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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 16, 2007

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

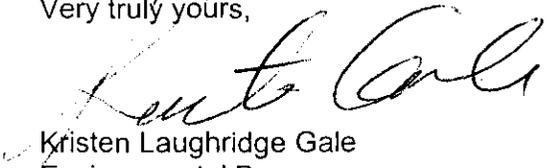
Re: ***People v. CSX Transportation, Inc.***
PCB No. 06-51

Dear Clerk Gunn:

Enclosed for filing please find the original and one copy of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,


Kristen Laughridge Gale
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

KLG/pp
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that I did on April 16, 2007, 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 and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: David L. Rieser
McGuire Woods LLP
77 West Wacker Drive
Suite 4100
Chicago, IL 60601-1818

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

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

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

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


KRISTEN LAUGHRIDGE GALE
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 CSX TRANSPORTATION, INC.,)
 a Virginia corporation,)
)
 Respondent.)

PCB No. 06-51
(Enforcement - Air, Water, Land)
RECEIVED
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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) (2004), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004). In support of this motion, Complainant states as follows:

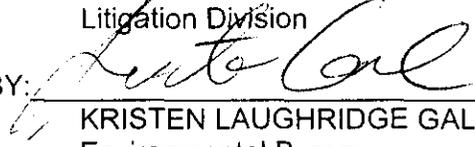
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

KRISTEN LAUGHRIDGE GALE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 16, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

CSX Transportation, Inc., a Virginia)
corporation,)

Respondent.)

PCB No. 06-51
RECEIVED
CLERK'S OFFICE
(Enforcement - Air, Water, Land)
APR 19 2007
STATE OF ILLINOIS
Pollution Control Board

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and CSX TRANSPORTATION, 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. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

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

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On October 14, 2005, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 43 of the Act, 415 ILCS 5/43 (2004), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, The Respondent, CSX TRANSPORTATION, INC., was a Virginia corporation in good standing.

B. Site Description

1. On December 22, 2004 at approximately 7:30 AM, thirteen engines and cars of a

55-car train owned by the Respondent derailed into a farm field about one mile north of downtown Paris, Edwards County, Illinois ("derailment site").

2. Three derailed engines breached and released approximately 5,700 gallons of diesel fuel. One car containing hydrochloric acid ("HCl") breached and released approximately 20,700 gallons of HCl.

3. The HCl release caused an airborne HCl plume and a HCl spill at the derailment site. Due to the presence of the airborne HCl plume, the City of Paris Fire Department and Illinois EPA ordered evacuations of approximately 250 people within approximately one mile radius of the derailment site.

4. The releases occurred approximately 300 yards from Twin Lakes, which provides drinking water for the community of Paris, Illinois. A marshy wooded area and an unnamed creek, which drains into Twin Lakes, were between the derailment site and Twin Lakes. The unnamed creek is approximately 200 yards southwest of the derailment site.

C. Allegations of Non-Compliance

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

- Count I: Air Pollution, in violation Section 9(a) of the Act, 415 ILCS 5/9(a) (2004).
- Count II: Abandonment of Waste, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).
- Count III: Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

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

E. Compliance Activities to Date

1. On December 22, 2004, emergency environmental contractors hired by the Respondent arrived at the derailment site and began remediation efforts including building berms to contain the HCl and diesel fuel and digging an interceptor trench.

2. On December 22, 2004, environmental contractors began monitoring the air for HCl and volatile organic compounds at the work area in the derailment site and in the surrounding community within a mile radius. The air monitoring continued until December 24, 2004. On December 22, 2004, the airborne HCl concentrations within the work area ranged from 0.0 ppm to 1.2 ppm. The Occupational Safety and Health Administration ceiling for airborne HCl is 5 ppm. Airborne HCl was not detected within the work area on December 23, 2004 or December 24, 2004. Airborne HCl was detected at two community locations on December 22, 2004, at concentrations of 0.39 ppm and 0.34 ppm. The lowest public exposure value for HCl is 0.5 ppm, set by the Department of Energy's Temporary Emergency Exposure Limit - 0 ("TEEL-0"). Airborne HCl was not detected in the surrounding community on December 23, 2004 or December 24, 2004.

3. From December 23, 2004 until May 9, 2005, Respondent inspected the derailment site, at first on a daily basis and reduced in intervals as the site conditions improved.
4. Respondent installed three interceptor trenches at the derailment site to collect diesel fuel and HCl. From December 23, 2004 until January 21, 2005, Respondent vacuumed the trenches for diesel fuel and HCl daily. From January 21, 2005 until May 9, 2005, Respondent vacuumed the trenches on an as needed basis per the inspections.
5. Respondent placed booms in nearby woods, creek and Twin Lakes. From December 23, 2004 until May 9, 2005, the booms were removed and replaced on an as needed basis.
6. Respondent performed a site investigation including soil sampling, groundwater sampling and surface water sampling. The soil samples taken from the HCl impacted area were analyzed for nutrients, pH, and total chloride. The soil samples taken from the diesel fuel area were analyzed for benzene, toluene, ethylbenzene, and xylene ("BTEX"), methyl tertiary butyl ether ("MTBE"), and polynucleic acids ("PNAs"). The groundwater samples and surface water samples were analyzed for BTEX, MTBE, and PNAs. Sampling within the spill area for diesel met Tier I residential soil and groundwater objectives, and sampling of the HCl spill area demonstrated that soils would be suitable for agricultural purpose.
7. Respondent sampled the groundwater on April 13, 2005, December 20, 2005, and March 9, 2006. All of the results were below the method detection limits for BTEX and PNAs.

IV. APPLICABILITY

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

and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

5. any subsequent compliance.

In response to these factors, the Complainant states the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations.
2. There is social and economic benefit to railroads and trains.
3. Operation of the railroad and train was suitable for the area in which it occurred.
4. Timely remediation of the release is both technically practicable and economically reasonable.
5. Respondent engaged in response activity to comply with the Act.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

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

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of

this Act by the respondent;

6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Complainant states as follows:

1. The derailment of the Respondent's train caused, allowed or threatened air pollution and posed a water pollution hazard. Respondent's failure to timely respond to the migration of the release caused or allowed abandonment of waste. The violations began on December 22, 2004, and were individually resolved at various times within two months of the releases.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.
3. No economic benefit was gained by the derailment of the Respondent's train and the subsequent remediation.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eighty Thousand Dollars (\$80,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.
6. Respondent timely reported the derailment and release to Illinois EPA and all other state and local authorities.

7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Eighty Thousand Dollars (\$80,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by certified check or money order to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund ("EPTF") and submitted to:

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

The name and number of the case shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kristen Laughridge Gale
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

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

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall

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

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

David L. Rieser
McGuire Woods LLP
77 West Wacker Drive
Suite 4100
Chicago, Illinois 60601-1818

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

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.F, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit

proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2004). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated. This waiver does not in any way prevent Defendant from arguing in a future proceeding that the prior adjudication of this matter should not result in any increase in penalty or other enforcement.

C. Cease and Desist

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

D. Release from Liability

In consideration of the Respondent's payment of the \$80,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.E and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on October 14, 2005. The Complainant reserves, and this Stipulation is without

prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

E. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") and C ("Stipulated Penalties") of this Stipulation shall be submitted as follows:

As to the Complainant

Kyle N. Davis
Assistant Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276

Springfield, Illinois 62794-9276

Yeric Yarrington
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

David L. Rieser
McGuire Woods LLP
77 West Wacker Drive
Suite 4100
Chicago, Illinois 60601-1818

F. Modification of Stipulation

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.A. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

G. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution

Control Board and may be enforced as such through any and all available means.

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

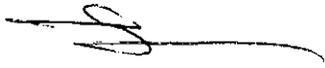
3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

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

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

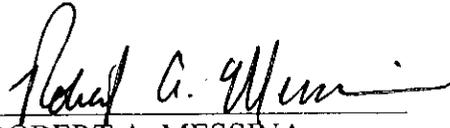
PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

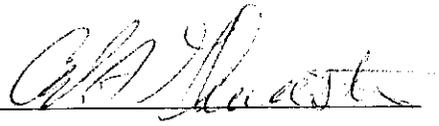
DATE: 4/16/07

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 3/23/07

CSX TRANSPORTATION, INC.

BY: 
Name: CARL D. GENNARDSTEIN

DATE: 4/10/07

Title: DIRECTOR ENVIRONMENTAL SYSTEMS