

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
v.)
)
J. McDANIEL, INC., an Illinois)
corporation,)
)
Respondent.)

PCB NO. 05-110
(Enforcement)

RECEIVED
CLERK'S OFFICE
AUG 29 2008
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Edward W. Dwyer
Monica Rios
Hodge Dwyer Zeman
3150 Roland Avenue
Springfield, IL 62705-5776

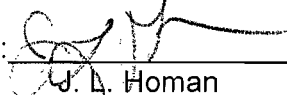
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT, STIPULATION AND PROPOSAL FOR SETTLEMENT McLEAN COUNTY and STIPULATION AND PROPOSAL FOR SETTLEMENT VERMILION COUNTY, copies of 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: 
J. L. Homan
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 26, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on August 26, 2008, 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, MOTION FOR RELIEF FROM HEARING REQUIREMENT, STIPULATION AND PROPOSAL FOR SETTLEMENT McLEAN COUNTY and STIPULATION AND PROPOSAL FOR SETTLEMENT VERMILION COUNTY:

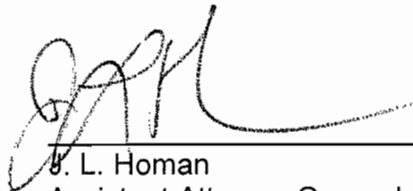
To: Edward W. Dwyer
Monica Rios
Hodge Dwyer Zeman
3150 Roland Avenue
Springfield, IL 62705-5776

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

To: John T. Therrault, Assistant 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



B. L. Homan
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant, v. J. McDANIEL, INC., an Illinois corporation, Respondent.

PCB NO. 05-110 (Enforcement)

RECEIVED CLERK'S OFFICE AUG 29 2008 STATE OF ILLINOIS Pollution Control Board

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) (2006), 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) (2006). In support of this motion, Complainant states as follows:

- 1. The parties have reached agreement on all outstanding issues in this matter in both McLean and Vermilion Counties.
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) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

J. L. Homan
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 26, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
J. McDANIEL, INC., an Illinois corporation,)
)
Respondent.)

PCB NO. 05-110
(Enforcement)

RECEIVED
CLERK'S OFFICE

AUG 29 2008

STATE OF ILLINOIS
Pollution Control Board

STIPULATION AND PROPOSAL FOR SETTLEMENT
McLEAN COUNTY

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 J. McDANIEL, INC., ("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. 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.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On December 14, 2004, 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 (2006), against the Respondent. The Complaint alleged violations against Respondent arising from the accidental release of gasoline in McLean County addressed in this Stipulation, as well as another release of gasoline in Vermilion County addressed in a separate Stipulation.

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 (2006).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent operated as a transportation and logistics company in Illinois.

4. On April 3, 2001, an employee of the Respondent was operating a tanker truck on Route 136 in McLean County, Illinois.

5. The truck crossed into oncoming traffic, struck a car, rolled over and struck a utility pole, killing the driver and resulting in the release of approximately 8,698 gallons of gasoline.

6. The released gasoline discharged into a drainage way over a distance of approximately one hundred (100) feet, after which it ran through a culvert under route 136, entered a drain tile, ultimately impacting a three to four mile stretch of Sugar Creek and causing a fish kill.

7. The public right of way along the highway, a nearby farmstead and agricultural properties along Sugar Creek were also impacted by the gasoline release. The areas and media impacted by the gasoline release and referred to in paragraphs 6 and 7 shall collectively constitute the "site."

8. Respondent represents that Respondent's consultants mobilized at the site within

a few hours and began emergency response actions, including utilizing booms and an underflow dam to contain the gasoline in the creek, as well as employing vacuum trucks to recover gasoline from the surface of the creek. As part of the emergency response activities, Respondent represents that Respondent's consultants also excavated and removed approximately 1,625 tons of soil.

9. Respondent represents it diligently continued remediation efforts at the site and has completed remediation activities to the Illinois EPA's satisfaction.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count III: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

Count IV: Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not admit the allegations of violation within Counts III and IV of 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

The Respondent represents that it has fully completed cleanup of the gasoline

contamination and achieved the remediation objectives approved by the Illinois EPA for the release in McLean County which is the subject of this Stipulation. The Illinois EPA has approved the completion of the remediation at the site.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA 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. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 this Stipulation state the following:

1. Human health was threatened, and the environment was negatively impacted.

Although Respondent's initial response to the Illinois EPA's Violation Notice was delayed, Respondent represents that it did not delay in responding to the release and continued remediation activities at the site.

2. There was no social and economic benefit as the result of the release incident.

Respondent represents that, in addition to suffering the death of an employee and losing saleable product, Respondent has incurred over \$270,000 in costs associated with the remediation activities at the site. In addition, in a separate proceeding, Respondent paid twenty-five thousand (\$25,000) dollars to resolve Respondent's liability for natural resource damages associated with the release at the site. See People v. J. McDaniel Transportation, Inc., Circuit Court for the Eleventh Judicial Circuit, McLean County, IL No. 06-AR-575 (February 16, 2007).

3. Respondent's ordinary fuel transportation operations were suitable for the area in which the release occurred.

4. Respondent's remediation contractor mobilized to the site and continued cleanup efforts until remediation was complete. Expeditious cleanup of the McLean County release was both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board Regulations after the occurrence of the McLean Co. And Vermilion Co. releases that are the subject of the Complaint in this matter.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

1. The water pollution violation persisted for several weeks after the incident occurred, while the water pollution hazard violations continued from the date of the incident (April 3, 2001) until remediation was completed in 2006. Respondent represents that the accidental release of gasoline, its eventual discharge into Sugar Creek, and Respondent's emergency response actions occurred between April 3, 2001, and April 16, 2001.

2. Respondent represents that it was diligent in undertaking initial emergency response activities but delayed in responding to the Illinois EPA's Violation Notice. After the initial emergency response activities were complete, Respondent represents that it diligently

continued remediation activities at the site.

3. Respondent represents that it lost saleable product and incurred over \$270,000 in costs associated with remediation activities at the site. Respondent represents that it has paid for the cost of the natural resources damages claim affiliated with this incident in a separate proceeding. Consequently, there was no economic benefit to the Respondent.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of the McLean County gasoline release, that a penalty of Thirty-Five Thousand Dollars (\$35,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA'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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Thirty-Five Thousand Dollars (\$35,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing

immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

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

C. Payment Procedures

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, case number and the Respondent's federal tax identification 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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

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.

E. Release from Liability

In consideration of the Respondent's payment of the \$35,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Counts III and IV 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 December 14, 2004 . 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; and
- c. 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, or entity other than the Respondent.

F. Enforcement of Stipulation

1. 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 each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

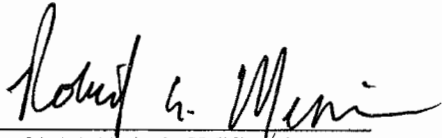
DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY:


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY:


ROBERT A. MESSINA
Chief Legal Counsel

DATE:

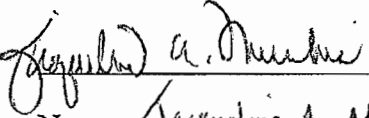
8/21/08

DATE:

8/21/08

J. McDANIEL, INC.
An Illinois corporation

BY:


Name: Jacqueline A. Musacchio
Title: VP & General Counsel

DATE:

7.20.2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
)
 v.)
 J. McDANIEL, INC., an Illinois corporation,)
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 Respondent.)

PCB NO. 05-110
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AUG 29 2008

STIPULATION AND PROPOSAL FOR SETTLEMENT
VERMILION COUNTY

STATE OF ILLINOIS
Pollution Control Board

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 J. McDANIEL, INC., ("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. 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.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On December 14, 2004, 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 (2006), against the Respondent. The Complaint alleged violations against Respondent arising from the accidental release of gasoline in Vermilion County addressed in this Stipulation, as well as another release of gasoline in McLean County addressed in a separate Stipulation.

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 (2006).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent operated a transportation and logistics Company in Illinois.

4. On November 12, 2001, an employee of the Respondent was operating a tanker truck in Danville, Vermilion County, Illinois, at a service station on the corner of Voorhees and Bowman Streets.

5. Respondent represents that during maneuvering, the tanker unintentionally struck a post, resulting in the release of some 2,900 gallons of gasoline.

6. The gasoline, which Respondent represents was flushed into a storm sewer by the Danville Fire Department, entered a storm sewer, a drainageway, and ultimately impacted up to two and a half miles of Stony Creek, causing a fish kill.

7. Soils, sediments and surface water were impacted on multiple properties along Stony Creek, and potentially explosive gasoline vapors impacted the storm sewer and nearby streets. The area and media impacted by the gasoline release and referred to in paragraphs 6 and 7 shall collectively constitute the "site."

8. Respondent represents that within hours of the release, Respondent's consultants mobilized at the site and implemented emergency remediation activities. The consultants, on behalf of the Respondent, collected approximately 1,000 gallons of product and approximately 4,500 gallons of impacted water from the area.

9. Respondent represents it diligently continued remediation efforts at the site and has completed remediation activities to the Illinois EPA's satisfaction.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

Count II: Water Pollution Hazard, in violation of Section 12 of the Act, 415 ILCS 5/12 (2006).

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not admit the allegations of violation within Counts I and II of 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

The Respondent represents that it has fully completed cleanup of the gasoline contamination and achieved the remediation objectives approved by the Illinois EPA for the

release in Vermilion County which is the subject of this Stipulation. The Illinois EPA has approved the completion of the remediation at the site.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA 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. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 this Stipulation state the following:

1. Human health was threatened and the environment was negatively impacted.

Although Respondent's initial response to the Illinois EPA's Violation Notice was delayed, Respondent represents that it did not delay in responding to the release and continued remediation activities at the site.

2. There was no social and economic benefit as the result of the release incident. In addition to paying for a related fish kill and losing saleable product, Respondent represents that it has incurred over \$54,000 in costs associated with the remediation activities at the site.

3. Respondent's ordinary fuel transportation operations were suitable for the area in which the release occurred.

4. Respondent's remediation contractor mobilized to the site and continued cleanup efforts until remediation was complete. Expedient cleanup of the Vermilion County release was 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)(2006), 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 to this Stipulation state as follows:

1. The Respondent represents that the accidental gasoline release, its eventual discharge into Stony Creek, and the Respondent’s emergency response actions at the site occurred between November 12, 2001, and November 23, 2001. Remediation activities at the site were completed thereafter. The water pollution violation persisted for about eleven days after the incident occurred, while the water pollution hazard violation continued from the date of the incident, November 12, 2001, until remediation was completed in 2004.

2. Respondent represents that it was diligent in undertaking initial emergency response activities but delayed in responding to the Illinois EPA’s Violation Notice. After the initial emergency response activities were complete, Respondent represents that it diligently continued remediation activities at the site.

3. Respondent represents that it lost saleable product and incurred over \$54,000 in costs associated with remediation activities at the site. The Respondent has also paid for the cost of the fish kill. Consequently, there was no economic benefit to the Respondent.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of the Vermilion County gasoline release, 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 and the Illinois EPA'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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

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

B. Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of

collection, including reasonable attorney's fees.

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

C. Payment Procedures

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, case number and the Respondent's federal tax identification 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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

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.

E. Release from Liability

In consideration of the Respondent's payment of the \$25,000.00 penalty, and any specified costs and accrued interest, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Counts I and II 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 December 14, 2004. 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, or entity other than the 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 each party to this 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.

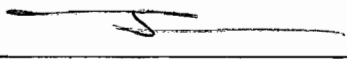
WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

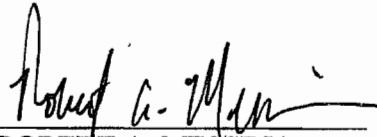
PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

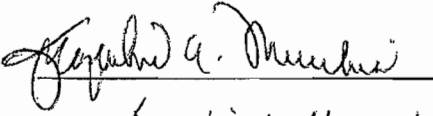
BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 8/21/08

DATE: 8/21/08

J. McDANIEL, INC.,
an Illinois corporation

BY: 
Name: Saqueline A. Musacchia
Title: V.P. General Counsel

DATE: 7.30.2008