

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
WHITE OAK RESOURCES LLC,)	
a Delaware limited liability company,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, WHITE OAK RESOURCES LLC, a Delaware limited liability company, as follows:

COUNT I

**UNDERGROUND INJECTION CONTROL PERMIT PROGRAM VIOLATIONS BY
WHITE OAK RESOURCES LLC**

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2014).

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

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Section 12(g) of the Act, 415 ILCS 5/12(g) (2014), provides, in pertinent part:

No person shall:

- g) Cause, threaten or allow the underground injection of contaminants without a UIC permit issued by the Agency under Section 39(d) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any regulations or standards adopted by the Board or of any order adopted by the Board with respect to the UIC program.

* * *

5. Section 704.121 of the Board's Waste Disposal Regulations ("Regulations"), 35

Ill. Adm. Code 704.121, provides, in pertinent part:

Any underground injection, except into a well authorized by permit or rule issued under this part and 35 Ill. Adm. Code 705, as applicable, is prohibited. The construction of any well required to have a permit under this Part is prohibited until the permit has been issued.

* * *

6. The Respondent is a "person" as that term is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, political subdivision, state agency, or any other legal entity or their legal representative, agent or assigns.

7. The term "contaminant" is defined under Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), as follows:

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

* * *

8. The term “well” is defined under Section 3.315 of the Act, 415 ILCS 5/3.555 (2014), as follows:

“Well” means a bored, drilled or driven shaft, or dug hole, the depth of which is greater than the largest surface dimension.

* * *

9. WHITE OAK RESOURCES LLC (“WHITE OAK”), is a Delaware limited liability company in good standing, registered with the Delaware Secretary of State, and authorized to conduct business in Illinois.

10. At all times relevant to this Complaint, WHITE OAK has owned and operated a coal mining facility (“the site”) located at the corner of County Road 500E and County Road 1800N, southeast of Dahlgren, Hamilton County, Illinois.

11. On January 7, 2013, WHITE OAK submitted a permit application for two Underground Injection Control (“UIC”) Class I nonhazardous wells located at the site.

12. On March 5, 2013, the Illinois EPA acknowledged receipt of the application and replied on July 22, 2013 with a letter to WHITE OAK citing numerous technical deficiencies in the application.

13. On January 15, 2014, an Illinois EPA inspector inspected the site and met with an environmental and permit planner for WHITE OAK. At that time, the inspector learned that WHITE OAK had begun drilling a UIC well (“the well”) in March of 2013. The WHITE OAK representative characterized the well as an “exploration” well and explained that the well has an approximate depth of 12,000 feet.

14. During the January 15, 2014 inspection, the WHITE OAK representative told the Illinois EPA inspector that a pump test of the well was conducted using high pH pond water.

During the pump test, the high pH pond water was a contaminant that was injected underground into the well, demonstrating that the well was operational prior to any permit being issued for the construction of the well.

15. During the January 15, 2014 inspection, the Illinois EPA inspector observed that the wellhead of the well was wrapped in a protective mylar covering. The covering was approximately six feet tall with two exposed hand wheel valves and a pressure gauge. The equipment constructed on the wellhead was indicative of an operational UIC well.

16. On February 28, 2014, the Illinois EPA sent Violation Notice L-2014-01026 to WHITE OAK, citing violations of 415 ILCS 5/12(g) (2014) and 35 Ill. Admin Code Section 704.121.

17. WHITE OAK requested a meeting pursuant to Section 31(a) of the Act and a meeting was held in Springfield on April 28, 2014. At the meeting, WHITE OAK informed numerous Illinois EPA personnel that they were drilling the exploratory well.

18. On May 19, 2014, WHITE OAK submitted a compliance commitment agreement ("CCA"). The CCA stated that the pump test performed in the well was a 12-day injection test that occurred from late July 2013 until early August 2013 to evaluate reservoir properties.

19. On June 6, 2014, the Illinois EPA sent a notice of non-issuance of compliance commitment agreement to WHITE OAK.

20. On July 2, 2014, the attorney for WHITE OAK sent a letter to the Illinois EPA stating that WHITE OAK waives rights to notice, process or additional meetings under Section 31(b) of the Illinois Environmental Protection Act for Violation Notice L-2014-01026.

21. WHITE OAK did not have a UIC permit or authorization by rule to inject contaminants into the well at the site.

22. WHITE OAK violated Section 12(g) of the Act, 415 ILCS 5/12(g), by constructing a UIC well without first having a UIC permit issued by the Agency authorizing construction of the UIC well.

23. WHITE OAK violated Section 12(g) of the Act, 415 ILCS 5/12(g), and Section 704.121 of the Regulations, 35 Ill. Adm. Code 704.121, by injecting contaminants underground into the well without having a UIC permit or authorization by rule during the 12-day injection test that occurred from late July 2013 until early August 2013.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

A. Find that WHITE OAK has violated Section 12(g) of the Act, 415 ILCS 5/12(g), and Section 704.121 of the Regulations, 35 Ill. Adm. Code 704.121;

B. Order WHITE OAK to cease and desist from further violations of Section 12(g) of the Act, 415 ILCS 5/12(g), Section 704.121 of the Regulations, 35 Ill. Adm. Code 704.121 and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2014);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), impose upon WHITE OAK a monetary penalty of Fifty Thousand Dollars (\$50,000) for each violation of the Act with an additional penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

D. Order WHITE OAK to pay all costs of this action, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

E. Grant such other and further relief as the Board deems appropriate and just.

Respectfully submitted,

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

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

BY: Matthew J. Dunn

BRIAN CLAPPIER
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9034
ARDC#: 6307721

Dated: 6/22/15

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2015, via First Class Mail, with postage thereon fully prepaid and by depositing in a United States Post Office Box, I mailed a true and correct copy of
Complaint to:

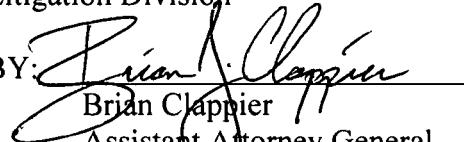
Charles A. Compton
White Oaks Resources
121 South Jackson Street
McLeansboro, IL 62859

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN, Attorney General of the
State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement Asbestos
Litigation Division

BY:



Brian Clappier
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

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v.)	PCB No. -
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Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and WHITE OAK RESOURCES LLC ("Respondent"), (collectively "Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1, et seq. (2014), and the Board's regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. A Complaint filed simultaneously with this stipulation was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415

ILCS 5/31 (2014), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2014).

3. At all times relevant to the Complaint, the Respondent was and is a Delaware limited liability company that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, the Respondent owned and operated a coal mining facility located at County Road 500E and County Road 1800N, southeast of Dahlgren, Hamilton County, Illinois ("Site" or "Facility").

B. Allegations of Non-Compliance

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

Count I: Underground Injection Control Permit Program Violations By White Oak Resources LLC.
 415 ILCS 5/12(g) (2014); 35 Ill. Adm. Code 704.121

C. Non-Admission of Violations

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

D. Compliance Activities to Date

1. The Respondent ceased construction of any support facilities for any underground injection control wells before receipt of the Violation Notice L-2014-01026, sent to the Respondent on February 28, 2014, and until permit approval was granted for construction of an

underground injection control well.

2. The Respondent contends that Respondent only utilized fluids to perform the required well test pursuant to the regulations. Once testing was completed, any underground injection control wells at the Site were shut-in until the Respondent obtained an Illinois EPA-UIC permit and this Stipulation was filed.

3. The Respondent ceased injection of fluids in the unpermitted underground injection control well prior to receipt of Violation Notice L-2014-01026.

4. The Respondent received Permit Number UIC-017-WOR, UIC Log No. UIC-146 on November 25, 2014 for the underground injection control well that was the basis of Violation Notice L-2014-01026.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), provides as follows:

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

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

* * *

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

1. The Respondent proceeded with construction and operational testing of an unpermitted well.
2. There is social and economic benefit to the underground injection control well.
3. Operation of the underground injection control well was and is suitable for the area in which it is located.
4. Complainant contends that obtaining the permit prior to construction of the well at the site was both technically practicable and economically reasonable. Respondent contends that it has subsequently complied with the Act and the Board regulations; the Illinois EPA has issued the Respondent permit No. UIC-017-WOR, UIC Log No. UIC-146.
5. The Respondent has subsequently complied with the Act and the Board regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief 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;
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; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. The Respondent failed to obtain Permit No. UIC-017-WOR, UIC Log No. UIC-146 for construction activities prior to beginning construction activities at the Site. The violations began when construction at the Site commenced on or around March 28, 2013 and continued until Permit No. UIC-017-WOR, UIC Log No. UIC-146 for the construction of the well was issued on November 25, 2014.

2. The Respondent was diligent in attempting to come back into compliance with the Act and Board regulations once the Illinois EPA notified it of its noncompliance.

3. Any economic benefit attributable to the noncompliance would be minimal.

4. Complainant has determined that, based upon the specific facts of this matter, a penalty of Forty Thousand Dollars (\$40,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. The Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

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

8. On May 19, 2014, pursuant to Section 31(a) of the Act, the Respondent submitted potential terms for a proposed Compliance Commitment Agreement ("CCA"). On June 6, 2014, pursuant to Section 31(a)(7)(a)(ii) of the Act, the Illinois EPA sent notice to the Respondent stating that the Illinois EPA would not issue a proposed CCA and that the violations in Violation Notice L-2014-01026 cannot be resolved without the involvement of the Office of the Attorney General or the State's Attorney.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Forty Thousand Dollars (\$40,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. **Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the

remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

1. 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, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Brian Clappier
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 S. Second Street
Springfield, Illinois 62701

D. Future Compliance

1. The Respondent shall refrain from construction of underground injection control wells unless properly permitted by the Illinois EPA.

2. In addition to any other authorities, 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 Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. 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.

3. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

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

E. Enforcement and Modification of Stipulation

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

2. The Parties to the Stipulation may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.C. Any such request shall be made by a separate document, and shall not be submitted within any other report

or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

F. Release from Liability

In consideration of the Respondent's payment of the \$40,000.00 penalty (and any specified costs and accrued interest), its commitment to cease and desist as contained in Section V.D.4 above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed simultaneously with this Stipulation. 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.

G. Execution of Stipulation

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

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

PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Director
Illinois Environmental Protection Agency

BY: *Matthew J. Dunn*
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: *[Signature]*
JOHN J. KIM
Chief Legal Counsel

DATE: *6/22/15*

DATE: *6/10/15*

RESPONDENT

B. Scott Spears, PRESIDENT

DATE: *5/14/15*

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2015, via First Class Mail, with postage thereon fully prepaid and by depositing in a United States Post Office Box, I mailed a true and correct copy of Stipulation and Proposal for Settlement to:

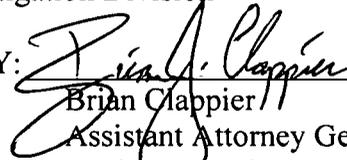
Charles A. Compton
White Oaks Resources
121 South Jackson Street
McLeansboro, IL 62859

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN, Attorney General of the
State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement Asbestos
Litigation Division

BY:



Brian Clappier
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031