



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

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March 30, 2009

Kathleen Madden  
Clerk of Circuit Court  
Waukesha County Circuit Court  
515 West Moreland Boulevard  
Waukesha, WI 53188-2428

FILED  
IN CIRCUIT COURT

APR - 8 2009

WAUKESHA CO. WI  
CIVIL DIVISION

Re: State of Wisconsin v. City of Waukesha

Dear Ms. Madden:

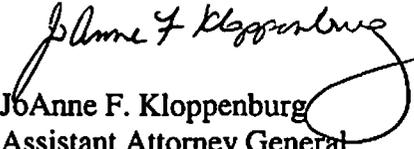
Enclosed for filing please find an original and two copies of the plaintiff's Summons and Complaint, in the above-entitled action. Please file the original and authenticate the copies.

Also enclosed are the original and two copies of a Stipulation and Order for Judgment, and Judgment. The parties wish to settle this case immediately upon filing, and so I ask that this case be brought to the immediate attention of the judge to whom this case is assigned. If the Stipulation and Order for Judgment, and Judgment, are acceptable, I respectfully request that the Order for Judgment, and Judgment, be signed and filed with the court. Then have the judge's clerk conform the two copies and return them, as well as the two copies of the authenticated Summons and Complaint, to me in the enclosed envelope. I will send a copy of the authenticated Summons and Complaint, and signed Stipulation and Order for Judgment, and Judgment, to counsel for the defendant upon receipt of these documents from the court.

This is a civil action for forfeitures using the classification code of Complex Forfeiture 30109, and no filing fee is required.

Thank you for your assistance in this matter.

Sincerely,

  
JoAnne F. Kloppenburg  
Assistant Attorney General

JFK:drm  
Enclosures  
c w/encs.:

Donald P. Gallo  
Debbie Roszak, DNR

09 MAR 31 AM 9:37  
CLERK OF CIRCUIT COURT  
CIVIL DIVISION

**BOHREN**

STATE OF WISCONSIN

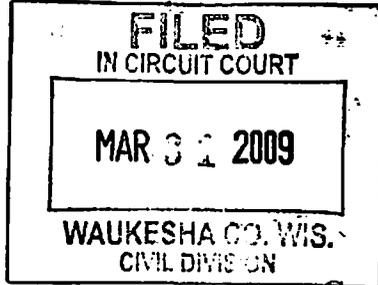
CIRCUIT COURT  
BRANCH \*

WAUKESHA COUNTY

STATE OF WISCONSIN  
17 West Main Street  
Post Office Box 7857  
Madison, WI 53707-7857,

Plaintiff,

v.



Case No. 2009-CX- 4

Complex Forfeiture: 30109

CITY OF WAUKESHA  
201 Delafield Street  
Waukesha, WI 53188,

Defendant.

THE AMOUNT CLAIMED IS  
GREATER THAN THE  
AMOUNT CLAIMED UNDER  
WIS. STAT. § 799.01(1)(d).

CIVIL SUMMONS

CLERK OF CIRCUIT COURT  
CIVIL DIVISION  
09 MAR 31 AM 9:36

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court

may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Kathleen Madden, Clerk of Circuit Court, Waukesha County Courthouse, 515 West Moreland Boulevard, Waukesha, Wisconsin 53188-2428, and to JoAnne F. Kloppenburg, Assistant Attorney General, plaintiff's attorney, whose address is Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 30th day of March, 2009.

J.B. VAN HOLLEN  
Attorney General

  
JOANNE F. KLOPPENBURG  
Assistant Attorney General  
State Bar #1012239

Attorneys for Plaintiff

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-9227

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \*

WAUKESHA COUNTY

STATE OF WISCONSIN  
17 West Main Street  
Post Office Box 7857  
Madison, WI 53707-7857,

Plaintiff,

v.

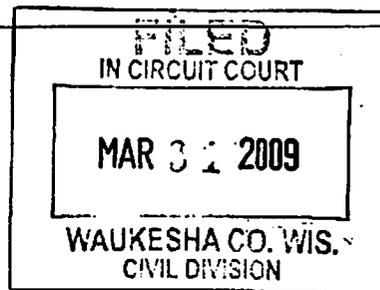
CITY OF WAUKESHA  
201 Delafield Street  
Waukesha, WI 53188,

Defendant.

Case No. 2009-CX- 4

Complex Forfeiture: 30109

THE AMOUNT CLAIMED IS  
GREATER THAN THE  
AMOUNT CLAIMED UNDER  
WIS. STAT. § 799.01(1)(d).



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CIVIL COMPLAINT

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The State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General JoAnne F. Kloppenburg, brings this complaint at the request of the Wisconsin Department of Natural Resources against the City of Waukesha and alleges as follows:

1. Plaintiff is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. It has enacted, in Wis. Stat. ch. 281, statutes intended to protect, maintain and improve the quality and management

of the supply of drinking water in the state. Its Department of Natural Resources administers regulations and issues orders authorized by those statutes.

2. Defendant City of Waukesha is a municipal corporation and operates a public water system in the City of Waukesha, Waukesha County, Wisconsin.

3. Wisconsin Stat. § 281.12 authorizes the Department of Natural Resources to promulgate rules "necessary for implementing the policy and purpose of this chapter." Wis. Stat. § 281.12(1).

4. Wisconsin Stat. § 281.17(8) authorizes the Department of Natural Resources to establish, administer and maintain a safe drinking water program no less stringent than the Federal Safe Drinking Water Act of 1974.

5. The Department promulgated Wis. Admin. Code ch. NR 809 under the authority granted in Wis. Stat. § 281.12, "to establish minimum standards and procedures for the protection of the public health, safety and welfare in the obtaining of safe drinking water." Wis. Admin. Code. § NR 809.01.

6. Wisconsin Admin. Code ch. NR 809 sets contaminant levels and other requirements for public water systems. Wis. Admin. Code §§ 809.03 and 809.05, ch. NR 809 generally.

7. Since 1993, the maximum contaminant level for combined radium-226 and radium-228 has been 5 pCi/l, and in 2002 community water systems were required to comply with this level by December 8, 2003. Wis. Admin. Code §§ NR 809.50(1) and (2).

8. Pursuant to an agreement negotiated by the Department with USEPA, the deadline for complying with the radium level was extended to December 8, 2006.

9. Defendant City of Waukesha operates a community water system and a public water system, which provides piped water for human consumption, within the meaning of Wis. Admin. Code § NR 809.04(4) and (57), and is subject to the standards and requirements set forth in Wis. Admin. Code. ch. NR 809.

10. Samples collected from defendant's drinking water since 1996 contained levels of combined radium-226 and radium-228 greater than 5 pCi/l.

11. The Department issued defendant a Notice of Noncompliance in 2002 and a Notice of Violation in 2003 for the radium exceedances.

12. The Department entered into a Consent Order with defendant City of Waukesha in December 2003, requiring defendant to: 1) construct Wells Nos. 11 and 12 by December 31, 2005; 2) complete treatment installation for Well No. 3 by September 1, 2006; 3) complete treatment installation for Wells Nos. 6 and 7 by November 1, 2006; 4) complete treatment installation for Well No. 10 or complete construction and development of a new shallow aquifer source well by November 1, 2006; and 5) collect and analyze follow-up samples by December 1, 2006, for the Department's review and determination as to whether further action must be taken to achieve compliance with the radium standard.

13. The Department agreed to allow the City of Waukesha to rely on flow weighted averaging as an interim compliance solution pending the City's development of long-term plans to achieve compliance at all entry points at all times. No other water

supply system had been allowed to rely on flow weighted averaging for radium compliance.

14. Flow weighted averaging reduces radium levels in drinking water, but flow weighted averaging does not comply long-term with the radium standard because it does not show that all water provided at all times has levels of radium below the radium standard.

15. In November 2005, the City of Waukesha informed the Department that Well No. 3 would be completed by May 2006, that Wells Nos. 6 and 7 would not be treated but that the City has instead drilled and test pumped two shallow wells and installed a reduced capacity well pump at Well No. 7, and that the City had submitted the design for Well No. 10 to the Department on November 9, 2005.

16. The Department agreed with the modifications to the Consent Order identified in paragraph 15 above, based on the assumption that the final compliance deadline of December 2006 would be met.

17. In June and November 2006, the Department sent the City of Waukesha letters reminding the City of the December 2006 radium compliance deadline.

18. As of October 2008, Well No. 13 is operational, the treatment system for Well No. 10 is not operational, and the City of Waukesha plans to add 3.5 million gallons of new capacity in new wells and the treatment of water from Wells Nos. 5, 6 and 9.

19. Defendant City of Waukesha has failed to provide drinking water that at all times has a combined radium level below 5 pCi/l since at least 2002, in daily violation of

Wis. Admin. Code §§ NR 809.50(1) and (2), and is subject to forfeitures for the daily violation since the EPA-approved deadline of December 8, 2006.

20. Long-term exposure to elevated levels of radium in drinking water poses a higher risk of bone cancer for the people exposed.

21. Defendant is one of the few Wisconsin communities that have not brought their drinking water systems into compliance with the radium standards, and court-ordered forfeitures and compliance schedule are needed to bring its system into compliance.

#### PENALTY PROVISIONS

22. Wisconsin Admin. Code ch. NR 809 was adopted under the authority of Wis. Stat. ch. 281.

23. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce chapter 281 and all rules promulgated and orders issued under the chapter, and authorizes the circuit court for the county where the violations occurred to enforce chapter 281 and all rules promulgated and orders issued under the chapter, by injunctive and other relief.

24. Wisconsin Stat. § 281.98(1) provides that any person who violates chapter 281 or any rule promulgated or order issued under that chapter, shall forfeit not less than \$10 nor more than \$5,000 for each day of violation.

25. Wisconsin Stat. § 281.98(2) and (3) provide that the court may, in addition to imposing penalties, order a defendant to abate any nuisance and take any action necessary to eliminate or minimize environmental damage caused by the defendant, and

to pay the state's reasonable and necessary investigation and prosecution expenses including attorney fees.

### RELIEF REQUESTED

The plaintiff asks for judgment against the defendant as follows:

1. The forfeitures provided for in Wis. Stat. § 281.98(1), the 26 percent penalty surcharge provided for in Wis. Stat. § 814.75(18), the 10 percent environmental surcharge provided for in Wis. Stat. § 814.75(12), the \$25 court costs pursuant to Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$12 justice information system surcharge pursuant to Wis. Stat. § 814.75(15).
2. The costs and disbursements of this action, including attorney fees incurred by the Department of Justice and costs of investigation incurred by the Department of Natural Resources under Wis. Stat. § 281.98(2) and (3);
3. An injunction requiring that defendant comply with the radium standards by a date certain;
4. Such other relief as the Court may find just and appropriate.

Dated this 30th day of March, 2009.

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-9227

J.B. VAN HOLLEN  
Attorney General  
*Joanne F. Kloppenburg*  
JOANNE F. KLOPPENBURG  
Assistant Attorney General  
State Bar #1012239  
Attorneys for Plaintiff

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 1

WAUKESHA COUNTY

STATE OF WISCONSIN  
17 West Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 2009-CX- 4

CITY OF WAUKESHA  
201 Delafield Street  
Waukesha, Wisconsin 53188,

Defendant.

Complex Forfeiture: 30109  
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APR - 8 2009

WAUKESHA CO. WI  
CIVIL DIVISION

09 MAR 31 AM 9:37

CLERK OF CIRCUIT COURT  
CIVIL DIVISION

JUDGMENT

Based on the Stipulation between the plaintiff and the defendant, and on the Court's order, the terms of both of which are incorporated into this judgment in their entirety, judgment is granted in favor of the plaintiff, State of Wisconsin, and against the defendant, City of Waukesha.

1. Defendant shall pay a judgment comprised of forfeitures of \$35,000 for the violations described in the complaint, plus \$9,100 for the 26% penalty surcharge under Wis. Stat. § 814.75(18), \$3,500 for the 10% environmental surcharge under Wis. Stat. § 814.75(12), the \$25 court costs under Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge required by Wis. Stat. § 814.75(3), the \$68 court support services surcharge as required by Wis. Stat. § 814.75(2), the 1% jail surcharge of

\$350 under Wis. Stat. § 814.75(14), and the \$12 justice information system surcharge required by Wis. Stat. § 814.75(15), plus \$4,900.00 for the costs of the Department of Natural Resources' investigation and \$2,037.00 as attorney fees for the Department of Justice under Wis. Stat. § 281.98(2) and (3), for a total of \$55,000.

2. The defendant shall pay the judgment as follows:

(a) Payment in the amount of \$4,900 shall be made by check payable to the Department of Natural Resources and delivered to counsel for plaintiff, JoAnne F. Kloppenburg, Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857, by June 15, 2009.

(b) Payment in the amount of \$2,037 shall be made by check payable to the Department of Justice and delivered to counsel for plaintiff at the address listed in paragraph (a) above by June 15, 2009.

(c) Payment in the amount of \$3,063 shall be made by check payable to the Waukesha County Clerk of Circuit Court and delivered to the clerk of court by June 15, 2009. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed in paragraph (a) above.

(d) Payment in the amount of \$17,500 shall be made by check payable to the Waukesha County Clerk of Circuit Court and delivered to the clerk of court by December 15, 2009. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed in paragraph (a) above.

(e) Payment in the amount of \$27,500 shall be made by check payable to the Waukesha County Clerk of Circuit Court and delivered to the clerk of court by June 15, 2010. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed in paragraph (a) above.

Dated this 8<sup>th</sup> day of April, 2009.

BY THE COURT:

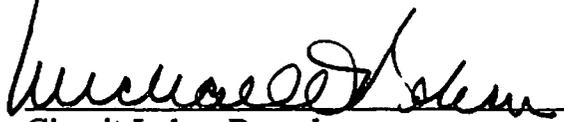
*Kathleen A. Madden*  
*by Suzanne Sredak*

ORDER FOR JUDGMENT

The Court approves the terms of the foregoing stipulation in *State v. City of Waukesha*, Case No. 09-CX- 4, which provides for the entry of judgment in favor of the State and against the City of Waukesha along with the payment of forfeitures, statutory surcharges, and costs totaling \$55,000.00 according to the schedule set in the stipulation, plus the taking of certain interim and permanent steps to achieve compliance with state radionuclide requirements, and directs the clerk to enter the judgment incorporating the terms of this stipulation, and to docket the judgment. This is a Final Order under Wis. Stat. § 808.03(1).

Dated this 7<sup>th</sup> day of April, 2009.

BY THE COURT: -

  
Circuit Judge, Branch 1

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH /

WAUKESHA COUNTY

STATE OF WISCONSIN  
17 West Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 2009-CX- 4

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201 Delafield Street  
Waukesha, Wisconsin 53188,

Defendant.

**FILED** Complex Forfeiture: 30109  
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APR - 8 2009

WAUKESHA CO. WI  
CIVIL DIVISION

CLERK OF CIRCUIT COURT  
CIVIL DIVISION  
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STIPULATION AND ORDER FOR JUDGMENT

The State of Wisconsin commenced this action against the City of Waukesha to enforce state laws regulating the supply of drinking water, and which specifically set limits on radionuclides levels in drinking water. The parties now wish to settle this matter by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS STIPULATED AND AGREED by the parties that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. Defendant shall pay a judgment comprised of forfeitures of \$35,000 for the violations described in the complaint, plus \$9,100 for the 26% penalty surcharge under Wis. Stat. § 814.75(18), \$3,500 for the 10% environmental surcharge under Wis. Stat. § 814.75(12), the \$25 court costs under Wis. Stat. § 814.63(1), the \$8 crime laboratories

and drug law enforcement surcharge required by Wis. Stat. § 814.75(3), the \$68 court support services surcharge as required by Wis. Stat. § 814.75(2), the 1% jail surcharge of \$350 under Wis. Stat. § 814.75(14), and the \$12 justice information system surcharge required by Wis. Stat. § 814.75(15), plus \$4,900.00 for the costs of the Department of Natural Resources' investigation and \$2,037.00 as attorney fees for the Department of Justice under Wis. Stat. § 281.98(2) and (3), for a total of \$55,000.

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3. Defendant has worked toward meeting the state drinking water standards for radium-226, radium-228; gross alpha ("Radionuclide Standards"). Defendant's efforts include, but are not limited to, expending over \$13,500,000 in radionuclide treatment facilities, piping and new wells. Additional measures are necessary to meet Wis. Admin. Code ch. NR 809 requirements for radionuclides.

4. As of the date of this stipulation, Defendant has constructed and placed on line new shallow Wells Nos. 11 and 12 and is blending the radium-compliant water from those wells with water from Well No. 8; has constructed and placed on line radium-removal systems at Wells Nos. 3 and 10; will substantially complete and place on line new shallow Well No. 13 by March 31, 2009, with final completion by May 1, 2009; and has upgraded storage, pumping and piping capacities to facilitate the provision of water, either from wells with radium-compliant water or from blending, that meets the state radium drinking water standards.

5. The Defendant implemented an effective water conservation program in April 2006 that includes, but is not limited to, the following elements: implementing Section 13.11 of the Waukesha Municipal Code limiting sprinkling; publishing a web site containing conservation practices and ideas; adopting a city-wide water conservation and protection plan; participating in a pilot project involving water saving fixtures; initiating design and construction of a water-recycling portion of the iron removal plant at Well No. 8; installing sprinkling ordinance signs; collaborating on establishing, and participating in, the Waukesha County Conservation Coalition; and implementing a conservation water rate structure. Waukesha's conservation success has been demonstrated by achieving reduced maximum day and annual average day water demand to below those of the past 20 years.

6. The Defendant has developed a water supply management plan requiring considerable increased management and staff time as well as increased annual operation costs.

7. To meet the Radionuclide Standards in the distribution system at each customer connection until Defendant implements measures to achieve complete compliance with federal and state Radionuclide Standards, by no later than June 30, 2018, Defendant may rely on weighted averaging. Weighted averaging as used in this Stipulation is defined as using a 12-month running annual average of results from water samples collected at predetermined representative monitoring locations to demonstrate that the water served to every point in the distribution meets the radionuclide maximum contaminant levels. The Department shall determine Defendant's compliance with this

paragraph in accordance with the process set forth in the Operation and Monitoring Plan for Compliance with the Radionuclides Standards attached to this Stipulation as Exhibit A and incorporated in this Stipulation by reference (the "Operation and Monitoring Plan"). Modification of the following components of the Plan may be made on an annual basis subject to DNR's approval: Monitoring Locations, Monitoring Frequencies, Monitoring Methods and Monitoring Reductions.

8. Defendant shall operate its water system to minimize the use of wells that exceed the Radionuclide Standards as much as possible. Defendant shall use only wells that provide water meeting the Radionuclide Standards to the distribution system for at least 8 months of each calendar year. At any time during the calendar year, Defendant shall be permitted to operate non-compliant wells a maximum of 2 days per month per well for sampling and maintenance, and such flow shall not be considered in the weighted averaging calculations. Defendant shall for no more than the remaining 4 months of each calendar year use a combination of wells that provide water meeting the Radionuclide Standards entering the distribution system and those wells providing water to the distribution system that do not meet the Radionuclide Standards.

9. If Defendant fails to meet the weighted average for radionuclides, Defendant shall within three years of such failure discontinue the supply of non-radionuclide-compliant water to the distribution system and shall meet state and federal Radionuclide Standards.

10. Defendant shall submit to the Department of Natural Resources an annual report documenting well operation, documenting monitoring results, summarizing the days that each well has operated each month of the calendar year, excluding the 2 days for monitoring and maintenance as provided in Paragraph 8, calculating the weighted average for the Radionuclide Standards at each monitoring location and documenting progress towards achieving compliance with state Radionuclide Standards (a sample report is included in Exhibit A).

11. The Department of Natural Resources shall perform an annual review of Defendant's annual report to evaluate Defendant's performance under this Stipulation and progress toward complete compliance with Wis. Admin. Code ch. NR 809 requirements for radionuclides.

12. Defendant shall conduct monitoring of radium 226, radium 228 and gross alpha pursuant to the Operation and Monitoring Plan. The Operation and Monitoring Plan shall provide for a minimum of annual sampling for compliant wells and quarterly sampling at each entry point for noncompliant wells, plus monthly sampling for noncompliant wells during the months of each calendar year that the noncompliant wells are in use during the first year with potential reduction of this monthly sampling as set forth in the Operation and Monitoring Plan.

13. Defendant shall by June 30, 2018, achieve complete compliance with all federal and state drinking water Radionuclide Standards, which require that radionuclide-compliant water can be provided in the event of the failure of the system's

largest well, by some combination of obtaining new sources of compliant water and by treating for radionuclide-removal existing and/or new sources of water.

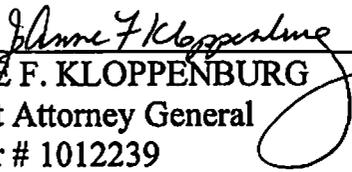
14. In the event that any duty or obligation required by this Stipulation is either delayed or not completed for causes beyond Defendant's reasonable control and outside Defendant's reasonable anticipation and without its fault or negligence, the Defendant shall not be deemed to be in default of this Stipulation and Order for Judgment. These circumstances of *force majeure* include, but are not limited to, unpreventable system breakdowns, nature, acts of God, war, labor disputes and disturbances, and failures of governmental agencies or third parties to act or conditions under the law that preclude the City from acting. These circumstances do not include economic hardship. For purposes of this *force majeure* provision, it is presumed that delay is the Defendant's responsibility, and it shall bear the burden of rebutting that presumption. Defendant shall notify DNR in writing within 4 days of its becoming aware of any circumstance of *force majeure*. Any circumstances of *force majeure* shall be remedied as soon as reasonably possible, and the obligations under this stipulation shall be resumed and met as soon as reasonably possible after those events no longer exist.

15. Except as between the parties to this action, nothing contained in this Stipulation and Order for Judgment shall be construed as an admission of liability by the Defendant in any proceeding now pending or hereafter commenced.

16. The accompanying order for judgment and judgment may be entered incorporating the terms of this stipulation and docketed without further notice.

Dated: 30 March 2009

J.B. VAN HOLLEN  
Attorney General

  
\_\_\_\_\_  
JOANNE F. KLOPPENBURG  
Assistant Attorney General  
State Bar # 1012239  
Attorneys for Plaintiff  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-9227

Dated: 3/27/09

REINHART BOERNER VAN DEUREN S.C.

  
\_\_\_\_\_  
DONALD P. GALLO  
State Bar # 1001278  
Attorneys for Defendant  
Post Office Box 2265  
Waukesha, Wisconsin 53187-2265  
(262) 951-4555

Dated: 3/27/09

CITY OF WAUKESHA

  
\_\_\_\_\_  
Curt R. Meitz  
State Bar # 1017139  
City Attorney  
201 Delafield Street  
Waukesha, Wisconsin 53188  
(262) 524-3525