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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NORTH AURORA GAS STATION,
(f/n/a INTERMART, INC.),

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 10-35
(UST Appeal)

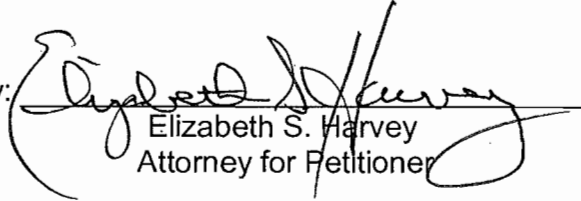
NOTICE OF FILING

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 28th day of April, 2010, the following was filed with the Illinois Pollution Control Board, which is attached and herewith served upon you: **Petitioner NORTH AURORA GAS STATION's Response in Opposition to Motion for Summary Judgment and Cross-Motion for Summary Judgment**

NORTH AURORA GAS STATION
(f/n/a INTERMART, INC.)

By:

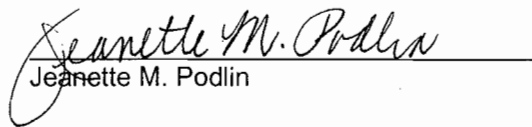


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CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copy of the above-described document to counsel of record in the above-captioned matter via U.S. Mail on or before 5:00 p.m. on April 28, 2010.



Jeanette M. Podlin

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

1438-001

SERVICE LIST

**North Aurora Gas Station (f/n/a Intermark, Inc.) v.
Illinois Environmental Protection Agency**

**PCB NO. 10-35
(UST Appeal)**

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NORTH AURORA GAS STATION,)
 (f/n/a INTERMART, INC.),)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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 PCB 10-35
 (UST Appeal) **STATE OF ILLINOIS**
Pollution Control Board

RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY JUDGMENT

Petitioner NORTH AURORA GAS STATION ("Gas Station"), by its attorneys, responds in opposition to respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("Agency") motion for summary judgment. Gas Station further cross-moves for summary judgment in its favor. For the reasons demonstrated in this response and cross-motion, the Board should deny the Agency's motion, and enter summary judgment in favor of Gas Station.

INTRODUCTION

This case involves an appeal brought by Gas Station, challenging the Agency's unsolicited and improper decision to change the deductible applicable to reimbursement of costs incurred in remediating petroleum contamination at Gas Station's facility located at 24 South Lincolnway, North Aurora, Illinois. The Agency made that decision on October 13, 2009. Although OSFM has determined that the appropriate deductible in this matter is \$15,000, the Agency asserts that the applicable deductible is \$100,000.

Because the Agency made its decision *sua sponte*, without any application or input from Gas Station, this matter has a somewhat unusual procedural posture.

This matter has a complex history, involving the interplay of Gas Station's efforts to remediate contamination with an enforcement action brought by the State of Illinois and by Kane County against Gas Station's owners. As part of the resolution of that enforcement action, Gas Station relied on the deductible determination made by the Office of State Fire Marshal ("OSFM"). Now, after the Agency had accepted OSFM's deductible determination, and without warning or any opportunity to respond, the Agency attempts to change OSFM's deductible determination to impose a higher deductible. The Agency's actions are outside the bounds of its authority, and cannot be condoned. Further, the doctrine of laches prevents the Agency from now attempting to change the deductible, after Gas Station has acted in reliance on the lower deductible. The Agency's decision should be overturned, and summary judgment granted in favor of Gas Station.

STANDARD OF REVIEW

Gas Station notes that, in an "ordinary" permit appeal relating to reimbursement, the standard of review is whether the reimbursement application as submitted by the petitioner demonstrates compliance with the Environmental Protection Act ("Act") and the Board's regulations. *Rantoul Township High School District No. 193 v. IEPA*, PCB 03-42 (April 17, 2003). However, this is not an "ordinary" permit appeal. Gas Station appeals a unilateral decision made by the Agency, without notice to Gas Station or the opportunity to submit information for the Agency's consideration.

The Board's review of Agency determinations is ordinarily limited to the documents within the administrative record before the Agency. However, because of the unique circumstances here, review should not be limited to the documents within the Agency's administrative record. There are two reasons for this.

First, the Agency made the decision at issue -- contending that the appropriate deductible is \$100,000 rather than the \$15,000 deductible determined by the OSFM -- without any application or input by Gas Station. Indeed, Gas Station was not aware, until receiving the Agency's October 2009 letter, that the Agency was purporting to review the deductible determination made by OSFM. Thus, this is not the usual case, where the applicant has the opportunity to submit, to the Agency, all information the applicant believes proves the applicant's position. In this case, Gas Station had no opportunity to provide the Agency with any information at all. The only material before the Agency was information from prior deductible applications to OSFM, and reimbursement applications to the Agency, all of which had been acted upon. None of those applications were still pending. Because Gas Station has never had an opportunity to provide information relevant to this appeal, the Board should consider the additional information provided by Gas Station in its petition and in this motion. To hold otherwise would deny Gas Station any semblance of due process, and would prejudice Gas Station in this appeal. See, e.g., *Wells Manufacturing Co. v. IEPA*, 195 Ill.App.3d 593, 596, 552 N.E.2d 1074 (1st Dist. 1990).¹ Second, Gas Station contends that the Agency's action in attempting to increase the deductible is barred by the equitable doctrine of laches. The Board has held that a petitioner should be allowed to present

¹ Like the petitioner in *Wells*, Gas Station "never had the opportunity proffer evidence" to IEPA before IEPA made a decision. *Wells*, 195 Ill.App.3d at 597.

evidence relevant to a claim of laches, where the petitioner had no reason to know it would need to provide that information until after it received the disputed communication from the Agency. *Community Landfill Company v. IEPA*, PCB 01-70 (December 6, 2001), 2001 WL 1598272, *4. That is the situation here, where Gas Station makes a claim of laches. Gas Station had no reason to know that it should submit information to the Agency until it received the Agency's October 2009 letter. There was no action pending before the Agency, and no notice to Gas Station that the Agency was considering any issue at all. The Board should consider the additional information submitted by Gas Station, in its petition for review and accompanying this cross-motion, to allow Gas Station to prove its claim of laches.

FACTS

Gas Station does not take issue with the facts as set out in the Agency's motion, as far as those facts go. However, the facts given by the Agency are only some of the facts relevant to the resolution of this matter. The Board should also consider the following facts:

1. The Gas Station is currently owned by the Estate of Muhammad Bashir Malik, deceased, and the Estate of Rashidah Malik, deceased (collectively, "the Estates"). (Exhibit A, court orders approving July 2009 settlements in Kane County probate cases 00 PK 192 and 08 PK 218)²
2. Between 1999 and 2009, the Estates owned the Gas Station in a partnership with Javed and Shahnaz Arshed ("the Arsheds"). During this period, the gas station property was known as "Intermart, Inc."

² Exhibits A through E are attached to Gas Station's petition for review in this matter, filed on November 17, 2009. Exhibits F through I are attached to this response and cross-motion.

3. In 2000, the People of the State of Illinois, through the Attorney General, and Kane County, filed an environmental enforcement action in Kane County Circuit Court, seeking remediation of petroleum contamination at the Gas Station. The court entered substantive orders on December 16, 2004 (attached as Exhibit F), December 27, 2006 (attached as Exhibit G), and August 12, 2009 (Exhibit B).
4. Those orders establish a complex series of deadlines for the remediation of the Gas Station property. (Ex. B, F, and G)
5. The resolution of that enforcement action, by agreement of the parties, was made possible in part in reliance on the OSFM's October 2003 determination that the applicable deductible in this matter is \$15,000. Representatives of the State of Illinois, including the assistant attorney general assigned to the enforcement action, were aware that the Estates entered into the settlement agreement in reliance on the \$15,000 deductible. (Exhibit H, affidavit of Eleonora "Lee" R. Holmes.)
6. Based upon the \$15,000 deductible, the Estate was able to hire a contractor to perform the ongoing remediation. Because the Estate has already satisfied the \$15,000 deductible, it can submit reimbursement packages on a going forward basis and be fully reimbursed. (Ex. H)
7. Imposition of a deductible higher than the \$15,000 deductible determined by OSFM will cause significant hardship to the Gas Station. (Ex. H)
8. In addition, the Gas Station relied upon the \$15,000 deductible in resolving a dispute involving the Estates and the Arsheds, over the ownership of the Gas Station. (Ex. A, H)

9. The settlement of the dispute over the ownership of the Gas Station was made possible, in integral part, in reliance upon OSFM's determination of a \$15,000 deductible.
10. On October 8, 2008, the Agency issued two letters approving the Gas Station's applications for reimbursement from the Underground Storage Tank Fund. One letter approved payment of \$70,158.00, on the Gas Station's December 6, 2007 application for reimbursement. In that letter, the Agency applied the \$15,000 deductible determined by OSFM. (Ex. C)
11. The second October 8, 2008 letter from the Agency approved payment of \$30,825.00, on the Gas Station's January 13, 2008 application for reimbursement. (Ex. C)
12. The Gas Station received no further communication from the Agency until the Agency's October 13, 2009 letter, purporting to impose a \$100,000 deductible. (Ex. H)

ARGUMENT

The Agency's summary judgment argument misstates the issues in this case.

The Agency claims that the issue here is based upon the applicable deductible when a facility installs new tanks on its site. However, there is absolutely no evidence in this case that the Gas Station's second application for a deductible determination was based on the addition of the new tanks.³ While there are indeed additional tanks listed on Application II, that is because those new tanks were registered on June 15, 2000

³ In its statement of facts, the Agency refers to the Gas Station's January 2000 application to OSFM for a deductible determination as "Application I," and the Gas Station's June 2000 application as "Application II." The Gas Station will also use those designations. The applications are contained in the Agency's administrative record at AR 123-126 and AR 130-135.

(AR 133), after Application I was filed with OSFM in January 2000 (AR 123, 126). OSFM's form requires the applicant to provide information for each UST at the site: "USTs presently at the site and USTs that have been removed or abandoned." (AR 133) Gas Station was thus required to list the new tanks on Application II. The Agency implies that the Gas Station's second application for deductible determination was submitted in an improper attempt to reduce the deductible. There is no evidence of this, nor does the Agency cite to any such evidence.

Further, the Agency devotes much of its argument to a discussion of when the tanks were registered, and which tanks experienced a release. None of these arguments address the claim raised by the Gas Station in its petition for review: that the Agency lacks authority to change the deductible amount from the deductible established by OSFM. The real issue in this case, and for decision on these cross-motions for summary judgment, is whether the Agency has the authority to change a deductible determination made by OSFM.

Only OSFM has the authority to make a deductible determination.

The Act clearly establishes that it is OSFM -- not the Agency -- that has the authority to make determinations of eligibility and deductibility for reimbursement under the UST Fund. Section 59.9(c) of the Act provides "[E]ligibility and deductibility determinations shall be made by the Office of the State Fire Marshal," and goes on to give OSFM the authority to request information from an applicant sufficient to make a "final determination as to owner or operator eligibility to access the Underground Storage Tank Fund...and the appropriate deductible." 415 ILCS 5/57.9(c)(1)(emphasis added). There is no statutory authority for the Agency to be involved in eligibility and

deductibility determinations for the UST Fund. Indeed, the statute specifically gives OSFM the final authority to make those determinations.

Here, OSFM initially applied a deductible of \$100,000, in its January 24, 2000 decision. (AR 119-120.) That January 24, 2000 decision specifically reserved, to OSFM, the “right to change the deductible determination should additional information that would change the determination become available.” (AR 120.) After Gas Station submitted Application II, OSFM indeed exercised its right to change the deductible determination. On July 25, 2003, OSFM found that the appropriate deductible for the Gas Station site is \$15,000. (AR 127-129)

OSFM made that decision consistent with the statutory authority given to it, by Section 57.9 of Act, to make eligibility and deductibility determinations under the Act.

An administrative agency has only the authority given to it by statute. *Schalz v. McHenry County Sheriff's Department Merit Commission*, 113 Ill.2d 198, 497 N.E.2d 731, 733 (1986)(any power claimed by an administrative agency must find its source within statute); *Bio-Medical Laboratories, Inc., v. Trainor*, 68 Ill.2d 540, 370 N.E.2d 223 (1977). An administrative agency has no inherent authority to amend or change a decision. *Reichhold Chemicals, Inc. v. Illinois Pollution Control Board*, 204 Ill.App.3d 674, 561 N.E.2d 1343, 1345 (3d Dist. 1990). Here, the Agency lacks any authority to determine or change a deductible: that authority is specifically reserved to OSFM. The Agency's involvement with deductibles is limited to applying the deductible determined by OSFM, when the Agency makes decisions upon reimbursement applications.

To allow the Agency to change a deductible, after OSFM has made its determination, would cause havoc with the finality of valid administrative decisions. If

the Board allows the Agency to act unilaterally to change valid deductibility determinations made by OSFM -- the agency with the statutory authority to make those determinations -- no entity would be able to rely upon any decision made by OSFM, in whom the Illinois Legislature has invested the power. There would be nothing to stop the Agency from changing deductibles for any site in Illinois.

Because the Agency's attempt to apply a \$100,000 deductible exceeds the Agency's statutory authority, the Board should grant summary judgment in Gas Station's favor, and reverse the Agency's October 13, 2009 action.

The Agency is barred by laches from applying a \$100,000 deductible.

Even assuming, *arguendo*, that the Agency has authority to apply a \$100,000 deductible, the Agency is barred from taking that action by the doctrine of laches.

Laches is an equitable doctrine that bars an entity (here, the Agency) from taking action against a party (here, Gas Station) because of the entity's delay in taking action. There are two principal elements of laches: 1) a lack of diligence by the party asserting the claim (here, that a \$100,000 deductible applies); and 2) prejudice to the opposing party. *Indian Creek Development Company v. Burlington Northern Santa Fe Railway Company*, PCB 07-44 (June 18, 2009), 2009 WL 1766180, *7, citing *City of Rochelle v. Suski*, 206 Ill.App.3d 497, 564 N.E.2d 933, 936 (2d Dist. 1990), and *Van Milligan v. Board of Fire & Police Commissioners*, 158 Ill.2d 84, 620 N.E.2d 830, 833 (1994). The Board has previously held that it can consider claims of laches. See, e.g., *Indian Creek*, PCB 07-44 (June 18, 2009), 2009 WL 1766180, *7; *People of the State of Illinois v. QC Finishers, Inc.*, PCB 01-7 (July 8, 2004), 2004 WL 1615869, *7-8; *Community Landfill*

Company, PCB 01-70 (December 6, 2001), 2001 WL 1598272, *4; *People of the State of Illinois v. John Crane Inc.*, PCB 01-76 (May 17, 2001), 2001 WL 578498, *7-8.

Both of the elements of laches are present here. First, the Agency lacked diligence in asserting its claim that the appropriate deductible is \$100,000. OSFM made its determination that the correct deductible is \$15,000 in July 2003. (AR 127-129) Not until October 2009 -- almost six and a half years later -- did the Agency make its claim that the deductible should be \$100,000. Indeed, in October 2008, one year before the Agency's disputed determination, the Agency applied the \$15,000 deductible to Gas Station's reimbursement application. (Ex. C) Even the Agency applied the proper \$15,000 deductible determination made by OSFM.⁴ There was ongoing communication between the Agency and Gas Station in the years between OSFM's determination and the Agency's disputed action. For example, according to the Agency's web site, there were eleven written communications between the Agency and Gas Station between May 2004 and January 2009, and nine corrective action plans, work plans, and budgets submitted between February 2007 and February 2009. (Exhibit I) The Agency cannot claim it was not aware of Gas Station and its ongoing remediation efforts. However, the Agency waited more than six years before making any attempt to "correct" the deductible in this matter. This delay clearly demonstrates a lack of due diligence.

Second, Gas Station has been prejudiced by the Agency's lack of due diligence. In the six years between the OSFM determination and the Agency's attempt to change the deductible, Gas Station worked to investigate and remediate the property. This is demonstrated by the regular communication between Gas Station and the Agency. (Ex.

⁴ Gas Station notes that, as of April 25, 2010, the Agency's own web site lists the appropriate deductible as \$15,000. (Ex. I)

I) In making its remediation decisions and in obtaining funds to implement investigation and remediation, Gas Station relied upon the \$15,000 deductible determination made by OSFM. For example, the \$15,000 deductible allowed the Gas Station to retain an environmental contractor to perform the ongoing remediation. Because the Gas Station has already satisfied the \$15,000 deductible (Ex. C), it can submit reimbursement packages on a going forward basis, and be fully reimbursed. Without that \$15,000 deductible, it is very unlikely the Gas Station could have hired that contractor. (Ex. H)

Further, in the six-year period, Gas Station engaged in a series of negotiations with the Attorney General and the Kane County State's Attorney to resolve the enforcement action against Gas Station. (Ex. B, F, G, and H) To effectuate the actions demanded by the State and by Kane County, Gas Station relied upon the \$15,000 deductible, so that it was sure it could fund the actions needed to settle the enforcement action. In fact, the last agreed order in the enforcement action was entered on August 12, 2009 (Ex. B), two months before the Agency made the disputed October 13, 2009 decision. Gas Station has relied upon OSFM's \$15,000 deductible determination for more than six years, in making substantive and important remediation decisions. If the \$100,000 deductible the Agency seeks is applied, Gas Station may not be able to meet its remediation obligations under the Act and under the settlement agreement in the enforcement action. To allow the Agency, at this late date, to change the deductible determination would prejudice Gas Station.

Additionally, the Gas Station (as owned by the Estates) relied upon the \$15,000 deductible in resolving litigation between the Estates and the Arsheds over the ownership of the Gas Station. That litigation was resolved on July 30, 2009, in orders

issued by the Kane County Circuit Court. (Ex. A) The settlement of the litigation between the Estates and the Arsheds was made possible in reliance upon OSFM's July 2003 determination that the applicable deductible is \$15,000.

Gas Station recognizes that applying laches to public bodies is disfavored. However, as the Board has noted, the Illinois Supreme Court has held that laches can apply to governmental bodies under compelling circumstances. *John Crane Inc.*, PCB 01-76 (May 17, 2001), 2001 WL 578498, *7-8, citing *Hickey v. Illinois Central Railroad Co.*, 35 Ill.2d 427, 220 N.E.2d 415 (1966). This case presents such compelling circumstances. Even putting aside the Agency's lack of authority for its action, the Agency failed to exercise due diligence in taking its action to impose a higher deductible. The Agency sat on its hands for more than six years after OSFM's 2003 determination. In fact, the Agency itself recognized the \$15,000 deductible in its October 2008 letters approving Gas Station's reimbursement applications. (Ex. C) For more than six years, Gas Station relied upon the \$15,000 deductible determination in making serious and important decisions in remediating the property, in resolving a complicated enforcement action,⁵ and in resolving litigation between the Estates and the Arsheds. These circumstances justify the imposition of laches to prevent the Agency from imposing a higher deductible in this matter.

The Board should apply the doctrine of laches to prohibit the Agency's attempt to impose a higher deductible, more than six years after Gas Station began relying on the lower deductible.

⁵ Representatives of the State of Illinois, including the assistant attorney general assigned to the enforcement case, were aware that the Gas Station relied upon the \$15,000 deductible in reaching settlement. (Ex. H) Where one agency of government has knowledge of reliance, and at least tacitly approves of that reliance, the State should not later be allowed to act to prejudice Gas Station by attempting to raise the deductible upon which reliance was placed.

Section 732.603(b)(4) is beyond the Board's authority, as applied in this case.

The Agency relies on Section 732.603(b)(4) of the Board's regulations as support for the claim that the higher deductible applies. Gas Station believes the Board need not rule upon this claim because Gas Station has demonstrated that: 1) the Agency has exceeded its authority by attempting to change OSFM's deductible determination; and 2) the doctrine of laches applies to prevent the Agency's action. A finding in Gas Station's favor on either of these arguments makes the Agency's claims about Section 732.603(b)(4) moot in this case. If, however, the Board disagrees that the Agency's position is moot, Gas Station demonstrates that the Board's regulation -- at least as applied to this case -- is beyond the Board's statutory authority.

Section 732.603 provides regulations for authorizing payment under the UST Fund. Subsection (b)(4) of that section states that where more than one deductible determination is made, the higher deductible applies. (35 Ill. Adm. Code. 732.603(b)(4).) To any extent that regulation acts to usurp OSFM's statutory authority to make deductible determinations, the Board's regulation is beyond its statutory authority. As demonstrated above, the Act gives the authority to make eligibility and deductibility determinations only to OSFM. (415 ILCS 5/57.9(c).) The legislature did not give that authority to either the Agency or to the Board. A Board regulation that seeks to rotely impose the higher of two deductibles, where those deductibles were validly determined by OSFM, exceeds the Board's authority and impinges on OSFM's statutory authority.⁶

⁶ Gas Station notes that Section 732.603(b)(1), which contains the phrase "any deductible, as determined by the OSFM or the Agency" (emphasis added), also appears to exceed the Board's authority, to the extent it is interpreted to give the Agency any authority to determine a deductible -- an authority clearly given to OSFM, and not to the Agency, by the legislature. Gas Station further notes that the Administrative Procedure Act provides for the award of attorney's fees when a court invalidates an administrative rule on grounds including an agency's exceeding its statutory authority. (5 ILCS 100/10-55(c).)

It is well-settled that an administrative agency, such as the Board, has only the rulemaking authority given to it by statute. *McHenry County Sheriff*, 497 N.E.2d at 733. Gas Station does not dispute the Board's general authority to make regulations to implement the UST program -- its only dispute is with Section 732.603(b)(4) as the Agency attempts to apply it. If interpreted to allow the Agency to rotely apply a higher deductible in this case, simply because OSFM has made two deductibility determinations, Section 732.603(b)(4) exceeds the Board's statutory authority by giving the Agency authority to make deductibility determinations.

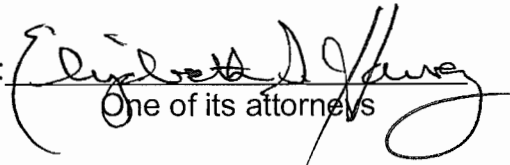
CONCLUSION

All entities in Illinois should be able to rely upon the final decision of an administrative agency (here, OSFM) without fear that another agency (here, the Agency) will attempt to overrule that decision without authority. The Agency has improperly attempted to change the deductible applicable to Gas Station's property. OSFM, which holds the statutory authority under the Act to make deductibility determinations, determined in July 2003 that the appropriate deductible is \$15,000. More than six years later, after Gas Station relied on that deductible determination, and after the Agency itself applied that \$15,000 deductible, the Agency unilaterally and without notice attempted to impose a higher deductible. The Agency's actions are beyond the scope of its statutory authority, and must be rejected. Even assuming, *arguendo*, that the Agency has authority to make such a change, the attempt in this case is barred by the doctrine of laches. Finally, if applied to allow the Agency to take its disputed action, Section 732.603(b)(4) of the Board's regulations exceeds the Board's statutory authority.

There is no genuine issue of material fact, and Gas Station is entitled to judgment as a matter of law. Gas Station moves the Board to deny the Agency's motion for summary judgment; to grant Gas Station's cross-motion for summary judgment; to enter an order invalidating the Agency's October 13, 2009 decision; and for such other relief as the Board deems appropriate.

Respectfully submitted,

NORTH AURORA GAS STATION

By: 
One of its attorneys

Dated: April 28, 2010

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Exhibit F

Exhibit F

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CHANCERY DIVISION

20051206784

SANDY WEGMAN
RECORDER
KANE COUNTY, IL

RECORDED ON
01/19/2005 09:32AM

REC FEE: 26.00
PAGES: 19

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN,)
Attorney General of the State)
of Illinois, and ex rel. JOHN)
BARSANTI, States Attorney of Kane)
County, Illinois,)

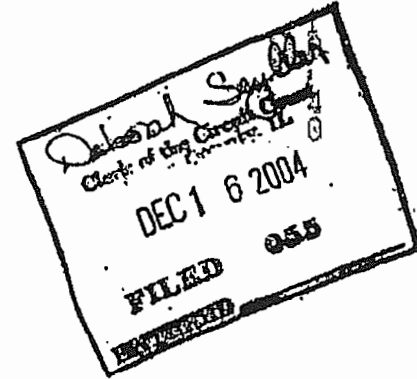
No. 00 CH 313

Plaintiff,)

v.)

RASHIDAH MALIK and AKIF MALIK,)
individually and as administrator)
for the estate of M. Bashir Malik)

Defendants.)



COURT ORDER

This Court Order hereby sets forth the remedy and the penalties in this matter.

On May 29, 2003 this Court granted Plaintiff's Motion for Partial Summary Judgment.

On December 16, 2004 this Court heard testimony with respect to the remedy and the penalties in this matter.

I.

JURISDICTION

This Court has jurisdiction of the subject matter herein and of the parties.

II.

STATEMENT OF RELEVANT FACTS AND LAW

A. Parties and Site Description

1. On April 12, 2000, a Complaint was filed on behalf of the People of the State of Illinois by JAMES E. RYAN, at that time the Attorney General of the State of Illinois, on his own motion, and ex rel. DAVID AKEMANN, at that time the States Attorney of Kane County, Illinois, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2002), against Defendants.

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 (2002).

3. Defendants RASHIDAH and AKIF MALIK are residents of Illinois. At all times relevant to this complaint, Defendants operated a gasoline filling station located at 24 South Lincolnway, North Aurora, Kane County, Illinois ("Site").

4. At all times relevant to this Complaint, Defendant AKIF MALIK was the owner, operator, and the person in control of or responsible for the daily operation of five (5) underground storage tanks ("USTs") at the Site.

5. At all times relevant to this Complaint, Defendant RASHIDAH MALIK was the owner of the Site property and of the USTs beneath the site.

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6. Tanks 1, 2, and 3 were used to store gasoline. Tank 4 stored used oil. Tank 5 was used to store heating oil.

7. At sometime prior to January, 1997, the exact date better known to the Defendants, a release of heating oil from Tank 5 occurred at the site. This release is referred to as MUST Incident Number 970184.

8. A February 1997 environmental assessment of the Site revealed extremely high levels of contaminants in the samples of water and soil extracted from the Site property.

B. Violations OF Law

Defendants have violated the following provisions of the Act, the Illinois Pollution Control Board ("Board") Regulations, and the Office of the State Fire Marshal ("OSFM") Regulations which were recited in the April 12, 2000 complaint:

Count I: Causing, threatening, or allowing water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

Count II: Creating a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(a) (2002).

Count III: Failure to timely submit information to Illinois EPA, failure to remove free product, and failure to timely evaluate and classify the site in violation of Sections 732.200, 732.202(a), 732.202(b), 732.202(c), 732.202(d), 732.202(e), 732.203, 732.300, 732.305, and 732.307 of the Board Regulations, 35 Ill. Adm. Code 732.200, 732.202(a), 732.202(b), 732.202(c), 732.202(d), 732.202(e), 732.203, 732.300, 732.305, and 732.307, and Sections 57.6(a)

I M A P U S T 1 0 4 0

and 57.7(a) (1) of the Act, 415 ILCS 5/57(a) and 57.7(a) (1) (2002).

Count IV: Failure to timely remove a UST threatening human health and the environment in violation of Section 170.670(a) (5) of the OSFM Regulations, 41 Ill. Adm. Code 170.670(a)(5).

Count V: Failure to timely remove abandoned USTs in violation of Section 170.670(a) of the OSFM Regulations, 41 Ill. Adm. Code 170.670(a).

Count VI: Failure to comply with release detection requirements in violation of Section 170.510(a) (2) of the OSFM Regulations, 41 Ill. Adm. Code. 170.510(a) (2).

III.

APPLICABILITY

- A. This Court Order shall apply to and be binding upon Defendants, and any officer, director, agent, or employee of Defendants, as well as any successors or assigns of Defendants.
- B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of Defendants under this Court Order. In the event of any conveyance of title, easement or other interest in the facility, Defendants shall continue to be bound by and remain liable for performance of all obligations under this Court Order.

IV.

VENUE

The venue of any action commenced in the circuit court for the purposes of interpretation and enforcement of the terms and

I M A G E D E F I N I T I O N

payable to the County of Kane for deposit into the Environmental Prosecution Fund, and shall be sent by first class mail to:

Joseph Lulves
Assistant States Attorney
Kane County States Attorney's Office
100 South Third Street, 4th Floor
Geneva, Illinois 60134

d. The name, case number, and Defendants' Federal Employer Identification Number ("FEIN"), shall appear on the face of each certified check or money order. A copy of the certified checks or money orders and the transmittal letters shall be sent to:

Joel J. Sternstein
Assistant Attorney General
Environmental Bureau
188 West Randolph St., 20th Floor
Chicago, Illinois 60601

2. For purposes of payment and collection, Defendants may be reached at the following address:

Rashidah and Akif Malik
1287 Colorado Ave.
North Aurora, IL 60506

B. Future Compliance

1. Defendants have already submitted a Site Classification Work Plan to Illinois EPA.

2. By March 1, 2005, Defendants shall implement the Site Classification Work Plan, as approved by Illinois EPA, including making a determination of the full extent of soil and groundwater contamination as required by Section 732.312(c)(1) of the Board Regulations, 35 Ill. Adm. Code 732.312(c)(1).

3. By May 31, 2005, Defendants shall submit a Site Classification Completion Report to Illinois EPA. The Site Classification Completion Report shall comply with Section 732.312 of the Board Regulations, 35 Ill. Adm. Code 732.312.

4. Within 30 days after approval of the Site Classification Completion Report by the Illinois EPA and if the Agency approves the Site classification as High Priority, Defendants shall submit a High Priority Corrective Action Plan and budget ("High Priority CAP") that complies with Section 732.404 of the Board Regulations, 35 Ill. Adm. Code 732.404. Within 30 days after approval of the Site Classification Completion Report by the Illinois EPA and if the Agency approves the Site classification as Low Priority, Defendants shall submit a Low Priority Corrective Action Plan and budget ("Low Priority CAP") that complies with Section 732.403 of the Board Regulations, 35 Ill. Adm. Code 732.403. The High Priority CAP or Low Priority CAP shall include a schedule for its implementation. Upon its approval, Defendants shall implement the High Priority CAP or Low Priority CAP according to its terms, including any modifications directed by the Illinois EPA, within the time period approved by the Illinois EPA.

5. In addition, if at any time the Illinois EPA determines upon its review of the progress of remediation that further modifications to the corrective action plan are necessary to

achieve established cleanup objectives, the Illinois EPA shall advise Defendants that they must submit a modified corrective action plan within a specified time period. Defendants shall submit a modified corrective action plan that complies with Section 732.404 of the Board Regulations, 35 Ill. Adm. Code 732.404, within the time period approved by the Illinois EPA. This corrective action plan shall include a schedule for its implementation. Upon its approval, Defendants shall implement the modified corrective action plan according to its terms, including any modifications directed by the Illinois EPA, within the time period approved by the Illinois EPA.

6. Defendants shall give at least two weeks verbal and written notice to the Illinois EPA prior to any construction or operation of the corrective action plan remediation system approved in paragraphs V.B.4 and V.B.5 above. Notice shall be directed to the:

Project Manager
Illinois Environmental Protection Agency
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-6762

7. If the Illinois EPA disapproves of any of the documents described in paragraphs V.B.2 to V.B.4 above, Defendants shall submit a modified document addressing the Illinois EPA's objections within 30 days of the receipt of the disapproval

letter. The Illinois EPA may also approve any of the documents submitted by Defendants that are described in paragraphs V.B.2 to V.B.4 above, subject to conditions or modifications specified by the Illinois EPA, including time schedules for completion of specified tasks.

8. Within 45 days after completing the performance of the corrective action plan, Defendants shall submit to the Illinois EPA a Corrective Action Completion Report that complies with Section 732.409 of the Board Regulations, 35 Ill. Adm. Code 732.409.

9. The Illinois EPA shall review and either approve or disapprove the Corrective Action Completion Report. The Illinois EPA shall disapprove the Corrective Action Completion Report if Defendants have failed to implement and complete the approved Corrective Action Plan, or other information indicates that the soil and groundwater affected by the petroleum release has not been remediated so as to achieve the established soil and groundwater cleanup objectives.

10. If the Illinois EPA disapproves the Corrective Action Completion Report, Defendants shall perform the additional corrective action as necessary to implement the approved Corrective Action Plan, and complete remediation so as to achieve the established soil and groundwater cleanup objectives, within the time schedule set forth in Illinois EPA's letter of

disapproval. In the alternative, Defendants may submit a time schedule to the Illinois EPA for completion of the additional corrective action, and the Illinois EPA may approve or modify the time schedule.

11. The Illinois EPA shall issue to Defendants a No Further Remediation letter upon approval by the Illinois EPA of the Corrective Action Completion Report. Defendants shall file the No Further Remediation letter with the Kane County Recorder of Deeds in accordance with Section 732 Subpart G of the Board Regulations, 35 Ill. Adm. Code Part 732, Subpart G, within 45 days after receipt of the No Further Remediation letter. Upon receipt of the No Further Remediation letter, the Respondent shall comply with Section 732.703 of the Board Regulations, 35 Ill. Adm. Code 732.703.

12. Modification of Schedule

The schedule for completion of any task set forth in paragraphs V.B.2 to V.B.11 above may be modified by mutual agreement of the parties in writing without amendment of this Court Order.

13. Final Compliance Date

Notwithstanding the dates for compliance set forth in paragraphs V.B.2 to V.B.11 above, Defendants shall obtain a No Further Remediation letter from the Illinois EPA and record it as set forth in paragraph V.B.11 by the "Final Compliance Date,"

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which shall be two years from implementation of the Site Classification Work Plan.

If the Defendants are unable to comply with the Final Compliance Date, the Defendants shall provide a written notice and request for extension of time ("Notice and Request for Time Extension") to the Illinois EPA and the Office of the Attorney General no later than 6 (six) months before the Final Compliance Date. The Notice and Request for Time Extension shall provide an explanation and description, with supporting facts, of the reasons why the Defendants are unable to complete performance of the requirements of this paragraph by the Final Compliance Date and the date by which Defendants commit to complete such performance. The Notice and Request for Time Extension sent to the Illinois EPA shall be sent to

Chief Counsel
Illinois EPA - Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

and

Bureau Chief
Office of the Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

and

Division Chief
Kane County States Attorney's Office
Civil Division
100 South Third Street, 4th Floor
Geneva, Illinois 60134

Failure by Defendants to comply with this Notice and Request for Time Extension requirement shall preclude Defendants from obtaining an extension of time under this paragraph. If the parties agree that the Final Compliance Date should be extended, the extension shall only be effective upon modification of this Court Order.

14. Soil and groundwater cleanup objectives shall be established in accordance with Part 742 of the Board Regulations, 35 Ill. Adm. Code Part 742, Tiered Approach to Corrective Action Objectives.

15. All remediation site activities shall be conducted by, or under the supervision of, a Licensed Professional Engineer ("LPE") licensed and in good standing in Illinois. All plans and reports submitted for review and evaluation shall be prepared by, or under the supervision of, an LPE.

16. Unless otherwise provided in this order, or agreed upon in writing by the Illinois EPA, all plans and reports shall comply with the requirements of Parts 732 and 742 of the Board Regulations, 35 Ill. Adm. Code 732 and 742, and are subject to the written approval of the Illinois EPA. Unless otherwise

provided in this order, or agreed upon in writing by the Illinois EPA, all activities required under this Section shall be performed in compliance with the requirements of Parts 732 and 742 of the Board Regulations, 35 Ill. Adm. Code 732 and 742. To the extent that any provision of this order is inconsistent with a provision of Parts 732 and 742 of the Board Regulations, 35 Ill. Adm. Code 732 and 742, the terms of this Court Order shall govern.

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C. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any penalty amount owed by Defendants not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. 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.

4. All interest on penalties owed Plaintiff shall be paid by certified check(s) or money order(s) payable as directed in Section V.A. The name, case number, and Defendants' FEIN shall

appear on the face of the certified check or money order. A copy of the certified check(s) or money order(s) and the transmittal letter also shall be sent as directed in Section V.A.

D. Force Majeure

1. For the purposes of this Court Order, *force majeure* is an event arising solely beyond the control of Defendants which prevents the timely performance of any of the requirements of this Court Order. For purposes of this Court order *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Defendants.

2. When, in the opinion of Defendants, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Court Order, Defendants shall orally notify Plaintiff within 48 hours of the occurrence. Written notice shall be given to Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence.

3. Failure by Defendants to comply with the notice requirements of the preceding paragraph shall render this section voidable by Plaintiff as to the specific event for which Defendants has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular

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event involved.

4. Within 10 calendar days of receipt of the *force majeure* notice required under Section V.D.2, Plaintiff shall respond to Defendants in writing regarding Defendants' claim of a delay or impediment to performance. If Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Defendants, including any entity controlled by Defendants, and that Defendants could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Court Order pursuant to the modification procedures established in this Court Order.

5. An increase in costs associated with implementing any requirement of this Court Order shall not, by itself, excuse Defendants under the provisions of this section of this Court Order from a failure to comply with such a requirement.

E. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Court Order, except for payments pursuant to Sections V.A and V.C of this Court Order shall be submitted as

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ELECTRONIC RECORDS

follows:

As to Plaintiff

Joel J. Sternstein
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Bruce Kugler
Illinois EPA
1021 North Grand Avenue
PO Box 19276
Springfield, IL 62794-9276

Joseph Lulves
Assistant States Attorney
Kane County States Attorney's Office
100 South Third Street, 4th Floor
Geneva, Illinois 60134

As to Defendants

Rashidah and Akif Malik
1287 Colorado Avenue
North Aurora, IL 60506

F. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, the Attorney General, her agents and representatives, and the Kane County State's Attorney, her agents and representatives, shall have the right of entry into and upon Defendants' facility which is the subject of this Court Order, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, the Attorney General, her employees and representatives, and the Kane County State's

Attorney, her agents and representatives, may take photographs, samples, and collect information, as they deem necessary.

G. Cease and Desist

Defendants shall cease and desist from those sections of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section II.B. of this Court Order.

H. Retention of Jurisdiction

This Court shall retain jurisdiction of this matter for the purposes of interpreting and enforcing the terms and conditions of this Court Order, except that the parties may, by mutual written consent, extend any compliance dates or modify the terms of this Court Order without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party, filed with the court and incorporated into this Court Order by reference.

I. Enforcement of Court Order

1. This Court Order is a binding and enforceable order of this Court and may be enforced as such through any and all available means.

2. Notice of any subsequent proceeding to enforce this Court Order may be made by mail.

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Exhibit G

Exhibit G

11/2006

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney General of the)
State of Illinois,)

Plaintiff,)

v.)

RASHIDAH MALIK and AKIF MALIK,)
individually and as administrator for the estate of)
M. Bashir Malik)

Defendants.)

No. 00 CH 313 Clerk of the Circuit Court
Kane County, IL

DEC 27 2006

FILED 64
ENTERED

ORDER

This matter having been taken under advisement for the Court to modify Defendant, Akif Malik's sentence, counsel for the Plaintiff and Defendant being present, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The Defendant, Akif Malik ("Malik") having been previously found in contempt of court on December 8, 2005, and having been sentenced to the Kane County Jail on November 30, 2006, said sentence is being modified whereby Defendant is placed on Electronic Home Monitoring (EHM) as long as Malik complies with the terms and conditions of this order.

2. The conditions of Electronic Home Monitoring are as follows:

a. The EHM equipment will be installed on Malik's home telephone, said number being 630-907-1733. The address is 1264 Oakleaf Court Aurora, IL 60506.

b. Malik is only allowed to leave said home address Monday through Friday, between the hours of 10:00 a.m. and must return no later than 3:00 p.m. During this time, Malik is only able to travel to the following locations:

1. Walter E. Deuchler Associates, Inc. 230 Woodlawn Ave.
Aurora, IL 60506;

2. Intermart Service Station (subject property) 24 S. Lincolnway
North Aurora, IL 60542;

3. Law Office of Richard C. Irvin, 605 N. Broadway Aurora, IL 60505;

4. Attorney Mark Heimsoth, Administrator in 00PK 192, 563 W. Galena Blvd. Aurora, IL 60506; and

5. Environmental Group Services Ltd (EGSL), 557 W. Polk Suite 204, Chicago, IL 60607.

d. Outside of the ~~site~~ ^{area} locations mentioned in paragraph b., Malik may leave his home between the hours of 10:00 a.m. and 3:00 p.m. for the sole purpose of negotiating/securing a contract with an environmental contractor, and Malik must provide written proof from said prospective contractor of his presence there, and the purpose of said visit.

d. If requested by EHM personnel, Malik to provide written proof from a third party as him being present at one of the ~~site~~ locations stated in paragraph b between the hours of 10.00 a.m. and 3:00 p.m.

3. Malik is ordered to pay \$10.00 per day for the EHM fees.

4. Malik is to remain in custody of the Kane County Jail, until EHM has installed the equipment at Malik's home and EHM has hooked Malik up with the ankle bracelet.

5. The conditions of EHM can be modified by further order of Court.

6. As a condition of being released on EHM, Malik has deposited with his attorney \$15,000.00. This money has been deposited into the attorney's trust account, and the sole purpose of said deposit is to serve as security for possible future payments as it relates to any work in connection with the clean-up of the subject property.

7. Malik's continued release on EHM is contingent upon him satisfying the following deadlines:

a. By January 5, 2007- Malik's attorney shall send out Subpoenas to EGSL and to Javed Arshed for any and all documentation related to any services they have performed related to the subject property.

b. By January 12, 2007- Malik to have entered into a written contract with an environmental consulting firm as it relates to the subject property for the purpose of complying with this Order.

c. By January 19, 2007- Malik to have the subject property marked (i.e. J.U.L.I.E. for utilities, and marked for underground tank and gas line locations, etc.) to allow his environmental consultants to implement the Illinois EPA-approved Site Classification Plan.

- d. By February 23, 2007- Malik, shall implement the Site Classification Work Plan, as approved by Illinois EPA, including making a determination of the full extent of soil and groundwater contamination as required by Section 732.312 of the Board Regulations, 35 Ill. Adm. Code 732.312.
- e. By March 9, 2007- Malik, shall submit a Site Classification Completion Report to Illinois EPA. The Site Classification Completion Report shall comply with Section 732.312 of the Board Regulations, 35 Ill. Adm. Code 732.312.

8. The deadlines stated in paragraph 7 are subject to modification, upon approval of the Court, for good cause shown with proper notice to the Court and Attorney General's Office.

9. When Malik has satisfactorily met all the deadlines listed in paragraph 7, by subsequent order of this Court, he shall be released from EHM, but will continue to be subject to this Court's contempt order of December 8, 2005.

10. Malik's attorney will provide the Assistant Attorney General with weekly status reports, as it relates to progress in Malik meeting the various deadlines stated in paragraph 7.

11. Within 30 days after approval of the Site Classification Completion Report by the Illinois EPA and if the Agency approves the Site classification as High Priority, Malik shall submit a High Priority Corrective Action Plan and budget ("High Priority CAP") that complies with Section 732.404 of the Board Regulations, 35 Ill. Adm. Code 732.404. Within 30 days after approval of the Site Classification Completion Report by the Illinois EPA and if the Agency approves the Site classification as Low Priority, Malik shall submit a Low Priority Corrective Action Plan and budget ("Low Priority CAP") that complies with Section 732.403 of the Board Regulations, 35 Ill. Adm. Code 732.403. The High Priority CAP or Low Priority CAP shall include a schedule for its implementation. Upon its approval, Malik shall implement the High Priority CAP or Low Priority CAP according to its terms, including any modifications directed by the Illinois EPA, within the time period approved by the Illinois EPA.

12. In addition, if at any time the Illinois EPA determines upon its review of the progress of remediation that further modifications to the corrective action plan are necessary to achieve established cleanup objectives, the Illinois EPA shall advise Malik that he must submit a modified corrective action plan within a specified time period. Malik shall submit a modified corrective action plan that complies with Section 732.404 of the Board Regulations, 35 Ill. Adm. Code 732.404, within the time period approved by the Illinois EPA. This corrective action plan shall include a schedule for its implementation. Upon its approval, Malik shall implement the modified corrective action plan according to its terms, including any modifications directed by the Illinois EPA, within the time period approved by the Illinois EPA.

13. Malik shall give at least two weeks verbal and written notice to the Illinois EPA prior to any construction or operation of the corrective action plan remediation system approved in paragraphs 11 and 12 above. Notice shall be directed to the:

Project Manager
 Illinois Environmental Protection Agency
 Leaking Underground Storage Tank Section
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, Illinois 62794-9276
 (217) 782-6762

and
Stephen Agler
Off. of A.C.
Environmental Bureau
188 W. Randolph St
20th fl.
Chicago, IL

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14. If the Illinois EPA disapproves of any of the documents described in paragraphs 7(e), 11, and 12 above, Malik shall submit a modified document addressing the Illinois EPA's objections within 30 days of the receipt of the disapproval letter. The Illinois EPA may also approve any of the documents submitted by Malik that are described in paragraphs 7(e), 11, and 12 above, subject to conditions or modifications specified by the Illinois EPA, including time schedules for completion of specified tasks.

15. Within 45 days after completing the performance of the corrective action plan, Malik shall submit to the Illinois EPA a Corrective Action Completion Report that complies with Section 732.409 of the Board Regulations, 35 Ill. Adm. Code 732.409.

16. The Illinois EPA shall review and either approve or disapprove the Corrective Action Completion Report. The Illinois EPA shall disapprove the Corrective Action Completion Report if Malik has failed to implement and complete the approved Corrective Action Plan, or other information indicates that the soil and groundwater affected by the petroleum release has not been remediated so as to achieve the established soil and groundwater cleanup objectives.

17. If the Illinois EPA disapproves the Corrective Action Completion Report, Malik shall perform the additional corrective action as necessary to implement the approved Corrective Action Plan, and complete remediation so as to achieve the established soil and groundwater cleanup objectives, within the time schedule set forth in Illinois EPA's letter of disapproval. In the alternative, Malik may submit a time schedule to the Illinois EPA for completion of the additional corrective action, and the Illinois EPA may approve or modify the time schedule.

18. The Illinois EPA shall issue to Malik a No Further Remediation letter upon approval by the Illinois EPA of the Corrective Action Completion Report Malik shall file the No Further Remediation letter with the Kane County Recorder of Deeds in accordance with Section 732 Subpart G of the Board Regulations, 35 Ill. Adm. Code Part 732, Subpart G, within 45 days after receipt of the No Further Remediation letter. Upon receipt of the No Further Remediation letter, Malik shall comply with Section 732.703 of the Board Regulations, 35 Ill. Adm. Code 732.703.

19. Modification of Schedule

The schedule for completion of any task set forth in paragraphs 11 to 18 above may be modified by mutual agreement of the parties in writing without amendment of this Court Order.

ENCLOSURE

20. Final Compliance Date

Notwithstanding the dates for compliance set forth in paragraphs 7(d) & (e), and 11 to 18 above, Malik shall obtain a No Further Remediation letter from the Illinois EPA and record it as set forth in paragraph 18 by the "Final Compliance Date," which shall be two years from implementation of the Site Classification Work Plan (See Paragraph 7(d) of this Order).

If Malik is unable to comply with the Final Compliance Date, Malik shall provide a written notice and request for extension of time ("Notice and Request for Time Extension") to the Illinois EPA and the Office of the Attorney General no later than 6 (six) months before the Final Compliance Date. The Notice and Request for Time Extension shall provide an explanation and description, with supporting facts, of the reasons why Malik is unable to complete performance of the requirements of this paragraph by the Final Compliance Date and the date by which Malik commits to complete such performance. The Notice and Request for Time Extension sent to the Illinois EPA shall be sent to:

Chief Counsel
Illinois EPA - Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

and
Stephen Sylvester
Office of AG
Environmental Bureau
188 W Randolph St 20th fl.
Chicago, IL

and

Bureau Chief
Office of the Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Failure by Malik to comply with this Notice and Request for Time Extension requirement shall preclude Malik from obtaining an extension of time under this paragraph. If the parties agree that the Final Compliance Date should be extended, the extension shall only be effective upon modification of this Court Order.

21. Soil and groundwater cleanup objectives shall be established in accordance with Part 742 of the Board Regulations, 35 Ill. Adm. Code Part 742, Tiered Approach to Corrective Action Objectives.

22. All remediation site activities shall be conducted by, or under the supervision of, a Licensed Professional Engineer ("LPE") licensed and in good standing in Illinois. All plans and reports submitted for review and evaluation shall be prepared by, or under the supervision of, an LPE.

23. Unless otherwise provided in this order, or agreed upon in writing by the Illinois EPA, all plans and reports shall comply with the requirements of Parts 732 and 742 of the Board Regulations, 35 Ill. Adm. Code 732 and 742, and are subject to the written approval of the

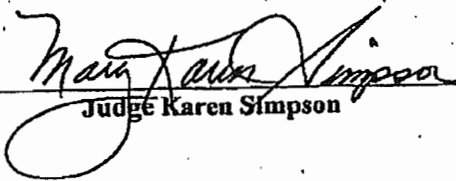
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Illinois EPA. Unless otherwise provided in this order, or agreed upon in writing by the Illinois EPA, all activities required under this Section shall be performed in compliance with the requirements of Parts 732 and 742 of the Board Regulations, 35 Ill. Adm. Code 732 and 742. To the extent that any provision of this order is inconsistent with a provision of Parts 732 and 742 of the Board Regulations, 35 Ill. Adm. Code 732 and 742, the terms of this Court Order shall govern.

24. This matter is continued to the _____ day of _____, 2007 for status.

ENTERED:

DATE: 12-27-06



Judge Karen Simpson

Exhibit H

Exhibit H

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NORTH AURORA GAS STATION,)	
(f/n/a INTERMART, INC.),)	
)	
Petitioner,)	
)	
v.)	PCB 10-35
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

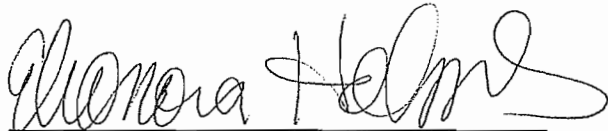
AFFIDAVIT OF ELEONORA "LEE" R. HOLMES

I, Eleonora "Lee" R. Holmes, having been duly sworn, state and affirm as follows:

1. I am an attorney licensed to practice in the State of Illinois.
2. I was formerly the administrator of the Estate of Rashidah Malik, deceased.
3. As part of my representation of the Estate of Rashidah Malik, I was involved in the settlement of the environmental enforcement action in Kane County Circuit Court, captioned *People of the State of Illinois v. Malik*, No. 00 CH 313.
4. The settlement of the enforcement action includes an obligation for the Estate to remediate the gas station property located at 24 South Lincolnway, North Aurora, Illinois.
5. That settlement was made possible, in integral part, by reliance on the Office of State Fire Marshal's ("OSFM") July 25, 2003 determination that the applicable deductible for reimbursement is \$15,000.
6. Among other things, the \$15,000 deductible is essential to the settlement because it allowed the Estate to hire a contractor to perform the ongoing remediation. Because the Estate has already satisfied the \$15,000 deductible, it can submit reimbursement packages on a going forward basis and be fully reimbursed. Without that \$15,000 deductible, it is very unlikely the Estate could have entered into the settlement of the enforcement action.
7. Representatives of the State of Illinois, including the assistant attorney general assigned to the case, were aware that the Estate is reliant upon the \$15,000 deductible.

8. The Kane County Court entered its order adopting the settlement of the enforcement case on August 12, 2009.
9. Thus, the environmental enforcement action was settled before the Illinois Environmental Protection Agency ("Agency") issued its October 13, 2009 letter purporting to impose a higher deductible of \$100,000.
10. The imposition of a deductible higher than the \$15,000 deductible determined by OSFM will cause significant hardship to the Estate.
11. In addition, the Estate relied upon the \$15,000 deductible in resolving a dispute involving the Estate, the Estate of Muhammad Bashir Malik, deceased, and Javed and Shahnaz Arshed, over the ownership of the gas station property. Those disputes were resolved in orders entered by Kane County Court in *In re the Estate of Muhammad Bashir Malik*, 2000 PK 192 (July 30, 2009), and in *In re the Estate of Rashidah Malik*, 2008 PK 218 (July 30, 2009).
12. The settlement of the disputes involving the estates and the Arsheds were made possible, in integral part, by reliance on the Office of State Fire Marshal's ("OSFM") July 25, 2003 determination that the applicable deductible for reimbursement is \$15,000
13. The Estate's first notice that the Agency purported to impose a higher deductible of \$100,000 was upon receipt of the Agency's October 13, 2009. Thus, the Estate had no opportunity to submit information to the Agency.

FURTHER AFFIANT SAYETH NOT.



Eleonora "Lee" R. Holmes

SUBSCRIBED & SWORN to before me
this 26th day of April, 2010.



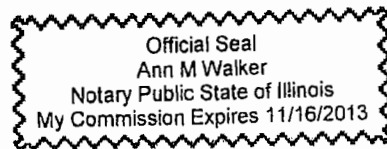
Notary Public

Exhibit I

Exhibit I



www.epa.state.il.us

State of Illinois

[L.I.T. Search](#)

IEMA # 970184

LPC # 0890605030

IEMA Date: 1/31/1997

Site: North Aurora 76

Address: 24 South Lincolnway
North Aurora, IL. 60542

County: Kane

Regulated by: 734

Site Classification: High

Products: Gasoline

20 Day Rpt: 11/14/2000

45 Day Rpt: 11/14/2000

Project Manager: Chris Covert

Phone: (217) 785-3943

Email: Chris.Covert@illinois.gov

Tank Operator	General	Title XVI	TACO	Claims	Search
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State of Illinois

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IEMA # 970184

LPC # 0890605030

Site: North Aurora 76

Bills Received	Status Code	Amount Requested	Amount Paid	Voucher Date	Deductible
1/17/2008	VOP	85158	70158	11/18/2009	15000
1/17/2008	VOP	30825	30567	11/18/2009	0
4/6/2010	NRE	81805.66	0		0

Site (Main)	Tank Operator	General	Title XVI	TACO	Search
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State of Illinois

[L.I.T. Search](#)

IEMA # 970184

LPC # 0890605030

Site: North Aurora 76

Event Description	Date	Resp. Due	Decision	Mailed
Site Classification Work Plan	11/26/2001	3/26/2002	MOD	12/31/2001
Site Classification Work Plan Budget	11/26/2001	3/26/2002	MOD	12/31/2001
Site Classification Completion Report	2/27/2007	6/27/2007	APR	3/27/2007
High Priority Corrective Action Plan	1/17/2008	5/16/2008	DEN	3/4/2008
High Priority Corrective Action Plan Budget	1/17/2008	5/16/2008	DEN	3/4/2008
Corrective Action Plan	4/25/2008	8/23/2008	MOD	6/12/2008
Corrective Action Plan Budget	4/25/2008	8/23/2008	MOD	6/12/2008
Amended Corrective Action Plan	10/6/2008	2/3/2009	DEN	10/20/2008
Amended Corrective Action Plan Budget	10/6/2008	2/3/2009	DEN	10/20/2008
High Priority Corrective Action Plan Budget	2/13/2009	6/13/2009	APR	3/9/2009
High Priority Corrective Action Plan	2/13/2009	6/13/2009	APR	3/9/2009
High Priority Corrective Action Plan	2/1/2010	6/1/2010	APR	3/3/2010
High Priority Corrective Action Plan Budget	2/1/2010	6/1/2010	APR	3/3/2010

Site (Main)	Tank Operator	General	TACO	Claims	Search
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APPENDIX 2003-2010-11-15

State of Illinois

[L.I.T. Search](#)

IEMA # 970184

LPC # 0890605030

Site: North Aurora 76

Date	Description
2/6/1997	Notice of Release Letter sent
12/6/2000	45 Day Selection Received Letter sent
10/22/2002	Review Letter sent
11/1/2002	Review Letter sent
3/5/2003	Miscellaneous Correspondence received
6/30/2003	Miscellaneous Correspondence received
5/17/2004	Miscellaneous Correspondence received
4/12/2007	Miscellaneous Correspondence received
5/1/2007	Miscellaneous Correspondence received
1/17/2008	Free Product Report received
7/10/2008	Miscellaneous Correspondence received
8/13/2008	Miscellaneous Correspondence received
11/3/2008	Miscellaneous Report received
11/12/2008	Miscellaneous Correspondence received
12/30/2008	Miscellaneous Correspondence received
1/16/2009	Miscellaneous Correspondence received
1/27/2009	Review Letter sent
4/6/2010	Miscellaneous Correspondence received
4/8/2010	Miscellaneous Correspondence received
4/13/2010	Election to Proceed as "Owner"
4/19/2010	Acceptance of Election to Proceed as "Owner"

Site (Main)	Tank Operator	Title XVI	TACO	Claims	Search
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