

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	No. PCB 06-36
)	
MAGELLAN PIPELINE COMPANY, L.P.,)	
a limited partnership,)	
)	
)	
Respondent.)	

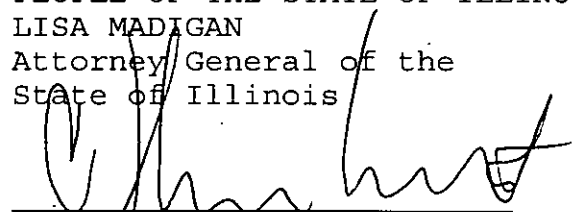
NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, December 8, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement, and Motion to Waive the Requirement of a Hearing, by electronic filing. Copies of these documents are attached.

Respectfully submitted,

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

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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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 MAGELLAN PIPELINE COMPANY, L.P. ("Respondent"), 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. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the

claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

II. AUTHORIZATION

The undersigned representatives for each party 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.

III. STATEMENT OF FACTS

A. Parties

1. On September 6, 2005, 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 (2004), 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 (2004).

3. At all times relevant to the Complaint, Respondent was, and is, a limited partnership. The general partner of Magellan Pipeline Company L.P. is Magellan Pipeline GP, LLC, a Delaware limited liability company that is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a petroleum product storage and distribution facility located at 1222 U.S. Route 30, Amboy, Lee County, Illinois ("site").

2. During July, 2004, Respondent generated waste from storage tank restoration activities at the site. The waste included hazardous waste in the form of styrofoam contaminated with benzene.

3. On July 20, 2004, the benzene-contaminated styrofoam was disposed of at Prairie Hill Recycling and Disposal ("Prairie Hill"), a municipal solid waste landfill located in Whiteside County, Illinois. Prairie Hill is not permitted for the disposal of hazardous waste.

4. On July 22, 2004, the benzene-contaminated styrofoam was removed from Prairie Hill and disposed of at a permitted

hazardous waste facility.

C. Allegations of Non-Compliance

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

Count I: IMPROPER DISPOSAL OF HAZARDOUS WASTE, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

Count II: FAILURE TO PREPARE A HAZARDOUS WASTE MANIFEST, in violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004), and 35 Ill. Adm. Code 722.120(a).

Count III: OFFERING HAZARDOUS WASTE TO A FACILITY THAT DOES NOT HAVE AN EPA IDENTIFICATION NUMBER, in violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004), and 35 Ill. Adm. Code 722.112.

Count IV: VIOLATION OF BOARD WASTE EVALUATION REQUIREMENTS, in violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004), and 35 Ill. Adm. Code Sections 722.111, 728.109(a), and 728.109(c).

D. Admission of Violations

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

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, 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.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2004), 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 state the following:

1. The alleged violations threatened human health and the environment by placement of hazardous waste within a landfill not qualified to manage hazardous waste.

2. There is social and economic benefit to Respondent's activities at its facility.

3. Respondent's petroleum storage and distribution activities are appropriate at the site, provided Respondent manages waste generated for its activities in accordance with the Act and pertinent waste disposal regulations.

4. Disposal of hazardous waste at a properly permitted facility is both technically practicable and economically reasonable.

5. The waste Styrofoam was removed from the Prairie Hill landfill and disposed of at a properly permitted facility. Respondent has revised its waste handling procedures and instituted policies that reduce the risk of the inadvertent disposal of hazardous waste at an unpermitted facility.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2004), 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, the parties state as follows

1. Complainant has alleged that the violations continued from July 20, 2004 until July 22, 2004.

2. Once Respondent was notified of the improper hazardous waste disposal, Respondent revised internal policies to reduce the chance of a repeat incident. Therefore Respondent demonstrated diligence by reducing the possibility of future violations. The waste Styrofoam has been disposed of at a properly permitted facility.

3. Respondent gained some economic benefit from shipment of hazardous waste to a municipal solid waste landfill. However, Respondent subsequently paid for a second disposal at a hazardous waste management facility, and therefore did not retain any economic benefit from improper disposal.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eighteen Thousand Dollars (\$18,000.00) 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.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Eighteen Thousand Dollars (\$18,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check, money order or record of

electronic funds transfer and any transmittal letter shall be sent to:

CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601,

and,

PAUL JAGIELLO
Assistant Counsel
Illinois Environmental Protection Agency
9511 West Harrison
Des Plaines, IL 60016

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, the Respondent

may be reached at the following address:

Mr. Paul Pratt
Magellan Midstream Partners, L.P.
One Williams Center
P.O. Box 22186
Tulsa, Oklahoma 74121-2186

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondent hereby agrees that 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 promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h) (2004). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

D. Release from Liability

In consideration of the Respondent's payment of the Eighteen Thousand Dollar (\$18,000.00) penalty and any specified costs and accrued interest, commitment to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 September 6, 2005. 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), or entity other than the Respondent.

E. Enforcement of Board Order

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

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve

and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

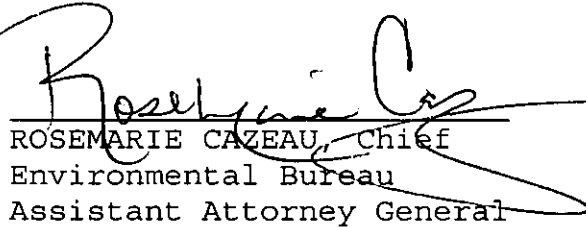
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:

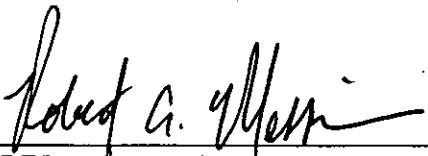

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE:

12/1/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

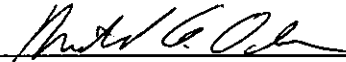
BY:


ROBERT A. MESSINA
Chief Legal Counsel

DATE:

11/28/05

MAGELLAN PIPELINE COMPANY, L.P.,
by Magellan Pipeline GP, LLC, its
General Partner

BY: 

DATE: 11-23-05

Name: Richard A. Olson




Title: Vice President

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PEOPLE OF THE STATE OF ILLINOIS,)
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 MAGELLAN PIPELINE COMPANY, L.P.,)
 a limited partnership,)
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 Respondent.)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 8th day of December, 2005, the foregoing Stipulation and Proposal for Settlement, Motion to Waive the Requirement of a Hearing, and Notice of filing, upon the persons listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.

tal Service located at 100 W

CHRISTOPHER GRANT

Service List:

Mr Gabriel G. Orenic

Mr. John Spesia

Spesia, Ayers, & Ardaugh

1415 Black Road

Joliet, IL 60435

Mr. Bradley P. Halloran

Hearing Officer

Illinois Pollution Control Board

100 W. Randolph Drive

Chicago, Illinois 60601 (hand delivery) (Notice of Filing only)