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CLERK'S OFFICE

DEC 22 2005

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 20, 2005

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Petco Petroleum Corporation***
PCB No. 05-66

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be "Thomas Davis", is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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DEC 22 2005
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
PETCO PETROLEUM CORPORATION,)
an Indiana corporation,)
)
Respondent.)

PCB No. 05-66

NOTICE OF FILING

To: Charles J. Northrup, Jr.
Sorling, Northrup, Hanna,
Cullen & Cochran, Ltd.
Suite 800, Illinois Building
607 East Adams
P.O. Box 5131
Springfield, IL 62705

Claire A. Manning
Brown, Hay & Stephens
205 South Fifth, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459


PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT, copies of which are attached hereto and herewith served upon you.

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: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on December 20, 2005, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT

To: Charles J. Northrup, Jr.
Sorling, Northrup, Hanna,
Cullen & Cochran, Ltd.
Suite 800, Illinois Building
607 East Adams
P.O. Box 5131
Springfield, IL 62705


Claire A. Manning
Brown, Hay & Stephens
205 South Fifth, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 22 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
PETCO PETROLEUM CORPORATION,)
an Indiana corporation,)
)
Respondent.)

No. 05-66
(Enforcement-Water)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, 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) (2004), 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) (2004). In support of this motion, Complainant states as follows:


1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. 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) (2004).

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) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 20, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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v.)
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PETCO PETROLEUM CORPORATION,)
an Indiana corporation,)
)
Respondent.)

PCB No. 05-66
(Water-Enforcement)

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 Petco Petroleum Corporation ("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 April 14, 2005, an Amended 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 an Indiana corporation 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 oil production facilities located in Fayette and Jefferson Counties, Illinois.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations: Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004); Section 302.203, 304.105, 304.106, and 302.208(g) of the Board’s Water Pollution Regulations, 35 Ill. Adm.

Code 302.203, 304.105, 304.106, and 302.208(g).

D. 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 violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

E. Compliance Activities to Date

The Respondent has remediated the impacts of the spills alleged in the Amended Complaint and has taken confirmatory samples to demonstrate that the remediation of the August 2005 spills has also been completed but has not yet received the analytical results. The Respondent has also continued to replace and upgrade its pipelines and associated equipment; the Respondent represents that these activities are accurately summarized in Attachment A.

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 Complainant states the following:

1. The Respondent's violations caused or threatened water pollution and caused fish kills in August 2004 and August 2005.
2. There is social and economic benefit to the oil production facilities.
3. The facilities are suitable for the area in which they are located in that such are permitted by the Illinois Department of Natural Resources.
4. The prevention of pollutorial discharges from the oil production facilities is both technically practicable and economically reasonable.

5. Respondent has subsequently taken steps toward coming into compliance with the Act and the Board Regulations.

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 Complainant states as follows:

1. The violations resulted from spills and leaks which occurred for unknown periods of time before being discovered. Estimated totals of 1,100 barrels of salt water and 20 barrels of crude

oil were released.

2. Since the previous enforcement actions in circuit court, Respondent has been increasingly diligent in attempting to prevent spills and thereby assure compliance with the Act, Board regulations and applicable federal regulations.

3. No quantified economic benefit was accrued.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of One Hundred and Thirty-Five Thousand Dollars (\$135,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Petco has previously been adjudicated in violation of Section 12 of the Act in Jefferson County Circuit Court No. 99-CH-55.

6. Self-disclosure is not at issue in this matter because the reporting of the releases is a legal obligation.

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 One Hundred and Thirty-Five Thousand Dollars (\$135,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by a company check 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 check and any transmittal letter shall be sent to:

Thomas Davis
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

John Waligore
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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, Respondent may be reached at the following address: 108 East Ogden Avenue, Hinsdale, Illinois 60521.

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 Sections 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 \$135,000.00 penalty and 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 Amended Complaint herein and for any violations resulting from a June 2005 spill at Dix in Jefferson County (reported as IEMA #20050874) and two separate August 2005 spills at St. Elmo in Fayette County (reported as IEMA #20051176 and #20051215) and an August 2005 spill at Dix in Jefferson County (reported as IEMA #20051235). The release set forth above does not extend to any matters other than those expressly specified in Complainant's Amended Complaint filed on April 14, 2005, and the June 2005 spill at Dix in Jefferson County (IEMA #20050874) and two separate August 2005 spills at St. Elmo in Fayette County (reported as IEMA #20051176 and #20051215) and an August 2005 spill at Dix in Jefferson County (reported as IEMA #20051235). 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:




THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 12/01/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY:




ROBERT A. MESSINA
Chief Legal Counsel

DATE: 12/1/05

PETCO PETROLEUM CORPORATION

BY:



CLAIRE A. MANNING, One of its counsel
Brown Hay & Stephens, LLP

DATE: 12-1-05

ATTACHMENT A

**ACTIONS TAKEN BY PETCO PETROLEUM TO ABATE, PREVENT, CONTAIN
AND IMMEDIATELY DETECT FUTURE RELEASES**

Since January 1, 2004

- The completion of the installation of a new Loudon SCADA (alarm) system, at a cost of several hundred thousand dollars. Now, there are two SCADA systems running side-by-side which monitor pipeline pressures, tank & pit levels, etc.;
- The completion of the replacement of well over 100 steel pig traps with PVC pig traps. All of the known steel pig traps in Loudon Field have been replaced, at a six figure cost to Petco;
- The replacement of steel injection line laterals with 2" and 3" fiberglass pipe. While the main injection lines and known steel laterals were replaced several years ago, Petco is now replacing all newly discovered steel lines in order to avoid future leaks;
- The replacement of numerous steel stock tanks;
- The replacement of 18 wash tanks with new fiberglass tanks at a cost of over \$100,000;
- The refurbishment of 14 tanks by draining, sand blasting, welding and coating or applying fiberglass to the inside walls;
- The replacement of 9 pipeline creek crossings to prevent possible line breaks;
- The replacement of 9 pipeline headers to prevent possible line breaks;
- The replacement of over a mile of disposal lines with PVC or seamless poly to prevent future leaks;
- The replacement of hundreds of valves and fittings prior to failure;
- The training of staff concerning expectations regarding the containment, abatement and reporting of leaks;
- The replacement of staff not meeting such expectations.

The above-listed items are just some of the actions that Petco has voluntarily taken to prevent or quickly detect possible problems. While some of the replacements may have been made due to an actual leak or spill, the vast majority have been made as preventative maintenance items prior to a problem occurring.