

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 LISA MADIGAN, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 vs.)
)
 CITGO PETROLEUM CORPORATION,)
 a Delaware corporation,)
)
 Respondent.)

PCB No. 09-
(Enforcement - Land)

NOTICE OF FILING

TO: Christopher Newcomb
 Senior Corporate Counsel
 Refinery Operations
 CITGO Petroleum Corporation
 135th Street and New Avenue
 Lemont, Illinois 60439

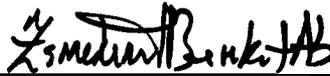
Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 W. Randolph Street, Ste. 11-500
 Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
 Attorney General
 State of Illinois

BY: 

 ZEMEHERET BEREKET-AB
 Environmental Bureau
 Assistant Attorneys General
 69 W. Washington St., 18th Fl.
 Chicago, Illinois 60602
 (312) 814-3816

DATE: February 23, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
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vs.)
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CITGO PETROLEUM CORPORATION,)
a Delaware corporation,)
)
Respondent.)

PCB No. 09-
(Enforcement - Land)

AGREED MOTION TO REQUEST RELIEF FROM THE HEARING REQUIREMENT

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

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

2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2006) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). . . .

3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2006).

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

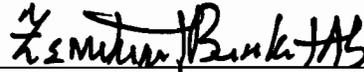
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



ZEMEHERET BEREKET-AB
Environmental Bureau
Assistant Attorneys General
69 W. Washington St., 18th Fl.
Chicago, Illinois 60602
(312) 814-3094

DATE: February 23, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 09-
)	(Enforcement - Land)
CITGO PETROLEUM CORPORATION,)	
a Delaware corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and CITGO PETROLEUM CORPORATION, a Delaware corporation ("CITGO" and/or "Respondent"), ("Parties to the Stipulation and Proposal for Settlement") have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board Waste Disposal Regulations, as alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation and Proposal for Settlement ("Parties to the Stipulation") that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On _____, 2009, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006).

3. At all times relevant to the Complaint, Respondent was and is a Delaware corporation registered with the Illinois Secretary of State to transact business in the State of Illinois.

4. CITGO operates a petroleum refinery in Lemont, Will County, Illinois ("Lemont Refinery").

5. Sometime late in December 2006, CITGO excavated contaminated soil at its refinery in Lemont, Illinois.

6. On January 3, 2007, CITGO took six samples of the contaminated soil and sent the samples of the contaminated soil to be analyzed by Suburban Laboratories ("Suburban") in Hillside, Illinois.

7. On January 19, 2007, Suburban reported its analysis to Citgo which showed that the benzene contents of the soil were below the regulatory limit of 0.5 mg/l.

8. CITGO prepared a Generator's Waste Profile Sheet for two roll-off boxes of soil (21.7 tons) to be disposed as non-hazardous, declassified special waste.

9. On March 16 and March 19, 2007, the contaminated soil which was generated at the CITGO Lemont refinery was transported by Waste Management Southwest to Prairie View Landfill ("Prairie View") and disposed of at Prairie View Landfill as non-hazardous, declassified special waste.

10. In May 2007, Suburban performed a regularly scheduled internal quality control review of the data for the contaminated soil originally provided to CITGO. In this review, Suburban discovered a calculation error that it had made in the original analytical report.

11. On May 17, 2007, Suburban notified CITGO that a calculation error had been made, and that the highest value of three samples was actually 1.478 mg/1 for benzene, approximately three times above the regulatory limit of 0.5 mg/1, thus, making the contaminated soils RCRA hazardous for toxicity for benzene.

12. On May 23, 2007, CITGO notified Prairie View of Suburban's new laboratory analysis, and on May 30, 2007, Prairie View, in turn, notified the Illinois EPA of Suburban's revised laboratory report.

13. On July 25, 2007, the Illinois EPA conducted a RCRA inspection of CITGO's Lemont refinery. The inspection confirmed that CITGO had sent two roll-off boxes (21.7 tons) of soil contaminated with benzene as a non-hazardous waste to a facility not authorized to accept hazardous waste.

14. On September 7, 2007, the Illinois EPA sent to CITGO a Violation Notice ("VN") pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1) (2006).

15. On October 17, 2007, CITGO responded to the VN and proposed its Compliance Commitment Agreement ("CCA").
16. On November 1, 2007 the Illinois EPA rejected CITGO's CCA.
17. On March 10 and 12, 2008, the Illinois EPA sent to CITGO a Notice of Intent to Pursue Legal Action pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b) (2006).
18. On April 11, 2008, the Illinois EPA met with CITGO to discuss the violations.
19. Following referral to the Office of the Attorney General for possible enforcement, representatives from CITGO, the Illinois EPA and the Office of the Attorney General met to discuss the matter on September 17, 2008.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- Count I: Disposing of Hazardous Waste at a Facility Not Permitted to Accept Hazardous Waste, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).
- Count II: Failure to Perform a Hazardous Waste Determination, in violation of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006), and 35 Ill. Adm. Code 722.111.
- Count III: Failure to Manage Hazardous Waste in Accordance with the Act, in violation of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006).
- Count IV: Failure to Prepare a Manifest Prior to Offering the Hazardous Waste for Off Site Transportation and Disposal, in violation of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006), and 35 Ill. Adm. Code 722.120(a)(1).

C. Non-Admission of Violations

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

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Disposing of hazardous waste at a municipal landfill has the potential to cause lasting environmental damage.
2. The social and economic benefit of the pollution source is not at issue.
3. The CITGO refinery located in Lemont, Illinois is suitable to the area in which it is located.
4. Complying with the requirements of the Act and Board Regulations prior to the disposal of the contaminated soil was both technically practicable and economically reasonable.
5. Respondent has put into place procedural mechanisms to prevent similar violations from happening in the future. Specifically, immediately upon being notified by Suburban that Suburban's results were in error, CITGO's RCRA Coordinator visited Suburban and audited the process to confirm that Suburban had implemented adequate corrective measures. CITGO's audit included but was not limited to understanding the cause of the error (errant data entry in a SIMS field by trainee), confirming that measures had been taken to ensure the error could not be repeated, and conducting test entries to confirm the fields could not accept data by mistake. Additionally, an independent third-party was hired to conduct an audit of Suburban which audit did not find any issues of concern.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), provides as follows:

In determining the appropriate civil penalty to be imposed under ... this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, Complainant states as follows:

1. The potential for harm in this case relates to the adverse impact on the RCRA regulatory program. At the very core of the program is the proper designation and handling of waste by the generator so as to prevent hazardous waste from being disposed anywhere except at permitted facilities.
2. CITGO showed considerable cooperation after the violations were discovered.
3. Economic benefits accrued by Respondent are believed to be minimal and are accounted for in the \$5,000.00 penalty agreed herein.
4. Complainant has determined, based upon the specific facts of this matter that a penalty of Five Thousand Dollars (\$5,000.00) will serve to deter further violations of the Act and Board Regulations by Respondent and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's and the Illinois EPA's knowledge, Respondent has no previously adjudicated RCRA violations.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Five Thousand Dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

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

C. Stipulated Penalties, Interest and Default

If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

D. Future Compliance

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the Five Thousand Dollars \$5,000.00 penalty, and its commitment to cease and desist as contained in Section D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the alleged violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on _____ 2009. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

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

G. Execution of Stipulation

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

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

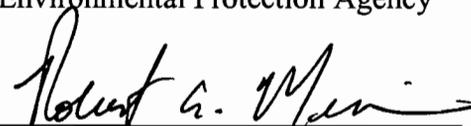
PEOPLE OF THE STATE OF ILLINOIS

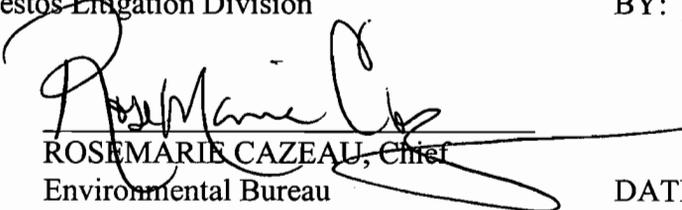
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 2/4/09

DATE: 2/6/09

CITGO PETROLEUM CORPORATION

BY: CW Hamm

Name: CLAUDE W. HAMMOND

Title: MANAGER ASSOC

DATE: 2/16/09

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CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 23rd day of February, 2009, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB