



**SERVICE LIST**

Bradley Halloran  
Hearing Officer  
Illinois Pollution Control Board  
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Counsel for  
Bank Financial N.A., f/k/a Bank Financial F.S.B.  
As Trustee under Agreement dated November 30, 2004  
and known as Trust Number 010797

Robert Lotzar  
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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served on the date of 20<sup>th</sup> day of April, 2023, the attached Notice of Filing, Motion for Leave to File First Amended Complaint, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement upon the persons listed on the foregoing Service List via electronic mail.

*/s Christopher Grant*

Christopher Grant

Senior Assistant Attorney General

Environmental Bureau

Illinois Attorney General's Office

69 W. Washington Street, Suite 1800

Chicago, Illinois 60602

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each responsible for decommissioning of the vapor recovery systems, Complainant now seeks leave to amend the Complaint to include the Land Trust as the Respondent.

4. Complainant and the Land Trust have reached settlement and are filing a Stipulation and Proposal for Settlement along with this Motion and the proposed First Amended Complaint. Therefore the Amended Complaint and Stipulation will fully resolve this matter.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant leave to file the First Amended Complaint...

Respectfully submitted,

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

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

STEPHEN SYLVESTER, Chief  
Environmental Bureau North

BY: */s Christopher Grant*  
CHRISTOPHER GRANT  
Senior Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, Illinois 60602  
(312) 814-5388  
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3. At all times relevant to this First Amended Complaint, Respondent BANKFINANCIAL N.A. Trust No. 010797, formerly known as (“f/ka”) BANK FINANCIAL FSB Trust No. 010797 (“Land Trust”) has been and is an Illinois Land Trust.

4. At all times relevant to this First Amended Complaint, Respondent owned a gasoline dispensing facility located at 37740 North Sheridan Road, Beach Park, Lake County, Illinois (the “Facility”).

5. As of the date of filing of this First Amended Complaint, the Facility is located in an area of Environmental Justice (“EJ”) concern as identified using Illinois EPA EJ Start.

6. Respondent owns gasoline dispensing pumps at the Facility that emit volatile organic compounds (“VOCs”) into the environment.

7. Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

8. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

9. Respondent, an Illinois Land Trust, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

10. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides the following definition:

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

11. VOCs are a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

12. Section 218.586(i)(1)(B) of the Illinois Pollution Control Board (“Board”) Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), provides as follows:

No later than December 31, 2016, an owner or operator of a gasoline dispensing operation shall complete the decommissioning of all vapor collection and control systems in accordance with all of the provisions specified in subsection (i)(2).

13. Section 218.586(a)(7) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(7), provides the following definition:

“Gasoline dispensing operation” means any operation where motor vehicle fuel is dispensed into motor vehicle fuel tanks or portable containers from a storage tank with a capacity of 2176 liters (575 gallons) or more.

14. The Facility is a “gasoline dispensing operation,” as that term is defined in Section 218.586(a)(7) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(7).

15. Section 218.586(a)(11) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(11), provides the following definition:

“Owner” or “operator” means any person who owns, leases, operates, manages, supervises or controls (directly or indirectly) a gasoline dispensing operation.

16. Respondent is an “owner”, as that term is defined in Section 218.586(a)(11) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(11).

17. Section 218.586(i)(2)(A) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(A), provides as follows:

The owner or operator of a gasoline dispensing operation shall complete and submit a notice of intent form, provided by the Agency, notifying the Agency of its intent to decommission. The completed notice of intent form shall be submitted to the



Agency at least 10 days prior to commencing decommissioning in accordance with subsection (i)(2)(B);

18. Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C), provides as follows:

The owner or operator of a gasoline dispensing operation and the contractors that performed the decommissioning shall complete and sign a decommissioning checklist and certification, provided by the Agency, documenting the decommissioning procedures performed. Within 30 days after completion of the decommissioning procedures specified by subsection (i)(2)(B), the owner or operator shall provide the completed checklist and certification and the test results to the Agency.

19. Respondent was required to decommission the Facility's vapor collection and control system in accordance with Section 218.586(i)(1)(B) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) by December 31, 2016, and was required to submit a decommissioning checklist, certification, and test results within 30 days after completion of decommissioning procedures, pursuant to Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C).

20. On October 18, 2022, Respondent arranged for a decommissioning report to be provided to Complainant. The report indicated that decommissioning and testing had been performed on October 6, 2022.

21. Respondent did not submit a notice of intent to Illinois EPA to decommission its vapor collection and control system at any time.

22. From December 31, 2016 until October 18, 2022, Respondent failed to submit a decommissioning checklist, certification, or test results to Illinois EPA.

23. By failing to submit a notice of intent to decommission and failing to timely submit a decommissioning checklist, certification, and test results to Illinois EPA, Respondent violated

Section 218.586(i)(2)(A) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(A) and 218.586(i)(2)(C).

23. Respondent failed to timely decommission its vapor collection and control system and thereby violated Section 218.586(i)(1)(B) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B).

25. From December 31, 2016 until October 18, 2022, by violating Sections 218.586(i)(1)(B), 218.586(i)(2)(A), and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(A), and 218.586(i)(2)(C), the Respondent caused or threatened or allowed the discharge or emission of VOCs into the environment so as to violate regulations adopted by the Board, and has thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against Respondent, BANKFINANCIAL N.A. TRUST No. 010797, with respect to Count I:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Finding that Respondents has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B), 218.586(i)(2)(A), and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(A), and 218.586(i)(2)(C);

3. Ordering Respondent to cease and desist from any future violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B), 218.586(i)(2)(A), and

218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(A), and 218.586(i)(2)(C);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

Respectfully submitted,

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

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

BY: /s/ Stephen J. Sylvester  
STEPHEN J. SYLVESTER, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

Christopher Grant  
Senior Assistant Attorney General  
Environmental Bureau  
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69 W. Washington Street, Suite 1800  
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773.590.7824  
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shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

\* \* \*

3. No hearing is now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2020).

Respectfully submitted,

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

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

STEPHEN SYLVESTER, Chief  
Environmental Bureau North

BY: /s Christopher Grant  
CHRISTOPHER GRANT  
Senior Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, Illinois 60602  
(312) 814-5388  
Christopher.grant@ilag.gov



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 April 20, 2023, a First Amended 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 (2020), 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 (2020).

3. Respondent is an Illinois Land Trust. At all times relevant to the Complaint, Respondent owned a gasoline dispensing facility located at 37740 North Sheridan Road, Beach Park, Lake County, Illinois (the "Facility").

4. The Facility is located in an area of Environmental Justice ("EJ") concern as identified using Illinois EPA EJ Start.

5. Respondent owns gasoline dispensing pumps at the Facility that emit volatile organic compounds ("VOCs") into the environment.

**B. Allegations of Non-Compliance**

Complainant contends that Respondent has violated the following provisions of the Act and Board Air Pollution Regulations:

Count I: Failure to Timely Decommission Vapor Collection and Control System and Submit Reports, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

**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**

On October 18, 2022, Respondent provided a report to Complainant verifying decommissioning of the vapor recovery system at the Facility. The report also included the decommissioning checklist and test results.

**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 (2020).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), 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. Complainant contends that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities were hindered by Respondent's alleged violations.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility was and is suitable for the area in which it is located.
4. Timely decommissioning of Respondent's vapor collection and control system, and timely submission of a decommissioning checklist, certification, and test results to the Illinois EPA, are both technically practicable and economically reasonable.
5. 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) (2020), 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. Respondent failed to timely submit a decommissioning checklist, certification, and test results to the Illinois EPA. The violations began on January 1, 2017, and were resolved by Respondent through submission of the decommissioning checklist and test results on October 18, 2022.
2. Respondent was diligent in attempting to come back into compliance with the Act and Board Regulations once Complainant notified it of its noncompliance.
3. The civil penalty takes into account any economic benefit realized by Respondent as a result of avoided or delayed compliance.

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 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 Five Thousand Dollars (\$5,000.00) within thirty (30) 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**

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:

Christopher Grant  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. 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 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.

2. 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.

3. 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 Respondent's payment of the \$5,000.00 penalty, its commitment to cease and desist as contained in Section 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 First Amended Complaint filed on April 20, 2023. 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 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 (2020), or entity other than Respondent.

**F. Enforcement of Stipulation**

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.

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  
State of Illinois

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

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY:   
STEPHEN J. SYLVESTER, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: 4/13/23

DATE: 4/10/23

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  
State of Illinois

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

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

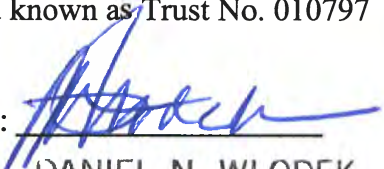
BY: \_\_\_\_\_  
STEPHEN J. SYLVESTER, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
CHARLES W. GUNNARSON  
Chief Legal Counsel

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

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

**BankFinancial, N.A., f/k/a BankFinancial, F.S.B.,**  
not personally but solely as Trustee under that  
certain Trust Agreement dated November 30, 2004  
and known as Trust No. 010797

BY:   
DANIEL N. WLODEK  
ITS: TRUST OFFICER

DATE: 04/07/2023

This instrument is executed by *BankFinancial, NA* not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said *BankFinancial, NA*, hereby warrants that it possesses full power and authority to execute this instrument) and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on *BankFinancial, NA*.