 2007. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant 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 Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315(2004), or entity other than the Defendant.

**L. Retention of Jurisdiction**

This Court shall retain jurisdiction of this matter for the purposes of interpreting and enforcing the terms and conditions of this Consent Order.

**M. Modification of Consent Order**

The parties may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of court. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.H. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing, signed by authorized representatives of each party, filed with the court and incorporated into this Consent Order by reference.

**N. Enforcement of Consent Order**

1. Upon the entry of this Consent Order, any party hereto, upon motion, may reinstate these proceedings for the purpose of enforcing the terms and conditions of this Consent Order. This Consent Order is a binding and enforceable order of this Court and may be enforced as such through any and all available means.

2. Defendant agrees that notice of any subsequent proceeding to enforce this Consent

Order may be made by mail and waives any requirement of service of process.

**O. Execution of Document**

This Order shall become effective only when executed by all parties and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

(THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK)

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

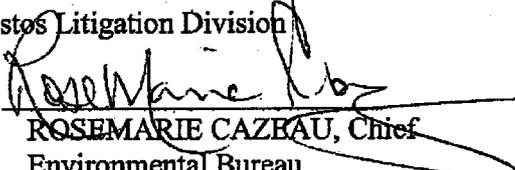
FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

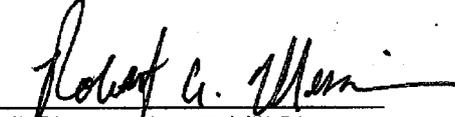
MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY:

  
ROSEMARIE CAZBAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:

  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE:

5/16/07

DATE:

5/14/07

FOR THE DEFENDANT:

NORTHERN HILLS WATER and SEWER  
COMPANY.

ENTERED:

BY:

\_\_\_\_\_  
Its \_\_\_\_\_

DATE:

\_\_\_\_\_

\_\_\_\_\_

JUDGE

DATE:

\_\_\_\_\_

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY: \_\_\_\_\_  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: \_\_\_\_\_

FOR THE DEFENDANT:

NORTHERN HILLS WATER and SEWER  
COMPANY

BY: Paul Binn  
Its Regional Vice-President

DATE: 5/3/07

ENTERED:

D. Jeffrey / J. Dun  
JUDGE

DATE: May 18, 2007

*[Handwritten mark]*

# **BNC 2.12 IL-D**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Galena Territory Utilities, Inc. :  
: :  
Petition for Issuance of Permanent :  
and Temporary Certificates of Public :  
Convenience and Necessity to : 05-0452  
Provide Sanitary Sewer Collection :  
Disposal and Service to a Parcel in :  
Unincorporated Jo-Daviess County, :  
Illinois Pursuant to Section 8-406 of :  
the Illinois Public Utilities Act; and :  
for approval of a related contract. :

ORDER

By the Commission:

I. **Procedural History**

On July 22, 2005 Galena Territory Utilities, Inc. ("Petitioner" or "GTU") filed with the Illinois Commerce Commission ("Commission"), a verified petition for a Certificate of Public Convenience and Necessity pursuant to Section 8-406 of the Public Utilities Act ("Act"), to provide sanitary sewer service to a certain parcel in Jo-Daviess County, Illinois. Galena Territory Utilities currently provides water and sanitary sewer public utility service to approximately 2,058 water and 730 sewer customers in unincorporated Jo-Daviess County, Illinois, commonly known as the Galena Territory. Galena Territory Utilities is a public utility within the meaning of Section 5/3-105 of the Act, and is a wholly-owned subsidiary of Utilities, Inc., which directly or through operating subsidiaries, provides water and wastewater services to more than 280,000 customers in 17 states, including approximately 17,400 customers in Illinois.

Petitioner has been requested to provide sanitary sewer service to an existing condominium development known as Longhollow Point in an area of unincorporated Jo-Daviess County, Illinois, which is contiguous to and in the vicinity of the existing certificated area of Galena Territory Utilities. The proposed service area consists of approximately 2.95 acres and will contain no more than 71 condominium units. The Petition requests a permanent certificate of service authority from the Commission authorizing Petitioner to serve the parcel, under the standard rates, rules and regulations that Galena Territory Utilities, Inc. has in effect. A temporary certificate of service authority was issued to the Petitioner by the Commission on September 14, 2005. There are no municipalities whose corporate boundaries lie within one and one-half miles of the property.

On August 15, 2005 and December 7, 2005, pre-hearing conferences were held before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its

offices in Springfield, Illinois. On April 17, 2006, an evidentiary hearing was held, and appearances were entered on behalf of GTU and Commission Staff ("Staff"). GTU presented the testimony of Steven Dihel, Regulatory Accountant for Petitioner. Staff presented the testimony of Thomas Smith, Economic Analyst for the Commission, and Michael McNally, Financial Analyst for the Commission. At the conclusion of the hearing, the record was marked "Heard and Taken." A Proposed Order was served upon the parties. Staff did not take exception to any of the substantive findings within the Proposed Order and proposed some additional language to clarify the Commission's findings and the factual basis for the findings. GTU indicated it had no objection to Staff's additional clarifying language, and that the Company had agreed with Staff not to oppose the adoption of the Proposed Order. Although GTU disagreed with the legal arguments advanced by Staff in support of the penalty finding, GTU had determined any further effort required to sustain its position would not be worthwhile.

## **II. Applicable Statutory Authority**

Section 8-406(b) of the Act provides, in relevant part:

No public utility shall begin the construction of any plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

In addition to issues surrounding the issuance of the requested certificate, Staff has also requested that a penalty be imposed upon GTU for providing service to an area prior to obtaining a certificate to serve that area. The relevant statutory provisions regarding this issue are as follows:

Section 5-202 provides that:

Any public utility, any corporation other than a public utility, or any person acting as a public utility, that violates or fails to comply with any provisions of this Act or that fails to obey, observe, or comply with any order, decision, rule, regulation, direction, or requirement, or any part or provision thereof, of the Commission, made or issued under authority of this Act, in a case in which a penalty is not otherwise provided for in this Act, shall be subject to a civil penalty imposed in the manner provided in Section 4-203. A small public utility, as defined in subsection (b) of Section 4-502 of this Act, is subject to a civil penalty of not less than \$500 nor more than \$2,000 for each and every offense . . . .

. . . . In case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense, provided, however, that the cumulative penalty for any continuing violation shall not exceed \$500,000, except in the case of a small utility, as defined in subsection (b) of Section 4-502 of this Act, in which case the cumulative penalty for any continuing violation shall not exceed \$35,000 . . . .

...

No penalties shall accrue under this provision until 15 days after the mailing of a notice to such party or parties that they are in violation of or have failed to comply with the Act or order, decision, rule, regulation, direction, or requirement of the Commission or any part or provision thereof, except that this notice provision shall not apply when the violation was intentional.

Section 4-203 provides that:

All civil penalties established under this Act shall be assessed and collected by the Commission. Except for the penalties provided under Section 2-202, civil penalties may be assessed only after notice and opportunity to be heard. In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility . . . the gravity of the violation, and such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility . . . in attempting to achieve compliance after notification of the violation

### **III. Uncontested Issues**

#### **A. Certificate of Public Convenience and Necessity**

Galena Territory Utilities' verified Petition states that sewer service within the proposed service area had previously been provided by the Longhollow Point Owners

Association, Inc. (the "Association" or "LPOA"), which represents the property owners of the condominiums and is exempt from Commission regulation as a mutual association. The waste water generated within the proposed service area had been collected by the Association and had been sent to offsite holding tanks. From these holding tanks, the waste water flow was then taken via sludge hauling trucks for disposal at a treatment plant. Over the years, the holding tanks had greatly deteriorated, and the Illinois Environmental Protection Agency had indicated this operation should be discontinued and the holding tanks should be removed as soon as possible. As a result, the Association had determined the best interests of its members would be served by undertaking to construct the necessary facilities to interconnect with Galena Territory Utilities' existing sewer utility system.

Staff analyzed GTU's proposal in conjunction with the requirements of 8-406(b) of the Act. Staff noted that no other utility was certificated to serve the proposed area, and that Staff was aware of no other sewer utilities that have interest or capacity to serve the proposed area. Staff analyzed the construction of the sewer system facilities and opined that GTU had properly and adequately managed the construction. It was the opinion of Staff witnesses that there was a demonstrated need for sewer service in the area, and that GTU could provide that service on a least cost basis. Staff witness McNally testified that GTU is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers, whether or not the Commission adopts Staff's proposal to require GTU to refund a portion of the sewer construction costs. Staff therefore recommended that the Commission grant GTU's request for a Certificate of Public Convenience and Necessity.

#### **B. Rules and Regulations and Conditions of Service**

Staff recommended that the Company be directed to update its sewer and water rules consistent with Staff Exhibit 1.2, Rules, Regulations and Conditions of Service for Sewer Operations, and Staff Exhibit 1.3, Rules, Regulations and Conditions of Service for Water Operations. The Petitioner accepted Staff's recommendation on this matter.

#### **IV. Contested Issues**

##### **A. Refund of Sewer Construction Costs**

###### **Staff Position:**

Staff proposes that GTU immediately refund one and one-half times the annual (or 18 months of revenue) to the LPOA. (Staff Ex. 1.0, p. 13) Staff also recommends that GTU be required to use the guidelines as contained in ICC Staff Exhibit 1.2 for purposes of making refunds to LPOA over the first ten years following the issuance of a certificate in this Docket. (*Id.*, at 14)

Staff notes that there are basically no codified sewer rules. However, Staff is of the opinion that in the recent past the Commission has used water rules as a guideline for the regulation of sewer utilities. (*Id.*, at 8) As a result, some sewer utilities have rules that require investment by those utilities in contributed plant.

The rationale for the refund, which results in investment in plant by a utility, is identifiable in basic ratemaking theory, under which utilities invest in assets to serve customers, operate and maintain those assets, pay taxes, and accumulate funds through the depreciation of assets in order that assets can be replaced when they are worn out. (*Id.*, at 9) Rates are then established to provide for the recovery of the aforementioned costs, including a return on investment, from customers who are receiving service. If a utility has no investment, the basic tenets of ratemaking become open to question. Specifically, if there is no investment, then there is no opportunity to earn a return, no incentive to operate efficiently, and no assets to depreciate so that funds might be accumulated for future replacement. In the instant docket, absent the refunds advocated by Staff, the Company will have invested no funds in the plant at issue. (*Id.*, at 11)

Since no rules have been promulgated for the expansion of sewer plant, Staff believes that the generic sewer rules developed from the Standards of Service for Water Companies (83 Ill. Adm. Code Part 600) and particularly Service to New Customers (83 Ill. Adm. Code 600.370) should be used as a guideline for sewer plant expansions. (Staff Ex. 1, p. 9) Water and sewer systems are similar and it is reasonable to apply the same rules to the two systems. In Docket No. 00-0194, the Commission stated that it has ". . . no difficulty interpreting Section 600.370(a) as also pertaining to sewer supply plant . . ." (Order, p. 6, April 25, 2001) (*Id.*, at 10) The Commission's decision in this regard was challenged and was affirmed by the Third Appellate Court. (See 331 Ill. App. 3d 1030, 772 N.E.2d 390 (2002))

#### **GTU Position:**

GTU takes exception to Staff's position that GTU should refund to LPOA an amount equal to 18 months revenue from operations, or \$24,927, in exchange for the contribution of the constructed lift station and sewer main to GTU. GTU is of the opinion that to require this contribution would have the effect of increasing the total costs of providing service, because customers will bear the additional cost of the return, interest and taxes associated with the incremental plant investment. GTU further opines that to implement Staff's proposal would fail to promote the public convenience, as required in Section 8-406(b), as the lift station and main only serve one customer.

GTU also is of the opinion that this proposal to apply the water main extension rule to the contribution of sewer facilities is unnecessary to promote the objectives behind the Commission's water rule. GTU believes the main purpose of this water rule is to protect the utility and its customers from paying for substantial investments in new facilities that might not achieve expectations. This risk is not present in this situation, as the risk had already been avoided when LPOA constructed and paid for the mains necessary to connect to GTU's system, and proposed to contribute the facilities at no cost. GTU also believes that the 10-year refund requirement used in the water rules is not needed in this case. GTU notes that the possibility of any sale of the contributed plant is extremely remote, as the nearest municipal facility is over 9 miles away. GTU further notes that these contributed plant facilities constitute a relatively small portion of GTU's total investment in utility plant, and GTU believes that imposition of this

contribution rule is unnecessary to achieve the goal of having the utility provide efficient utility service.

GTU further notes that according to the testimony, the requested refund would amount to about 40% of GTU's annual sewer income being paid to a single customer. As GTU notes that no utility can be compelled to provide service to customers outside of its certificated area, to impose this large cost on GTU would strongly discourage any utility from entertaining future requests by isolated customers who need utility service.

## **B. Assessment of a Penalty for Providing Service Prior to Certification**

### **Staff Position:**

Staff is of the position that GTU was providing service to LPOA prior to its receiving a temporary certificate by the Interim Order in this Docket. (Staff Ex. 1.0, pp. 3-4) Yet, it did not request a Certificate until it filed the Petition in the instant docket on July 22, 2005. On August 8, 2005, Galena was notified in a letter from Staff counsel, Vladan Milosevic that it had been brought to Staff's attention that Galena may have been operating as a public utility for approximately 18 months without a Certificate from the Commission. (See Staff Ex. 1.1) The letter also informed Galena that it may be subject to penalties for violating the PUA. At the status hearing on August 15, 2005, Staff made a statement into the record in which it articulated its concern about GTU serving the proposed area since May of 2004 without a Certificate and recommending that the Commission grant a Temporary Certificate. (See Tr., at 7-8) GTU received a Temporary Certificate on September 14, 2005 authorizing it to provide service in the proposed service area.

Staff recommends that the Commission impose a \$1,000 penalty on GTU, pursuant to its authority under Section 5-202 and 4-203 of the PUA, for operating within the proposed service area prior to receiving a certificate of public convenience. (220 ILCS 5/5-202 and 4-203) Said operation without a certificate of public convenience and necessity was in contravention of Section 8-406 of the PUA which prohibits utilities from beginning construction of facilities without having obtained a certificate from the Commission. (See 220 ILCS 5/8-406(b))

In making its recommendation Staff has taken into consideration the requirements of Sections 5-202 and 4-203. The notice required by Section 5-202 was provided by the letter from Staff Counsel mailed on August 8, 2005. The fifteen days during which no penalty could accrue ran from August 8 through August 23. This left the 20 days from August 24 until the Temporary Certificate was issued on September 14, 2005 for the penalty to accrue.

Section 4-502 of the Act defines a small public utility as one that "regularly provides service to fewer than 7,500 customers." Galena currently has 2,058 water customers and 730 sewer customers, bringing it within the penalty limitations for a small utility. (Staff Ex. 1.0, p. 17)

Section 4-203 of the Act provides 4 factors for the Commission to consider when assessing a penalty: 1) the size of the business of the public utility; 2) the gravity of the violation; 3) other mitigating or aggravating factors; and 4) the good faith demonstrated in attempting to achieve compliance after notification of the violation. As discussed above, Galena is a small utility. However, GTU is the subsidiary of Utilities Inc., which is not a small utility as defined by Section 4-502 of the PUA. Utilities Inc. has 24 subsidiaries similar to Galena in Illinois, with 17,400 customers in the state. (Staff Ex. 1.0, p. 18) Utilities Inc. should be aware of the requirements of the Illinois Public Utilities Act in regard to Certificates of Public Convenience and Necessity as it has applied for and received Certificates from the Commission in the past. GTU should be expected to adhere to the requirements of the Act.

The fact that the Petitioner acknowledged its failure and brought its failure to the attention of the Commission should be considered as a mitigating factor. (Staff Ex. 1.0, p. 18) The fact that GTU received a Temporary Certificate within 37 days of receiving the notice of violation is a demonstration of good faith. (Staff Ex. 1.0, p. 18-19) Finally, the continuing nature of the violation of Section 5-202 should be considered. However, Staff recommends that because of the foregoing mitigating factors it would not be appropriate to fine the Petitioner on a daily basis. (*Id.*)

GTU errs in its reliance on Docket No. 02-0008 for the proposition that "neither the Commission nor Staff considered the utility's provision of service prior to certification to be a violation of the Act" (Galena IB, p. 8). The application for a certificate of convenience and necessity which formed the basis for Docket No. 02-0008 was filed pursuant to a Settlement Agreement entered in Docket No. 00-0679. (See Commission Order, p. 2, Docket No. 02-0008 (May 22, 2002)) The Procedural History in the Order states, "The Company and Staff agreed that in light of the expedited schedule and the fact that the Company is serving the two customers in the requested certificated area, the issuance of a temporary Certificate is unnecessary." (*Id.*, at 1) This discussion of the procedural status of the docket is not the equivalent of a Staff position or a Commission finding in a contested matter.

In order to understand the procedural history of Docket No. 02-0008, one may review the procedural history of Docket No. 00-0679. In that docket, the City of Columbia ("City") filed a complaint alleging that Illinois American Water Company ("IAWC") was providing water service outside its certificated area. The parties stipulated to the facts that IAWC was providing water service to two residences which were outside of its certificated area and that the service connections for the two residences were within IAWC's service area. The City argued that the point of usage rather than the point of connection was determinative of whether IAWC needed a certificate to serve the two residences. IAWC argued that the fact that the point of connection and metering point were within its certificated areas was determinative of whether IAWC need a certificate to provide service. The parties ultimately resolved their controversy by a Settlement Agreement which required IAWC to request a certificate of public convenience and necessity. There is no Commission Order ruling on the issue as the Order entered reflects the Settlement Agreement of the parties. It is notable though that prior to the settlement by the parties, the Administrative Law Judge ("ALJ") had issued a Proposed Order (September 6, 2000), dismissing IAWC's

arguments and concluding that IAWC had violated Section 8-406(b) of the Public Utilities Act ("PUA") (220 ILCS 5/8-406(b)) by providing water service to residences outside its certificated area. Staff notes that the Settlement Agreement, Briefs on Exception and Reply Briefs on Exception were not filed and at the time the Commission issued a Final Order, the issue was not contested. The Settlement Agreement reflects the same position as adopted by the ALJ in the Proposed Order. The reasoning set forth in the Proposed Order is instructive and should be applied to this docket. Staff is not aware of any other final Commission order that directly addresses the issue.

GTU also argues that the Commission has permitted utilities to provide service from a point within the existing service areas without requiring a certificate for the areas benefiting from the service. The cases relied upon by Galena are inapposite to the issues before the Commission in this proceeding.

In *Will County Water Company*, Docket No. 87-0353 (Dec. 22, 1987) Will County's request for a certificate of public convenience and necessity was denied and the Commission ordered Will County to provide water service on a wholesale basis and to file appropriate rate tariffs with the Commission. At issue in that docket were both the willingness or obligation of various entities to own the distribution lines and compliance with a municipal ordinance. The resolution crafted by the Commission provided water service as needed without running afoul of the municipal ordinance. Those facts are not similar to the facts in the instant docket and no question has been raised as to legal impediments or provision of service on a wholesale basis in this docket.

Similarly in *Illinois American Water Company*, Docket No. 96-0494 (June 11, 1997) the Petitioner requested Commission approval of a wholesale contract. Contrary to the Company's argument, GTU's provision of service to LPOA is clearly distinguishable from wholesale service as was provided in those dockets.

Finally, the Petitioner argued that it would be unfair to penalize the Company based upon notice provided by a Commission employee rather than "having the notice considered as an agenda item at a public meeting of the Commission." (Galena IB, p. 9) No legal authority is provided for this argument. Section 5-202 of the PUA does not state that the Commission must consider the notice at a public meeting. (220 ILCS 5/5-202) It simply provides for the mailing of 'a notice'. GTU does not deny that it received a notice but seeks to impose a greater burden on the Commission than is required by statute. Given the purpose of the notice – notification of an entity that it is in violation of a rule, order, decision, or requirement of the Commission – time is of the essence in serving the notice so that the entity may bring itself into compliance immediately. The notice, after all, is not the equivalent of a finding that an entity is in violation, it simply provides the entity an opportunity to cure its violation before penalties may be assessed. In this case, although GTU was notified that it may be in violation of Section 8-406, GTU did not bring itself into compliance within the 15 days provided by statute.

No public utility may serve customers outside of its certificated area without having first received a certificate of public convenience and necessity from the Commission. None of GTU's arguments have demonstrated that it was not a public utility providing utility service from May of 2004 until September 14, 2005, during which

time it provided sewer service to LPOA without a certificate of public convenience and necessity. GTU was notified August 8, 2005 that it may be in violation of the Act and that it may be subject to penalties under Sections 5-202 and 4-203 of the Act. GTU failed to bring itself into compliance with the Act until September 14, 2005 when an Interim Order was granted in this proceeding granting it a temporary certificate of public convenience and necessity. GTU should be assessed a \$1,000.00 penalty which takes into consideration Petitioner's status as a small utility, its cooperation with Staff, the speed (37 days) with which it attained a temporary certificate, and its relationship with Utilities Inc., which is not a small utility and which should be aware of the requirements of the Public Utilities Act.

#### **GTU Position:**

GTU is of the opinion that they did not provide service prior to obtaining a certificate of service authority. GTU bases this on the fact that the construction of the new plant to extend the LPOA's sewer facilities to a connection point with GTU's existing certificated service area was performed by LPOA at their expense. GTU notes that the Commission has previously held, in Docket 95-0238, that LPOA, as a co-operative, did not need a certificate to provide utility service. GTU takes the position that they have only sought a certificate because LPOA desires to transfer the responsibility for maintaining and replacing the lift station and main extension to GTU, and that ownership of these facilities will not be transferred to GTU unless and until the Commission has entered a final order granting a permanent certificate of service authority to GTU.

GTU interprets prior Commission orders for the proposition that a utility may provide service to customers at a point within its currently certificated service area even though the area benefiting from the service is located outside the certificated area.

GTU also objects to the notice of violation being given by a Staff attorney, rather than having the issuance of a notice being considered at a public meeting of the Commission. GTU is of the opinion that the power to issue a notice of a potential violation should be a matter reserved to the Commission. GTU notes that when the notice was issued by the Staff attorney, this Petition was already pending before the Commission, and based on GTU's interpretation of other dockets, GTU had no reason to know that their provision of service to LPOA was in violation of the Act.

#### **V. Commission Analysis and Conclusion**

The Commission first notes that the parties are in agreement that a Certificate of Public Convenience and Necessity should be issued to GTU to provide service to the Longhollow Point Condominiums, located in the area described in Exhibit A to the Petition. It appears that the subject property is in need of sewer services, having been informed by the Illinois EPA to cease their prior method of handling sewage, that Petitioner is well situated to handle service for the subject area, and there appear to be no municipal facilities closer than 9 miles to the subject area.

The parties are also in agreement that the Petitioner will adopt new water and sewer rules, in conformity with Staff Exhibits 1.2 and 1.3.

The two issues on which the parties have disagreement, are first whether GTU should be required to make refunds to LPOA for a portion of the contributed plant constructed by LPOA, and second, whether GTU should be fined for providing service to an area outside their certificated area prior to receiving a new certificate from the Commission.

The Commission first notes that it appears the parties are in agreement that there are no codified sewer rules in use that would aid in the determination of this matter. Staff urges the Commission to use the water rules to aid in determining this matter, as discussed in Docket 00-0194. To use the aforementioned water rules in this matter, GTU would be required to make a refund to LPOA for the contributed plant in the amount of \$24,927, which GTU notes would amount to approximately 40% of the Petitioner's annual income. Under the sewer rules that Petitioner appears to be operating under at the present time, no contribution to capital would be required. The Commission notes that upon adoption of the updated water and sewer rules, this issue should not be in question in any dockets in the future.

Staff notes that the revenue received by GTU for services rendered to LPOA would not have been considered in GTU's most recent rate case, and therefore Staff believes that all this revenue should be available for investment in the main extension. GTU believes the testimony shows that to accept Staff's proposal would have the negative effect of increasing the cost to provide service, and would have a chilling effect on any future requests for small expansions to serve a single or a very few customers.

The Commission, in this hopefully unique situation, is disinclined to require a contribution to capital from GTU as requested by Staff. We note that under the sewer rules in effect for GTU at the time of the construction, unlike the new rules to be adopted, no contribution is contemplated. The Commission also notes that in this situation, LPOA was under a mandate from the Illinois EPA to remedy their sewer treatment situation, which they were able to do with the assistance of GTU. The construction of the lift station and sewer main were undertaken by LPOA, and the agreement between LPOA and GTU contemplates the facilities being given to GTU upon a certificate being issued. While we recognize that GTU will be receiving these facilities at a zero cost, this does not appear to give GTU any incentive to provide sub-standard service, nor the opportunity to seek a windfall in the future. While this arrangement appears to have been structured differently than most additions to plant, with construction being handled by the customer in a service area in which the utility is not certificated, it is the hope of the Commission that this was done to ease the environmental burdens of the condominium association, and not an attempt to circumvent the Commission rules and regulations. The Commission further notes that the best time to resolve the issue of refunds is prior to the issuance of a Certificate and prior to the beginning of construction. It is unfortunate that in this case the Company agreed to provide service and that construction was begun prior to the Commission's authorization being granted.

On the issue of a penalty to be assessed for providing service prior to certification, it appears clear to the Commission that GTU was in fact providing utility services to an area outside of the Petitioner's certificated area of service. The Commission is also satisfied that the notice provided by Staff Attorney Milosevic was in compliance with the rules, and that this notice entitled GTU to a 15 day period in which to bring themselves into compliance. While GTU argues that a utility is entitled to provide service to a customer outside their certificated area, we agree with the position of Staff that the cases relied upon by GTU do not stand for this proposition. The Commission is also in agreement with Staff regarding the mitigating factors present in this matter, but we also note that GTU apparently provided services to LPOA for approximately 16 months prior to obtaining an interim certificate of service authority. The Commission is of the opinion that the recommended fine of \$1,000.00 is appropriate in this matter.

#### **VI. Finding and Ordering Paragraphs:**

The Commission, after reviewing the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Galena Territory Utilities, Inc. is a public utility engaged in the business of furnishing water and sanitary sewer service to the public in portions of the State of Illinois and is a public utility within the meaning of Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the Petitioner and of the subject matter herein;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) a Certificate of Public Convenience and Necessity should be issued to Petitioner for the provision of sanitary sewer service to the area described in Exhibit A to the Petition;
- (5) Petitioner should, within 30 days after entry of this Order, file tariffs implementing Rules, Regulations and Conditions of Service substantially consistent with Staff Exhibits 1.2 and 1.3, with an effective date of not less than thirty working days after the date of filing for service rendered on and after their effective date, with individual tariff sheets corrected within that time period if necessary;
- (6) The Commission rejects Staff's recommendations for an initial refund and for possible future refunds of sewer construction cost; and
- (7) Petitioner shall, pursuant to Section 5-202 of the Public Utility Act, pay a fine of \$1,000, which amount shall be paid to the Illinois Commerce Commission within 30 days of the entry of this Order.

IT IS THEREFORE ORDERED that, pursuant to Section 8-406(e) of the Public Utilities Act, a Certificate of Public Convenience and Necessity is hereby granted to Galena Territory Utilities, Inc., to provide sanitary sewer service to the areas described in the attachment to the verified petition filed in this docket.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity hereinabove granted shall be the following:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

IT IS HEREBY CERTIFIED that the public convenience and necessity require that Galena Territory Utilities, Inc. provide sanitary sewer service to the area described in Exhibit A to the verified petition filed in this docket.

IT IS FURTHER ORDERED that Galena Territory Utilities, Inc. shall serve such customers under the standard rates, rules and regulations that Galena Territory Utilities, Inc. has in effect.

IT IS FURTHER ORDERED that within 30 days after entry of this Order, Galena Territory Utilities, Inc. shall file tariffs implementing Rules, Regulations and Conditions of Service substantially consistent with Staff Exhibits 1.2 and 1.3 with an effective date of not less than thirty (30) working days after the date of filing, for service rendered on and after their effective date, with individual tariff sheets to be corrected within that time period if necessary.

IT IS FURTHER ORDERED that pursuant to Section 5-202 of the Public Utilities Act, Galena Territory Utilities is hereby assessed a fine in the amount of \$1,000.00, said fine to be paid by check made out to the Illinois Commerce Commission and delivered to the Financial Information Section of the Commission's Administrative Services Division within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that Galena Territories Utilities, Inc. shall file with the Commission's Chief Clerk a certification attesting that the Company has paid the ordered fine. Said certification is to be filed under Docket No. 05-0452, served upon the parties to this docket and a copy is to be provided to the Manager of the Commission's Water Department within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 30<sup>th</sup> day of August, 2006

(SIGNED) CHARLES E. BOX

Chairman

**BNC 2.12 IL-E**

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL DISTRICT  
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHARMAR WATER COMPANY, an Illinois )  
corporation, )  
 )  
Defendant. )

No. 05 CH 1009

FILED

JUL 12 2005

*[Signature]*  
CIRCUIT CLERK

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendant, Charmar Water Company, have agreed to the making of this Consent Order and submit it to this Court for approval. 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 trial were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Consent Order, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If this

Court approves and enters this Consent Order, Defendant agrees to be bound by the Consent Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms. However, it is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter, subject to the provisions of Section VIII.K ("Release from Liability") and Section VIII.M ("Modification of Consent Order").

#### I. JURISDICTION

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2002).

#### 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 Consent Order and to legally bind them to it.

### III. STATEMENT OF FACTS

#### A. Parties

1. On June 24, 2005, 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 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Defendant.

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.

3. At all times relevant to the Complaint, Defendant was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

#### B. Site Description

1. At all times relevant to the Complaint, Defendant owned and operated a public water supply ("PWS") located north of Gurnee in northeast Lake County, Illinois ("facility" or "site").

2. The Charmar PWS distribution system consists of two shallow wells and hydropneumatic storage of approximately seven thousand five-hundred (7,500) gallons.

3. The Charmar PWS currently obtains water by pumping from two wells. Wells #1 and #2 have natural fluoride, and the

water from both wells is treated with sodium hypochlorite and then the treated water is distributed throughout the distribution system.

4. On November 21, 2003, the Illinois EPA inspected the Charmar PWS and discovered that a hydropneumatic storage tank had been replaced without obtaining an Illinois EPA issued construction permit.

**C. Allegations of Non-Compliance**

Plaintiff contends that the Defendant has violated the following provisions of the Act, Illinois Pollution Control Board ("Board") Public Water Supply Regulations, and the Illinois EPA Public Water Supply Regulations:

Count I: FAILURE TO OBTAIN A CONSTRUCTION PERMIT: Violation of Section 15(a) of the Act, 415 ILCS 5/15(a) (2002), Section 602.101(a) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 602.101(a), and Section 652.101(a) of the Illinois EPA Public Water Supply Regulations, 35 Ill. Adm. Code 652.101(a);

Count II: OPERATING WITHOUT A PERMIT: Violation of Section 18(a) (2) and (3) of the Act, 415 ILCS 5/18(a) (2) and (3) (2002), and Section 602.102 of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 602.102.

**D. Admission of Violations**

The Defendant represents that it has entered into this

Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Consent Order shall not be interpreted as including such admission.

#### IV. APPLICABILITY

A. This Consent Order shall apply to and be binding upon the Plaintiff and the Defendant, and any officer, director, agent, or employee of the Defendant, as well as any successors or assigns of the Defendant. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order 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 Consent Order.

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Defendant under this Consent Order. In the event of any conveyance of title, easement or other interest in the facility, the Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, the Defendant and a proposed

purchaser or operator of the facility may jointly request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, the Defendant.

c. In the event that the Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, the Defendant shall notify the Plaintiff 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Defendant shall make the prospective purchaser or successor's compliance with this Consent Order a condition of any such sale or transfer and shall provide a copy of this Consent Order to any such successor in interest. This provision does not relieve the Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

#### V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Consent Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations, 35 Ill. Adm. Code, Subtitles A through H.

#### VI. VENUE

The parties agree that the venue of any action commenced in

the circuit court for the purposes of interpretation and enforcement of the terms and conditions of this Consent Order shall be in the Circuit Court of Lake County, Illinois.

#### VII. SEVERABILITY

It is the intent of the Plaintiff and Defendant that the provisions of this Consent Order shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

#### VIII. JUDGMENT ORDER

This Court, having jurisdiction over the parties and subject matter, the parties having appeared, due notice having been given, the Court having considered the stipulated facts and being advised in the premises, this Court finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

##### A. Penalty

1. The Defendant shall pay a civil penalty of Five Thousand Dollars (\$5,000.00). Payment shall be tendered at time of entry of the consent order.

2. Payment shall be made by certified check, money order or electronic funds transfer, payable to the Illinois EPA for

deposit into the Environmental Protection Trust Fund ("EPTF") and shall be sent by first class mail, unless submitted by electronic funds transfer, and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

3. The name, case number and the Defendant's Federal Employer Identification Number ("FEIN"), 36-2589107, shall appear on the face of the certified check or money order. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

**B. Future Compliance**

1. Defendant shall obtain a variance from the Lake County, Illinois zoning set back requirements or an easement that complies with the Lake County, Illinois zoning set back requirements for placement of its hydropneumatic storage tank above ground.

2. a. If Defendant obtains a variance from the Lake County, Illinois zoning set back requirements or an easement that complies with the Lake County, Illinois zoning set back

requirements, then within 45 days of such receipt, Defendant shall apply to the Illinois EPA for a construction permit for placement of its hydropneumatic storage tank above ground.

b. If within 90 days of entry of the Consent Order, Defendant fails to obtain a variance from the Lake County, Illinois zoning set back requirements or an easement that complies with the Lake County, Illinois zoning set back requirements, Defendant shall:

i. immediately, but no later than 7 days, contact the Plaintiff and set up a meeting between the parties to discuss alternative actions to be taken by Defendant to comply with the terms of this Consent Order.

ii. within 30 days of the meeting with Plaintiff required in Section VIII.B.2.b.i. above, Defendant shall submit to Plaintiff for review and approval, a plan to bring its public water supply into compliance with all applicable laws and regulations;

iii. if Plaintiff disapproves Defendant's plan to bring its public water supply into compliance with all applicable laws and regulations, Defendant shall, within thirty (30) days of receiving such disapproval notification from Plaintiff, submit to Plaintiff a revised plan, which satisfies Plaintiff's objections to Defendant's prior submittal.

3. Within 120 days from the issuance of all applicable permits, including the construction permit from the Illinois EPA and any other permits required to relocate Defendant's hydropneumatic tank above ground, Defendant shall initiate and complete the relocation of its hydropneumatic storage tank above ground according to the terms of the Illinois EPA issued construction permit.

4. Within 7 days of completing the relocation of its hydropneumatic storage tank above ground, Defendant shall apply to the Illinois EPA for an operating permit for the operation of its hydropneumatic storage tank. All actions required to be completed under paragraphs 3 and 4 of this Section VIII.B. shall be completed within no more than 127 days after the issuance of all applicable permits, including the construction permit from the Illinois EPA and any other permits required to relocate Defendant's hydropneumatic tank above ground ("Final Compliance Date").

5. Upon the issuance of the operating permit required by Section VIII.B.4 above, Defendant shall at all times operate the Charmar PWS in compliance with the terms and conditions of such permit.

6. If in the opinion of Defendant, it will be unable to complete the work required in paragraph 3 of this Section

VIII.B. above, Defendant may request an extension of no more than 60 days by providing a written request to the Illinois EPA and the Office of the Attorney General no later than 30 days before the Final Compliance Date. The request shall provide an explanation and description, with supporting facts, (1) providing the reasons why Defendant is unable to complete performance of the requirements of this Section VIII.B by the Final Compliance Date, and (2) demonstrating that Defendant has acted with due diligence in performing the requirements of this Section VIII.B herein. The Illinois EPA shall approve or deny the request. The Illinois EPA may deny the request for extension if the Defendant has failed to demonstrate that it has acted with due diligence in performing the requirements of this Section VIII.B herein. Failure by Defendant to comply with this notice requirement shall preclude Defendant from obtaining an extension of time under this paragraph 6 of Section VIII.B.

**C. Stipulated Penalties**

1. If the Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in Section VIII.B. of this Consent Order, the Defendant shall provide notice to the Plaintiff of each failure to comply with this Consent Order. In addition, the Defendant shall pay to the Plaintiff, for payment into the EPTF,

stipulated penalties per violation for each day of violation in the amount of \$100.00 until such time that compliance is achieved.

2. Following the Plaintiff's determination that the Defendant has failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. Failure by the Plaintiff to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties.

3. All penalties owed the Plaintiff under this section of this Consent Order that have not been paid shall be payable within thirty (30) days of the date the Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

4. a. All stipulated penalties shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA for deposit into the EPTF and shall be sent by first class mail, unless submitted by electronic funds transfer, and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East

P.O. Box 19276  
Springfield, Illinois 62794-9276

b. The name and number of the case and the Defendant's FEIN shall appear on the face of the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

5. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

**D. Interest on Penalties**

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

2. 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 by the Illinois EPA.

3. 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.

4. All interest on penalties owed the Plaintiff shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA for deposit in the EPTF and shall be submitted by first class mail unless submitted by electronic funds transfer, and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

The name, case number, and the Defendant's FEIN shall appear on the face of the certified check or money order. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

**E. Future Use**

Notwithstanding any other language in this Consent Order to the contrary, and in consideration of the mutual promises and conditions contained in this Consent Order, including the Release from Liability contained in Section VIII.K, below,

Defendant hereby agrees that this Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h). Further, Defendant agrees to waive, in any subsequent enforcement action, any right to contest whether these alleged violations were adjudicated.

**F. Force Majeure**

1. For the purposes of this Consent Order, *force majeure* is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Consent Order. For purposes of this Consent order *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant.

2. When, in the opinion of the Defendant, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the Plaintiff within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than

ten (10) calendar days after the claimed occurrence.

3. Failure by the Defendant to comply with the notice requirements of the preceding paragraph shall render this Section VIII.F voidable by the Plaintiff as to the specific event for which the Defendant has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

4. Within ten (10) calendar days of receipt of the written *force majeure* notice required under Section VIII.F.2, the Plaintiff shall respond to the Defendant in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order pursuant to the modification procedures established in this Consent Order. The Defendant shall not be liable for stipulated penalties for the period of any such

stipulated extension.

5. If the Plaintiff does not accept the Defendant's claim of a *force majeure* event, the Defendant may submit the matter to this Court within twenty (20) calendar days of receipt of Plaintiff's determination for resolution to avoid payment of stipulated penalties, by filing a petition for determination of the issue. Once the Defendant has submitted such a petition to the Court, the Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon the Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

6. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant under the provisions of this Section VIII.F of

this Consent Order from a failure to comply with such a requirement.

**G. Dispute Resolution**

1. Unless otherwise provided for in this Consent Order, the dispute resolution procedures provided by this section shall be the only process available to resolve all disputes arising under this Consent Order, including but not limited to the Illinois EPA's approval, comment on, or denial of any report, plan or remediation objective, or the Illinois EPA's decision regarding appropriate or necessary response activity. The following are expressly not subject to the dispute resolution procedures provided by this section: disputes regarding *force majeure*, which has separate procedures as contained in Section VIII.F above; where the Defendant has violated any payment or compliance deadline within this Consent Order, for which the Plaintiff may elect to file a petition for adjudication of contempt or rule to show cause; and, disputes regarding a substantial danger to the environment or to the public health of persons or to the welfare of persons.

2. The dispute resolution procedure shall be invoked upon the written notice by one of the parties to this Consent Order to another describing the nature of the dispute and the initiating party's position with regard to such dispute. The

party receiving such notice shall acknowledge receipt of the notice; thereafter the parties shall schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

3. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall be for a period of thirty (30) calendar days from the date of the first meeting between representatives of the Plaintiff and the Defendant, unless the parties' representatives agree, in writing, to shorten or extend this period.

4. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written summary of the Plaintiff's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute

shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, the Defendant's petition before the court and the Plaintiff's response to the petition.

5. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution.

6. This Court shall make its decision based on the administrative record and shall not draw any inferences nor establish any presumptions adverse to any party as a result of invocation of this section or the parties' inability to reach agreement with respect to the disputed issue. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

7. As part of the resolution of any dispute, the parties, by agreement, or by order of this Court, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

#### H. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents

required under this Consent Order, except for payments pursuant to Sections VIII.A. and C. of this Consent Order shall be submitted as follows:

As to the Plaintiff

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Joey Logan-Wilkey  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Defendant

Lisa Crossett  
Vice-President-Operations  
Charmar Water Company  
2335 Sanders Road  
Northbrook, Illinois 60063

Darrin Yount  
Regional Director of Operations  
Utilities, Inc.  
Midwest Regional Office  
Post Office Box 656  
Mokena, Illinois 60448

Madonna F. McGrath  
Baker & Daniels  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204

I. Right of Entry

In addition to any other authority, 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 Defendant's facility which is the subject of this Consent Order, at all reasonable times for the purposes of carrying out inspections. 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.

**J. Cease and Desist**

The Defendant shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. of this Consent Order.

**K. Release from Liability**

In consideration of the Defendant's payment of a \$5,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, and to Cease and Desist as contained in Section VIII.J above, the Plaintiff releases, waives and discharges the Defendant from any further liability or penalties for 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 Plaintiff's Complaint filed on June 24, 2005. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant 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 Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Defendant.

#### **L. Retention of Jurisdiction**

This Court shall retain jurisdiction of this matter for the purposes of interpreting and enforcing the terms and conditions of this Consent Order.

**M. Modification of Consent Order**

The parties may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of court. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.H. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing, signed by authorized representatives of each party, filed with the court and incorporated into this Consent Order by reference.

**N. Enforcement of Consent Order**

1. Upon the entry of this Consent Order, any party hereto, upon motion, may reinstate these proceedings for the purpose of enforcing the terms and conditions of this Consent Order. This Consent Order is a binding and enforceable order of this Court and may be enforced as such through any and all available means.

2. Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

O. Execution of Document

This Order shall become effective only when executed by all parties and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

[The remainder of this page has been intentionally left blank.]



WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
WILLIAM D. INGERSOLL  
Acting Chief Legal Counsel

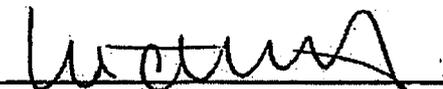
DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR THE DEFENDANT:

CHARMAR WATER COMPANY

ENTERED:

BY:   
LISA CROSSETT  
Its Vice-President-  
Operations

~~DAVID M. HALL~~  
\_\_\_\_\_

J U D G E

DATE: 6/22/05

DATE: 7/12/05

**BNC 2.12 IL-F**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

Northern Hills Water and Sewer Company )  
1438 West Fairview Road )  
Freeport, Illinois 61032 )

Respondent. )

) CONSENT AGREEMENT

and

) FINAL ORDER

) Docket No. **CERCLA-05-2004**

0001  
00000000

CONSENT AGREEMENT AND FINAL ORDER

1. This is a civil administrative penalty action instituted and settled pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22 (see 40 C.F.R. §§ 22.13 and 22.18).
2. The complainant is, by lawful delegation, the Chief of the Office of Chemical Emergency Preparedness and Prevention, Superfund Division, U.S. EPA, Region 5 ("Complainant").
3. The Respondent is Northern Hills Water and Sewer Company, a corporation doing business in Illinois.
4. Complainant and Respondent have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules. 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).
5. This Consent Agreement and Final Order ("CAFO") is based on information Complainant has that Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to

immediately notify the National Response Center of a release which occurred at its facility in Freeport, Illinois on August 19, 2002.

6 Complainant and Respondent agree to settle these alleged violations by entering into this CAFO

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 7 Respondent is a corporation incorporated in the State of Illinois.
- 8 Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 9 Respondent owns or operates a facility located at 1438 West Fairview Road, Freeport, Illinois (facility).
- 10 Respondent's facility consists of a building, structure, installation, equipment, pipe or pipeline or storage container.
- 11 Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
- 12 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center as soon as that person knows of a release of a hazardous substance from the facility in an amount equal to or greater than the substance's reportable quantity.
- 13 Respondent was in charge of the facility on August 19, 2002.
- 14 On August 19, 2002, at or about 12:00 noon, an employee at the Respondent's facility discovered a release of approximately 125 pounds of chlorine (the release).

3

15. Chlorine CAS #7782-50-5 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 § U.S.C. 9601(14), with a reportable quantity of 10 pounds as indicated at 40 C.F.R. Part 302, Table 302.4.
16. The amount of chlorine released from facility on August 19, 2002 exceeded the reportable quantity specified in 40 C.F.R. Part 302.
17. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
18. Respondent had knowledge of the release on August 19, 2002 at approximately 12:00 noon.
19. Respondent did not notify the National Response Center of the release until August 27, 2002, at 12:51 p.m.
20. Respondent did not immediately notify the National Response Center as soon as Respondent knew of the release.
21. Respondent's failure to notify immediately the National Response Center of the release violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

#### TERMS OF SETTLEMENT

22. Northern Hills Water and Sewer Company consents to the issuance of this CAFO and the assessment of the civil penalty, admits the jurisdictional allegations in the CAFO and neither admits nor denies the factual allegations in the CAFO.
23. Northern Hills Water and Sewer Company waives its right to an administrative or judicial hearing on any issue of law or fact set forth in the CAFO, and waives its rights to appeal the Final Order.

- 24. Northern Hills Water and Sewer Company certifies that it is complying fully with the CERCLA provisions at issue.
- 25. The parties consent to the terms of this CAFO.
- 26. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

**CIVIL PENALTIES AND FEES**

- 27. In consideration of Respondent's agreement to perform an environmental beneficial expenditure (EBE) and the Respondent's financial condition and ability to pay a penalty amount, the U.S. EPA agrees to mitigate the proposed civil penalty amount of \$25,245 to \$1,000.
- 28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "U.S. EPA Hazardous Substance Superfund," to:

U.S. EPA, Region 5  
 ATTN: Superfund Accounting  
 P.O. Box 70753  
 Chicago, Illinois 60673

The check must reference Respondent's name, the docket number of the CAFO CERCLA-05-2004 0001 and the billing document number 05304T002A

- 29. A transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)  
 U.S. Environmental Protection Agency, Region 5  
 77 West Jackson Boulevard  
 Chicago, Illinois 60604-3590

5

James Entzminger, (SC-6J)  
Office of Chemical Emergency  
Preparedness and Prevention  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Andre Daugavietis, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

30. This civil penalty is not deductible for federal tax purposes.
31. If Northern Hills Water and Sewer Company does not timely pay the civil penalty, or any stipulated penalties due under paragraph 45, below, the U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
32. Pursuant to 31 C.F.R. §901.9, Respondent shall pay the following on any amount overdue under this CAFO:
- (a) Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717(a)(1).
  - (b) Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.
  - (c) Respondent must pay an additional penalty amount at the rate of six percent per annum on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk. This amount is in addition to amounts that accrue under subsections (a) and (b).
33. Northern Hills Water and Sewer Company must submit all notices and reports required by this CAFO by first class mail to:

6

James Entzminger (SC-6J)  
Office of Chemical Emergency  
Preparedness and Prevention  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

34. In each report that Northern Hills Water and Sewer Company submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

#### **ENVIRONMENTALLY BENEFICIAL EXPENDITURES**

35. Northern Hills Water and Sewer Company has made, and agreed to continue, environmentally beneficial expenditure (EBE) designed to protect the environment or public health by replacing the chlorine distribution system with a sodium hypochlorite distribution system.
36. At its Freeport, Illinois facility, Northern Hills Water and Sewer Company has completed the EBE as follows: the Company has replaced the valves, pumps and has installed storage tanks to hold the sodium hypochlorite.
37. Northern Hills Water and Sewer Company hereby certifies that it has spent at least \$5,500 to purchase and install the above EBE equipment.
38. Northern Hills Water and Sewer Company agrees to and shall continuously use or operate the EBE equipment for ten years following the date of this CAFO.
39. Northern Hills Water and Sewer Company must take steps and make expenditures to keep the system operating effectively (Respondent estimates the cost of this as \$964 per year).

40. Northern Hills Water and Sewer Company certifies that it was not required to perform or develop the EBE by any law, regulation, grant, order, or agreement, or as injunctive relief. Northern Hills Water and Sewer Company further certifies that it has not received, and is not negotiating to receive, credit for the EBE in any other enforcement action.

41. The U.S. EPA may inspect the facility at any time to monitor Northern Hills Water and Sewer Company's compliance with this CAFO's EBE requirements.



42. Each year Northern Hills Water and Sewer Company must submit to U.S. EPA an annual report outlining the cost incurred for the pervious year to maintain and operate the sodium hypochlorite feed system.



43. Northern Hills Water and Sewer Company must submit the annual report to the U.S. EPA by September 30. The first annual report is due September 30, 2004.

44. Northern Hills Water and Sewer Company must submit an EBE completion report to the U.S. EPA after ten years (September 30, 2014). This report must contain the following information:

- a. Detailed description of the EBE as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Certification that Northern Hills Water and Sewer Company has completed the EBE in compliance with this CAFO; and
- d. Description of the environmental and public health benefits resulting from the EBE (quantify the benefits and pollution reductions, if feasible).

Northern Hills Water and Sewer Company must maintain copies of the data for all reports submitted to U.S. EPA under this CAFO. Northern Hills Water and Sewer Company must provide the documentation of any data to U.S. EPA within seven days of the U.S. EPA's request for the information.

45. If Northern Hills Water and Sewer Company violates any requirement of this CAFO relating to the EBE, Northern Hills Water and Sewer Company must pay stipulated penalties to the United

States as follows:

- a. If Northern Hills Water and Sewer Company fails to continuously use or operate the EBE equipment in any of the ten years following the date of this CAFO, Northern Hills Water and Sewer Company must pay a stipulated penalty of \$500 for each such year. This is in addition to the stipulated penalty provided in subparagraph b. below.
- b. If Northern Hills Water and Sewer Company fails to take steps and make expenditures to keep the system operating effectively in any of the ten years following the date of this CAFO, Northern Hills Water and Sewer Company must pay a stipulated penalty of \$500 for each such year. This is in addition to the stipulated penalty provided in subparagraph a., above.
- c. If Northern Hills Water and Sewer Company failed to timely submit any EBE completion report as required by paragraph 44., above, Northern Hills Water and Sewer Company must pay a stipulated penalty of \$10 for each day after the report was due until it submits the report.
- d. If Northern Hills Water and Sewer Company failed to timely submit the EBE annual report as required by paragraph 43., above, Northern Hills Water and Sewer Company must pay a stipulated penalty of \$10 for each day after the report was due until it submits the report.

46. The U.S. EPA's determinations of whether Northern Hills Water and Sewer Company continuously used or operated the EBE equipment satisfactorily, whether it took steps and made expenditures to keep the system operating effectively, and whether any of the required EBE reports were complete and/or timely submitted will bind Northern Hills Water and Sewer Company.

47. Northern Hills Water and Sewer Company must pay any stipulated penalties within 15 days of receiving the U.S. EPA's written demand for the penalties. Northern Hills Water and Sewer Company will use the method of payment specified in paragraphs 28 and 29, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

**General Provisions**

48. This CAFO settles the U.S. EPA's claims for civil penalties for the violations alleged in the CAFO.
49. Nothing in this CAFO restricts the U.S. EPA's authority to seek Northern Hills Water and Sewer Company's compliance with CERCLA and other applicable laws and regulations.
50. This CAFO does not affect Northern Hills Water and Sewer Company's responsibility to comply with CERCLA and other applicable federal, state and local laws, and regulations.
51. This CAFO is a "final order" for purposes of the U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.
52. The terms of this CAFO bind Northern Hills Water and Sewer Company and its successors, and assigns.
53. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
54. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.
55. This CAFO constitutes the entire agreement between the parties.
56. Nothing in this CAFO is intended to nor shall be construed to constitute the U.S. EPA approval of the equipment or technology installed by Respondent in connection with the EBE under the terms of this Agreement.
57. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent.

SIGNATORIES

Each undersigned representative of a party to this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to bind legally such party to this document.

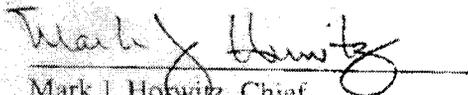
For Respondent:



Larry Schumacher,  
President

Agreed to this 30<sup>th</sup> day of Oct., 2003.

For Complainant:



Mark J. Horwitz, Chief  
Office of Chemical Emergency  
Preparedness and Prevention  
Superfund Division  
Region 5

Agreed to this 5<sup>th</sup> day of November, 2003.



William E. Muno, Director  
Superfund Division  
U.S. EPA, Region 5

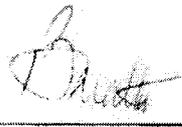
Agreed to this 5<sup>th</sup> day of Nov., 2003.

In the Matter of:  
Northern Hills Water and Sewer Company  
Freeport, Illinois 61032  
Docket No. PERCLA-05-2004 0001

Final Order

The foregoing Consent Agreement is hereby approved and incorporated by reference into this FINAL ORDER. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, as agreed to by the parties, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

Date: 11-6-03

*fn*  
  
\_\_\_\_\_  
Thomas V. Skinner  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

IN THE MATTER OF: Northern Hills Water and Sewer Company, Freeport, Illinois  
DOCKET NO: CERCLA-05-2004 0001

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the original of the foregoing Consent Agreement and Final Order (CAFO) to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and copies of the CAFO to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, first class, or certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelopes addressed to:

Mr. Dennis Cloud  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

Larry Schumacher, President  
Northern Hills Water and Sewer Company  
C/O Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

Madonna F. McGrath, Esq.  
Baker & Daniels  
300 North Mendian Street, Suite 2700  
Indianapolis, IN 46204-1782

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA  
REGION 5  
77 WEST JACKSON  
CHICAGO, IL 60604  
NOV 18 2003

This is each person's last known address.

I have further caused a copy of this CAFO to be hand delivered to Regina Kossek, Regional Judicial Officer, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 7 date of November, 2003.

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5