

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by KWAME RAOUL, Attorney General)
of the State of Illinois,)

Complainant,)

v.)

ONE EARTH ENERGY, LLC, an Illinois)
limited liability company,)

Respondent.)

PCB No. 19-90
(Enforcement-Water)

NOTICE OF FILING

To: See attached service list
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing the following Notice of Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements, copies of which are attached and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL, ATTORNEY GENERAL

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

BY: s/Raymond Callery
Raymond Callery
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Dated: May 23, 2019.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

For the Respondent

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PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
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Complainant,)	
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v.)	PCB No. 2019-090
)	(Enforcement - Water)
ONE EARTH ENERGY, LLC, an Illinois)	
limited liability company,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and ONE EARTH ENERGY, LLC, an Illinois limited liability company, ("Respondent") ("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.* (2016), and the Board's Regulations alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On February 28, 2019, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2016), 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 (2016).

3. Respondent is an Illinois limited liability company in good standing that owns and operates an ethanol and distiller's grain production facility ("Facility").

4. The Facility and Respondent's principal place of business are located at 202 North Jordan Drive, Gibson City, Ford County, Illinois.

5. The Facility discharges storm water and waste water effluent into Drummer Creek through Outfall 001 under the terms of its current National Pollutant Discharge Elimination System ("NPDES") Permit number IL0078808, issued on July 22, 2014, with an effective date of June 1, 2014, and an expiration date of July 31, 2019 ("NPDES Permit"). In accordance with Special Condition 11 of its NPDES Permit, the Facility is obligated to maintain a Storm Water Pollution Prevention Plan ("SWPPP") to manage storm water runoff at the Facility.

6. Storm water discharge may contain significant quantities of pollutants, sediments and other debris, including dust, dirt, oil and grease that, if not properly managed and controlled, can threaten the functionality and viability of aquatic habitats in the receiving waterway.

7. Respondent controls storm water by accumulating Facility runoff in five storm water retention ponds. Pond 2 contains an "L" shaped standpipe structure designed to prevent poor quality bottom storm water containing high sediment concentrations from flowing directly into the drain system. A manually operated drain valve controls discharges from the drain system into Drummer Creek via Outfall 001.

8. On or shortly before May 30, 2017, discharges of sediment from the bottom of storm water retention pond 2 to Drummer Creek occurred as a result of a damaged discharge line from a spill pipe serving the pond.

B. Allegations of Non-Compliance

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

- | | |
|------------|---|
| Count I: | <u>WATER POLLUTION</u>
415 ILCS 5/12(a) (2016) |
| Count II: | <u>OFFENSIVE CONDITIONS</u>
415 ILCS 5/12(a) (2016)
35 Ill. Adm. Code 302.203 |
| Count III: | <u>OFFENSIVE DISCHARGES</u>
415 ILCS 5/12(a) (2016)
35 Ill. Adm. Code 304.106 |

C. Non-Admission of Violations

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, Respondent does not

affirmatively admit the allegations of violation 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 broken storm water pipe was replaced with a like-kind pipe on May 31, 2017.
2. Excess vegetation surrounding the storm water pond was removed to facilitate future inspection and maintenance of the pond.
3. To mitigate temperature fluctuations and, therefore, fatigue on the new storm water pipe, the pipe was covered by an earth berm to insulate the pipe from changing temperature conditions.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 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 (2016).

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant thirty (30) calendar days prior to the conveyance of

title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2016), 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. On May 30, 2017, Illinois EPA observed turbid, dark-colored, and odorous effluent in Drummer Creek directly below the point of discharge from Outfall 001. The discharge from Outfall 001 into Drummer Creek exhibited a septic-like odor. Thus, human health and the environment were threatened.

2. There is social and economic benefit in the operation of Respondent's ethanol and distiller's grain production facility.

3. Respondent's ethanol and distiller's grain production facility was suitable for the area in which it was being operating.

4. Preventing the discharge of contaminated effluent to Drummer Creek was both technically practicable and economically reasonable.

5. Respondent has subsequently resolved the allegations in the Complaint.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2016), 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. Illinois EPA discovered contamination was being released by Respondent into Drummer Creek on May 30, 2017. On May 30, 2017, Illinois EPA observed turbid, dark-colored, and odorous effluent in Drummer Creek directly below the point of discharge from Outfall 001. The discharge from Outfall 001 into Drummer Creek exhibited a septic-like odor.
2. Respondent promptly closed the valve controlling the discharge and repaired the damaged pipe upon being notified by Illinois EPA that contaminated effluent was being released into Drummer Creek.
3. Respondent had minimal delay in implementing and remedying the broken pipe in the storm water pond. The economic benefit of non-compliance is considered to be negligible.
4. Complainant has determined, based upon the specific facts of this matter, that a

penalty of Twenty-Five Thousand Dollars (\$25,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, 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. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

Respondent shall pay a civil penalty in the sum of Twenty-Five Thousand Dollars (\$25,000.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, 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, 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 Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment

is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

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

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

The name and case number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Raymond J. Callery
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.
2. Respondent shall implement and annually train employees on a formal, written procedure to respond to an unwanted release from the storm water ponds ("Response Plan"). The block valve which controls discharges from the storm water ponds into Drummer Creek via Outfall 001 will remain closed unless elevated water levels in the ponds require discharge.

3. Respondent shall perform monthly inspections of the storm water ponds serving the Facility and maintain records of the inspections. The monthly inspections and recordkeeping shall include:

- a. Visual observation of the effluent from the Facility for any visual discoloration or odor in the effluent;
- b. Visual inspection of the storm water ponds for low water levels, floating matter, turbidity, obstructed access, excess sediment near the discharge piping, excessive vegetation or sediment, and evidence of damage to any of the piping;
- c. Ensuring all discharge structures in the storm water ponds are cleared of brush, sediment, vegetation and other obstacles within fourteen (14) days of inspection; and
- d. Visual inspection of the berm for damage resulting from erosion or animal pests in order to ensure that the covered earth berm in which the discharge pipe is located in the No. 2 storm water pond remains covered to reduce temperature fluctuation in the pipe.

4. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his 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, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

E. Release from Liability

In consideration of Respondent's payment of the \$25,000.00 penalty, its commitment to cease and desist as contained in Section V.D.1 above, its completion and continuance of the steps outlined in Sections V.D.2 and V.D.3, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on February 28, 2019. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against 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

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

G. Execution of Stipulation

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

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

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

KWAME RAOUL
Attorney General
of the State of Illinois

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

JOHN J. KIM, Acting Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY: 
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: 05/21/2019

DATE: 5-17-19

ONE EARTH ENERGY, LLC,

BY: 
STEVE KELLY,
President/Registered Agent

DATE: May 2, 2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
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Complainant,)	
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v.)	PCB No. 19-90
)	(Enforcement-Water)
ONE EARTH ENERGY, LLC, an Illinois)	
limited liability company,)	
)	
Respondent.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2016), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2016). In support of this motion, Complainant states as follows:

1. On February 28, 2019, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2016).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL, ATTORNEY GENERAL

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

BY: s/Raymond Callery

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ebs@atg.state.il.us

Dated: May 23, 2019.

CERTIFICATE OF SERVICE

I, Raymond Callery, an Assistant Attorney General, certify that on the 23rd day of May, 2019, I caused to be served via electronic mail the foregoing Notice of Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements to the following:

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