

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)	
<i>ex rel.</i> LISA MADIGAN, Attorney General)	
of the State of Illinois)	
)	PCB 2008-007
Complainant,)	
)	
vs.)	<i>VIA ELECTRONIC FILING</i>
)	
UNION PACIFIC RAILROAD COMPANY,)	
a Delaware corporation,)	
)	
Respondent.)	

NOTICE OF FILING

John Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602

Bradley P. Halloran
Hearing Officer
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

W. Lee Hammond
Union Pacific Railroad Company
1400 Douglas Street
Stop 1080
Omaha, NE 68179

Please take notice that today, April 3, 2009, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing a Motion to Sever and Memorandum of Law In Support of Motion to Sever on behalf of Union Pacific Railroad Company, along with Notice of Filing and Certificate of Service, a copy of which is attached hereto and served upon you.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

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By: /s/ Thomas A. Andreoli
Attorneys for Respondent
Union Pacific Railroad Company

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. LISA MADIGAN, Attorney General)
of the State of Illinois)
) PCB 2008-007
Complainant,)
)
vs.) ***VIA ELECTRONIC FILING***
)
UNION PACIFIC RAILROAD COMPANY,)
a Delaware corporation,)
)
Respondent.)

**UNION PACIFIC RAILROAD COMPANY'S
MOTION TO SEVER**

Union Pacific Railroad Company (“Union Pacific”) hereby respectfully moves the Illinois Pollution Control Board (the “Board”) to sever this action, pursuant to 35 Ill. Adm. Code §§ 101.406 and 101.408 and 735 ILCS 5/2-1006. The Board should sever this action and direct the State to re-file separate actions, because the Complaint improperly consolidates claims arising from two separate and unrelated events in November 2005 and February 2006 which, based on the face of the Complaint, took place at different times and on different properties and involve different theories of liability, witnesses and potential evidence.

Severance is appropriate where it avoids material prejudice. 35 Ill. Adm. Code § 101.408. Consolidation of claims that causes material prejudice to any party is improper. 35 Ill. Adm. Code § 101.406. The courts have recognized that requiring a party to try two unrelated sets of facts in the same action is reversible error. *See Mount v. Dusing*, 414 Ill. 361, 367-68 (Ill. 1953) (reversed and remanded for severance); *Rogala v. Silva*, 16 Ill. App. 3d 63, 64-65, 68 (1st Dist. 1973) (affirming severance of action).

Union Pacific believes that, once the evidence has been heard, neither the November 2005 or the February 2006 event will support a finding of liability under the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* That question is not before the Board on this Motion. This Motion seeks to avoid the material prejudice created by the Complaint's improper consolidation claims arising out of these alleged events. Requiring Union Pacific to defend these claims in a single action would be in error, because a finding of liability against Union Pacific as to either one of these separate and unrelated events would create an impermissible negative inference as to Union Pacific's liability related to the other. An objective damages determination as to either alleged event also would be impossible.

Finally, severance will avoid confusion of the record, based upon the different theories of liability, witnesses and potential evidence involved, and serve to narrow disputed issues and facilitate settlement and assist in the convenient, expeditious and complete determination of the issues.

WHEREFORE, Union Pacific Railroad Company respectfully requests that the Illinois Pollution Control Board enter an order severing this action, directing the State to re-file separate actions, and providing such other relief as the Board deems appropriate.

Dated: April 3, 2009

Respectfully submitted,

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By: /s/ Thomas A. Andreoli
Attorneys for Respondent
Union Pacific Railroad Company

avoid confusion of the record, serve to narrow disputed issues and facilitate settlement and assist in the convenient, expeditious and complete determination of the issues.

The Background

A. Global II And Proviso Yard

1. Union Pacific owns and operates two separate properties that are subject to the Complaint: (1) the Global II intermodal property, 301 W. Lake Street, Northlake, Illinois 60164 (“Global II”), and (2) the Proviso Yard, 5050 W. Lake Street, Melrose Park, Illinois 60610.

2. As its name suggests, Global II serves as a staging ground to exchange shipping products between rail and truck. Third-parties (*e.g.*, shippers and their contractors) may access Global II twenty four hours a day, seven days a week.

3. The Proviso Yard is a separate property with a separate purpose. Proviso Yard is a classification yard at which Union Pacific services locomotives and divides railroad cars onto different tracks.

B. The November 2005 Event

4. The Illinois Environmental Protection Agency (the “IEPA”) allegedly inspected the Proviso Yard on November 23, 2005 and observed a “rainbow and silver colored sheen on the water extending from a storm culvert at the Facility’s Locomotive Fueling Pad, continuing on through a drainage ditch an ultimately ... being discharged into Mud Creek” (Compl. ¶ 7; *see* Compl. ¶ 8) (the “November 2005 Event”).

5. The Complaint does not contain any allegations of an operational release of contaminants at the Proviso Yard in November 2005. There was none. Rather, the Complaint alleges that IEPA was “notified ... that there had been a recent fuel oil release” at the Proviso Yard. (Compl. ¶ 6). The Complaint does not identify the cause or source of the alleged November 23, 2005 release.

6. The Complaint does not contain any allegations pertaining to any acts or omissions by Union Pacific at the separate Global II property in connection with the November 2005 Event.

C. The February 2006 Event

7. On February 19, 2006, a “diesel fuel release” allegedly occurred at the Global II property (Compl. ¶ 9) (“February 2006 Event”). The Complaint alleges that one of Union Pacific’s “contractors had caused the fuel release when a fuel line on one of the ... contractor’s trucks ruptured, discharging diesel fuel into a storm sewer inlet.”¹ (Compl. ¶ 12). The Complaint alleges that the contractor’s release subsequently was discharged into Mud Creek. (Compl. ¶ 13).

8. The Complaint does not contain any allegations pertaining to any act or omissions by Union Pacific at the separate Proviso Yard in connection with the February 2006 Event.

D. The Complaint

9. On July 17, 2006, the State filed its Complaint (attached as Exhibit A to this Motion). The Complaint consolidates the State’s claims arising from the November 2005 (Compl. ¶¶ 6-8) and the February 2006 (Compl. ¶¶ 9-13) events into four combined counts. In the first three counts, the Complaint alleges Union Pacific caused water pollution in violation of 415 ILCS 5/12(a), 12(d) and 12(f). In the fourth count, the State alleges violations of 35 Ill. Adm. Code §§ 302.203 and 304.105 and 415 ILCS 5/12(a).

¹ While the veracity of the Complaint’s allegations are not at issue at this juncture, Union Pacific has advised the State that the facts alleged in Paragraph 12 of the Complaint are incorrect. Union Pacific did not inform representatives of the IEPA and the Metropolitan Water Reclamation District that “one of [Union Pacific’s] contractors had caused the release.” (*cf.* Compl. ¶ 12). The person involved was not a Union Pacific contractor.

Legal Standard

The Board has the authority under the Administrative Code to sever claims “[u]pon motion of any party or on the Board’s own motion, in the interest of convenient, expeditious and complete determination of claims, and where no material prejudice will be caused.” 35 Ill. Adm. Code § 101.408; *see* 735 ILCS 5/2-1006 (authorizing severance of claims “as an aid to convenience, whenever it can be done without prejudice to a substantial right”). Conversely, the Board only will consolidate claims if “consolidation would *not* cause material prejudice to any party.” 35 Ill. Adm. Code § 101.406 (emphasis provided). The courts have recognized that the prejudice inherent in requiring a party to try two unrelated sets of facts in the same consolidated action is reversible error. *See Mount v. Dusing*, 414 Ill. 361, 367-68 (1953) (reversed and remanded for severance); *Rogala v. Silva*, 16 Ill. App. 3d 63, 64-65, 68 (1st Dist. 1973) (affirming severance of action).

Argument

A. The Board Should Sever The Action To Avoid Material Prejudice

The Complaint improperly consolidates claims arising from two separate and unrelated events which, based on the face of the Complaint, took place at different times and on different properties and involve different theories of liability, witnesses and potential evidence. Requiring Union Pacific to defend these claims in a single action would be in error, because a finding of liability against Union Pacific as to either one of the events—whether the November 2005 or February 2006 event—would create an impermissible negative inference as to Union Pacific’s liability related to the other. Consolidation of these claims, which are based upon different theories of liability, also would render impossible an objective damages determination.

1. The November 2005 And February 2006 Events Happened At Different Times And In Different Places

The November 2005 and February 2006 events are unrelated and cannot be tried together without material prejudice to Union Pacific. The alleged events occurred at different times, indeed, in different years. (Compl. ¶¶ 6, 9). See *Mount*, 414 Ill. at 367-68 (reversing for failure to severing action where the allegations were separated by one year's time); *Rogala*, 16 Ill. App. 3d at 67-68 (affirming severance of claims separated by eight months). The alleged events also took place on different properties, which serve entirely different functions. The State conceded as much in its approach to investigation of the November 2005 and February 2006 events, which were conducted under separate IEPA violation notices and classifications (W-2005-00535 and M-2006-02009).

Not only are the underlying facts completely different, the State's theory of liability as to each instance is distinct. The State does not allege (nor could it allege) facts supporting the existence of an operational release by Union Pacific in November 2005. The State's theory of liability as to the November 2005 Event effectively is "strict liability," *i.e.*, the existence of the alleged release alone suffices to impose liability.² In contrast, the Complaint alleges the existence of an actual operational release, albeit by a third-party on Union Pacific property, in connection with the February 2006 Event. Union Pacific should not be required to defend these distinct theories of liability in a single action. A finding of liability against Union Pacific as to

² Union Pacific denies the State can support this theory of liability. The Act is not a strict liability statute. *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 793, 618 N.E.2d 1282, 1286 (5th Dist. 1993); *Perkinson v. Ill. Pollution Control Bd.*, 187 Ill. App. 3d 689, 693, 543 N.E.2d 901, 903 (3d Dist. 1989); *Phillips Petroleum Co. v. Ill. Env'tl. Prot. Agency*, 72 Ill. App. 3d 217, 220, 390 N.E.2d 620, 623 (2d Dist. 1979). Liability under the Act may not be imposed, regardless of fault. *Id.*; see, e.g., *PMC, Inc. v. Sherwin-Williams Co.*, 1993 WL 259442, at *2 (N.D. Ill. July 7, 1993) (noting that the Act is "a fault-based statute").

either one of these separate and unrelated events would create an unavoidable and impermissible negative inference—"If Union Pacific isn't liable for this, then it should be liable for that."

Severance is the appropriate remedy under these circumstances.

2. Consolidation Prejudices Objective Damages

The Board should not try the Complaint's separate and unrelated claims in the same proceeding, because consolidation will render an objective damages determination as to either alleged event impossible. The Complaint does not distinguish or otherwise identify the damages being sought in connection with the November 2005 and February 2006 events. Instead, the Complaint asks for consolidated damages. (Compl. at 6, 7, 9, 11-12). On information and belief, the State consolidated the relief being sought because it did not and does not have individualized damages assessments for each claim.

B. Severance Will Save Time And Resources

Finally, severance will avoid confusion of the record and serve the convenient, expeditious and complete determination of the issues. The State should have filed these claims separately in the first instance. Severance reasonably will have the benefit of narrowing the disputed issues before the Board. Severance also will give the parties both the incentive and the opportunity to settle either of the claims individually.

Conclusion

WHEREFORE, Union Pacific Railroad Company respectfully requests that the Illinois Pollution Control Board enter an order severing the claims and directing the State to re-file separate actions, and providing such other relief as the Board deems appropriate.

Dated: April 3, 2009

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

By: /s/ Thomas A. Andreoli
Attorneys for Respondent
Union Pacific Railroad Company

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Rami Hanash

Regional Environmental Counsel
Union Pacific

Exhibit A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	PCB
Complainant,)	
)	(Enforcement - Water)
vs.)	
)	
UNION PACIFIC RAILROAD)	
COMPANY, a Delaware Corporation,)	<u>VIA ELECTRONIC FILING</u>
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. W. Lee Hammond	Clerk
Environmental Manager	Illinois Pollution Control Board
Union Pacific Railroad Company	James R. Thompson Center
1400 Douglas Street, Stop 1080	100 W. Randolph Street, Suite 11-500
Omaha , Nebraska 68179	Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Complaint, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 

ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-3816

DATE: July 16,2007

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
Complainant,)
v.) No.
UNION PACIFIC RAILROAD)
COMPANY, a Delaware Corporation,)
Respondent.)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, UNION PACIFIC RAILROAD COMPANY, a Delaware Corporation, as follows:

COUNT I

CAUSING, THREATENING OR ALLOWING WATER POLLUTION

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, inter alia, with the duty of enforcing the Act. Additionally, pursuant to Section 402(b) of the federal Clean Water Act

("CWA"), 33 U.S. C. § 1342(b), the Illinois EPA administers and enforces the CWA's National Pollutant Discharge Elimination System ("NPDES") permit program within the State of Illinois.

3. At all times relevant to this Complaint, UNION PACIFIC RAILROAD COMPANY ("Respondent"), has been a Delaware corporation duly authorized to do business in Illinois.

4. At all times relevant to this Complaint, Respondent has operated a rail yard and intermodal facility, located at 301 West Lake Street, City of Northlake, County of Cook, Illinois ("Facility").

5. Stormwater and accumulated groundwater from the Facility are treated by passing through an oil/water separator ("Separator"), prior to being discharged into Mud Creek, which is a tributary of Addison Creek. The Separator consists of several weirs over which water flowing through the Separator passes, prior to being discharged. Respondent's discharge of the treated stormwater and accumulated groundwater is authorized under the terms of its Illinois EPA-issued NPDES Permit No. IL0002127 ("NPDES Permit").

6. On November 23, 2005, an employee of the Metropolitan Water Reclamation District of Greater Chicago ("MWRDC") notified Illinois EPA that there had been a recent fuel oil release at the Facility.

7. On November 23, 2005 ("November 23rd Inspection") the Illinois EPA inspected the Facility and observed a rainbow and silver colored sheen on the water extending from a storm culvert at the Facility's Locomotive Fueling Pad, continuing on through a drainage ditch and ultimately flowing into the Separator and then proceeding over the final weir in the Separator, before being discharged into Mud Creek.

8. During the November 23rd Inspection, the Illinois EPA observed the rainbow and silver colored sheen along the length of the oil/water separator structure, continuing past the final weir in the structure, and, ultimately, in Mud Creek.

9. On February 19, 2006, or on a date better known to Respondent, a diesel fuel release occurred at the Facility.

10. On February 21, 2006, representatives of the Illinois EPA and the MWRDC conducted an inspection of the Facility and confirmed that a diesel fuel release had indeed occurred.

11. On February 22, 2006 ("February 22nd Inspection"), representatives of the Illinois EPA and the MWRDC returned to the Facility and met with a representative for the Respondent.

12. During the February 22nd Inspection, Respondent's representative informed the Illinois EPA and MWRDC representatives that one of Respondent's contractors had caused the fuel release when a fuel line on one of the Respondent's contractor's trucks ruptured, discharging diesel fuel into a storm sewer inlet at the Facility.

13. During the February 22nd Inspection, the Illinois EPA and the MWRDC representatives determined that at least some of the diesel fuel which had been released as a result of the rupture to the fuel line had flowed through the Facility's Separator and had subsequently been discharged into Mud Creek.

14. Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment of any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter

from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

15. Section 3.315 of the Act, 415 ILCS 513.315 (2006), provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

16. Respondent, a Delaware corporation, is a "person," as that term is defined in Section 3.315 of the Act.

17. Section 3.165 of the Act, 415 ILCS 513.165 (2006), provides the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

18. The rainbow and silver colored fuel oil sheen that was observed on the water discharging into Mud Creek is a "contaminant," as that term is defined by Section 3.165 of the Act.

19. Section 3.545 of the Act, 415 ILCS 513.545 (2006), provides the following definition:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

20. The rainbow and silver colored fuel oil release observed in Mud Creek during the November 23, 2005 Inspection constitutes "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 513.545 (2006).

21. The diesel fuel released on or about February 19, 2006 constitutes "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 513.545 (2006).

22. Section 3.550 of the Act, 415 ILCS 513.550 (2006), provides the following definition:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

23. The water in the Separator at the Facility, as well as in Mud Creek, constitute "waters," as that term is defined in Section 3.550 of the Act.

24. By causing, threatening or allowing the rainbow and silver colored fuel oil sheen to discharge from the Separator into Mud Creek, as well as by allowing the diesel fuel release at the Facility into Mud Creek, Respondent caused, threatened or allowed the discharge of a contaminant into the environment.

25. By causing, threatening or allowing the discharge of the rainbow and silver colored fuel oil sheen and the diesel fuel, both of which are "contaminants," to discharge into Mud Creek, a water of the State, Respondent caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);
3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day during which Respondent continues to be in violation of Section 12(a) of the Act;
5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II

CREATING A WATER POLLUTION HAZARD

- 1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.
14. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:
No person shall:

* * * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

15. On at least two occasions, Respondent deposited petroleum products, which are contaminants, onto the land in such place and manner so as to create a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent with respect to this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

3. Ordering Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which Respondent continues to be in violation of Section 12(d) of the Act;

5. Ordering Respondent to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and

6 Granting such other relief as the Board deems appropriate and just.

COUNT III

**FAILURE TO COMPLY WITH THE TERMS
AND CONDITIONS OF THE NPDES PERMIT**

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count III.

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), provides as follows:

No person shall:

* * * *

(f) Cause, threaten, or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, any waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

15. Section 309.102(a) of the Illinois Pollution Control Board Water Pollution regulations ("Board Water Pollution Regulations"), 35 Ill. Adm. Code 309.102(a), provides as follows:

a. Except as in compliance with the provisions of the Act, Board regulations and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

16. The discharge of petroleum products from the Separator into Mud Creek is a violation of Respondent's NPDES Permit and is therefore a violation of Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

17. By violating Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), Respondent thereby, also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent with respect to this Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering Respondent to cease and desist from further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against Respondent for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12/(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

VIOLATION OF WATER QUALITY AND EFFLUENT STANDARDS

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count IV.

15. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin ...

16. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard . . .

17. On November 23, 2005, and on February 19, 2006, or on dates better known to the Respondent, Respondent caused or allowed petroleum products to leave the Separator at the Facility and to enter Mud Creek.

18. By allowing the petroleum products to enter Mud Creek, Respondent thereby violated the water quality standard found in Sections 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

19. Through its violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, Respondent thereby violated Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105.

20. By violating Sections 302.203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105, Respondent thereby, also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, on this Count IV, as follows:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Sections 302. 203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105;

3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12/(a) (2006), and Sections 302.203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105;

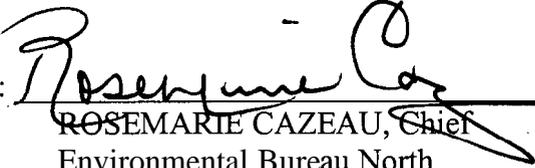
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12/(a) (2006), and Sections 302. 203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each violation of Section 12(a) of the Act and Sections 302.203 or 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

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

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

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

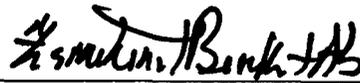
Of Counsel:

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Chicago, Illinois 60602
(312) 814-3816
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CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 16th day of July, 2007, the foregoing Complaint, Notice of Filing, and a Certificate of Service upon the person listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB

CERTIFICATE OF SERVICE

I, Thomas A. Andreoli, an attorney, hereby certify that I caused a copy of the Motion to Sever and Memorandum of Law In Support of Motion to Sever on behalf of Union Pacific Railroad Company, along with Notice of Filing and Certificate of Service, to be served upon the service list on April 3, 2009, by regular mail.

/s/ Thomas A. Andreoli
Thomas A. Andreoli