



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE
APR 06 2009
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

April 2, 2009

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Crop Production Services***
PCB NO. 09-60

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Leave to Amend Complaint and First Amended Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jane E. McBride".

Jane E. McBride
Sr. Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CROP PRODUCTION SERVICES,)
a Delaware corporation,)
)
Respondent.)

PCB No. 09-60
(Enforcement)

RECEIVED
CLERK'S OFFICE
APR 06 2009
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Edward W. Dwyer
Hodge Dwyer
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR LEAVE TO AMEND COMPLAINT and FIRST AMENDED COMPLAINT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
JANE E. McBRIDE
Sr. Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on April 2, 2009, 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 LEAVE TO AMEND COMPLAINT and FIRST AMENDED COMPLAINT


To: Edward W. Dwyer
Hodge Dwyer
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705

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

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

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

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



JANE E. McBRIDE
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 CROP PRODUCTION SERVICES,)
 a Delaware corporation,)
 Respondent.)

PCB NO. 09-60
(Enforcement)

RECEIVED
CLERK'S OFFICE

APR 06 2009

MOTION FOR LEAVE TO AMEND COMPLAINT STATE OF ILLINOIS
Pollution Control Board

NOW COMES the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, and moves to amend the Complaint in order to include additional referred violations. Complainant so moves on the following grounds:

1. Final judgment in this matter has not been reached. The Respondent has waived service and has not yet answered or otherwise responded to the complaint. No discovery requests have been submitted.
2. The original complaint was filed in this matter on February 17, 2009, and the Board accepted the complaint on March 5, 2009.
3. On February 24, 2009, the Illinois Attorney General's Office received an additional referral from the Illinois EPA concerning a fertilizer release at an agrichemical retail facility owned and operated by the Respondent. The existing complaint also concerns fertilizer releases at agrichemical retail facilities owned by the Respondent.
4. In the interest of economy, Complainant believes that it would be both most efficient and effective to address all three releases in a single enforcement action.
5. Complainant seeks to add the allegations that are the subject of the third referral as Count III of the complaint in this matter. The new allegations concern a site near Galesburg, Illinois in Knox County.

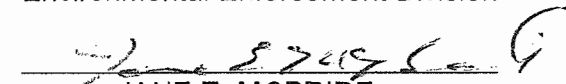
WHEREFORE, for the foregoing reasons and on the foregoing grounds, Complainant requests that this motion for leave to amend be granted. The First Amended Complaint is being filed contemporaneously with this motion.

Respectfully submitted,

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

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:



JANE E. MCBRIDE
Sr. Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

STATE OF ILLINOIS)
)
COUNTY OF PEORIA) SS

AFFIDAVIT

I, ERIC ACKERMAN, after being duly sworn and upon oath, state as follows:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as a field inspector and environmental protection engineer.

2. As part of my duties with the Illinois EPA, I perform site investigations to assess whether environmental and/or public health threats exist. Upon formal request, I also review pleadings to be filed by the Attorney General's Office to ensure veracity and accuracy with the records of the Illinois EPA as well as my own personal observations and knowledge.

3. I have reviewed Count III of the Amended Complaint, the amendment Complainant seeks leave to add in its Motion for Leave to Amend to which this Affidavit is attached. 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 paragraphs 4 through 6 and 8 through 14 of the Amended Complaint constitute the factual basis for the allegations 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.

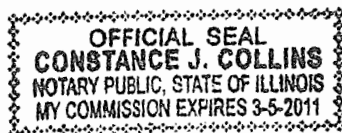
Further affiant sayeth not.

Eric Ackerman
ERIC ACKERMAN

Subscribed and sworn to before me

this 27th day of March, 2009.

Constance J. Collins
NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
CROP PRODUCTION SERVICES,)
a Delaware corporation,)
Respondent.)

PCB NO. 09-60
(Enforcement)

RECEIVED
CLERK'S OFFICE
APR 06 2009
STATE OF ILLINOIS
Pollution Control Board

FIRST AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent Crop Production Services, Inc., a Delaware corporation, as follows:

COUNT I

WATER POLLUTION VIOLATIONS – FERTILIZER SPILL – SINCLAIR

1. This Count is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, the 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 Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), 42(e) (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. This complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31, after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent, Crop Production Services, Inc. ("CPS"), a subsidiary of United Agri Products, Inc., is a foreign corporation in good standing in the State of Illinois. At all times relevant to this complaint, UAP Distribution, Inc. owned and operated the subject sites. Crop Production Services, Western Farm Service, Inc. and UAP Distribution, Inc., were affiliated

companies under the common ownership of United Agri Products, Inc. The three affiliated companies merged effective January 1, 2009. The surviving entity is UAP Distribution, Inc. In connection with the merger, UAP Distribution, Inc. changed its name to Crop Production Services, Inc. CPS' corporate headquarters is located at 7251 W 4th Street Greeley, CO 80634. CPS sells feed by retail and sells farm supplies by both retail and wholesale. CPS' registered agent is CT Corporation Systems, 208 South LaSalle Street, Suite 814, Chicago, IL 60604.

5. Respondent CPS owns and operates an agricultural chemical and fertilizer retail facility northeast of Jacksonville, Illinois in Morgan County. The facility is known as CPS Richter (Sinclair). The legal description of the site is SW 1/4, Section 28, T16N, R9W (Road District No. 1), Morgan County (the "site" or "facility"). The facility is located in the community of Sinclair, which consists of an unincorporated area including four residential structures and the CPS Richter facility. The facility is located in the watershed of Indian Creek. Indian Creek is tributary to the Illinois River.

6. At the Sinclair site, Respondent CPS handles dry fertilizer products, anhydrous ammonia, liquid fertilizer solutions and various pesticides. These products are delivered to the site by truck. Dry fertilizer products stored and handled at the site include potash and diammonium phosphate ("DAP"). Anhydrous ammonia is handled in bulk and stored in two, 12,000 gallon fixed storage tanks on-site. Approximately 40 ammonia nurse tanks are available at the site. Pesticides are handled in bulk, mini-bulks and packaged products. Liquid fertilizer (28% nitrogen) solution is also stored on-site. Two above-ground steel bulk tanks are available for storage of urea-ammonium nitrate (UAN 28% nitrogen solution). One of the tanks is an 18,000-gallon tank and was out of service at the time of the release. The other is a 30,000-gallon capacity, cone bottom tank that was involved in the July 21, 2005 release of 28%

nitrogen solution.

7. Section 12 (a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2006), provides in pertinent part, as follows:

No person shall:

a. Cause or threaten or allow the discharge of any contaminants into the environment in 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;

* * *

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

8. Section 255.80 of the agrichemical containment regulations, 8 Ill. Admin. Code 255.80, provides, in pertinent part, as follows:

Section 255.80 Secondary Containment

- a) All agrichemical non-mobile storage containers for liquid pesticides and liquid fertilizer shall be located within a secondary containment structure.
- b) Secondary containment structures and systems shall provide the following capacity:
 - 1) When not protected from receiving precipitation, the containment shall have a minimum containment volume of a 6-inch rain storm (a 25 year, 24 hour rain), plus the capacity of the largest tank, and the volume displaced by the bases of the other tanks located within the secondary containment structure.
 - 2) When protected from receiving precipitation, the containment shall have a minimum containment volume of 100% of the capacity of the largest tank, plus the volume displaced by the bases of the other tanks located within the secondary containment structure.
- c) Structural materials and integrity shall provide secondary containment that meets or exceeds the requirement of this Section. Materials shall be compatible with the agrichemical to be contained.
 - 1) General requirements include:
 - A) Clay, natural soil clay mixtures or clay/bentonite mixtures shall not

be used to contain any bulk pesticide.

- B) Secondary containment for liquid agrichemicals storage at facility sites should provide for separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing between the fertilizer area and the pesticide area shall provide for the interception and recovery including clean up of pesticide spills while the entire secondary containment area shall meet or exceed the total capacity requirement specified in this Section.
- C) The secondary containment structure shall be constructed to a water permeability rate of not greater than 1×10^{-6} centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of 1×10^{-5} centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid. The containment area shall not be equipped with a permanent pump unless the pump has only a manual mode of operation.
- D) The secondary containment structure shall not have a discharge outlet or gravity drain through the wall or floor.
- E) Synthetic materials or liners may be used with secondary containment structures provided they are compatible with agrichemicals being contained and it is installed according to manufacturer's written direction and repaired and maintained according to manufacturer's recommendations. These directions and recommendations shall become records maintained at the facility site.

9. On July 21, 2005, a release at the site of approximately 11,000 gallons of urea-ammonium nitrate (UAN 28% nitrogen solution) 28% nitrogen fertilizer was discovered by Respondent's employees and reported.

10. The source of the release was a reducer fitting on the 30,000-gallon, cone shaped upright steel tank used for liquid fertilizer. The cause of failure was the corrosive nature of the 28% nitrogen solution acting on the cast iron fitting resulting in creation of an approximately 1 inch hole in the fitting. There was no shut off capability or valve ahead of the failure. The tank was 12 to 13 years old, and the fitting had not been replaced.

11. The secondary concrete containment structure surrounding the 30,000 gallon

tank also failed, and released the liquid fertilizer into the environment. Three of the walls of the secondary containment had been poured after the floor was installed. Liquid fertilizer leaked out of the wall/floor joint at all three of the walls that were poured on top of the concrete floor.

12. On July 21, 2005, the Illinois EPA conducted an inspection of the release site.

13. At the time of the July 21, 2005 inspection, Illinois EPA personnel observed and photographed fertilizer pooling and puddles, as well as stained ground, outside of the concrete containment. The surface liquid and staining indicated that the released material flowed east across the facility property and entered a dry creek bed, an unnamed tributary of Indian Creek, where it traveled north another 100 to 200 yards. The inspectors observed and photographed the surface drainage of fertilizer east across the facility property to the dry creek bed and observed small pools of fertilizer in the dry creek bed.

14. On November 21, 2005, an inspector from the Illinois EPA, Division of Water Pollution Control/Field Operations Section, Peoria Regional Office conducted a follow-up inspection of the site. Samples from three up gradient supply wells in the vicinity of the spill showed total Kjeldahl nitrogen levels of 30.9 mg/l at the on site well, 30.5 mg/l at well located at 1939 Sinclair Road well, and 31.8 mg/l at a well located at 1933 Sinclair Road well. The ammonia concentration of a water sample collected from a puddle in the dry bed of the unnamed tributary of Indian Creek, down gradient of the spill, was 56.4 mg/l. Two soil samples were collected from the dry creek bed. Analytical results from the sample collected in the drainage path of the spill at the property boundary were as follows: ammonia 1040 mg/l, nitrate/nitrite 138 mg/l, and Total Kjeldahl nitrogen 33,000 mg/l. Analytical results of the second sample off site were as follows: ammonia 740 mg/l, nitrate/nitrite 209 mg/l, and Total Kjeldahl nitrogen 25,800 mg/l.

15. Respondent CPS has caused, allowed or threatened the discharge of

contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the release of liquid fertilizer from its Sinclair facility to an unnamed tributary of Indian Creek, which flows into the Illinois River.

16. The Respondent CPS has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to an unnamed tributary of Indian Creek.

17. The discharge of contaminants from the Respondent's facility has caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

18. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

19. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

A. Find that Respondent Crop Production Services, Inc. has violated Section 12 (a) and (d) of the Act, 415 ILCS 5/12(a) and (d);

B. Order the Respondent from to cease and desist further violations of the Act and

associated regulations pursuant to section 42(e) of the Act, 415 ILCS 5/42(e);

C. Assess against the Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

D. Grant such other and further relief as the Board deems appropriate.

COUNT II

WATER POLLUTION VIOLATIONS – FERTILIZER SPILL – WHITE HALL

1. This Count is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, the 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 Sections 42(d) and (e) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42(d), 42(e) (2006) .

2-4. Complainant realleges and incorporates by reference herein paragraphs 2 through 4 of Count I as paragraphs 2 through 4 of this Count II.

5. Respondent CPS owns and operates an agricultural chemical and fertilizer retail facility in the southeast portion of White Hall in Greene County. The facility is known as CPS Richter (White Hall). The legal description of the site is NE 1/4, Section 2, T11N, R12W (White Hall Township), Greene County (the “site” or “facility”). The facility is located in White Hall, bordered on the west by an active railroad. The facility is bordered on the north by East Carlinville Street, on the south by Tunison Street and on the east by White Street. It is located in a residential area.

6. The majority of surface drainage from the White Hall facility flows to the south. A stormwater inlet structure is located at the south end of the facility in the north street ditch of Tunison Street. Subsurface drainage from the stormwater inlet flows southeast to a 30-inch corrugated metal outlet pipe located on the east side of Fulton Street.

7. At the White Hall site, Respondent CPS handles dry fertilizer products, anhydrous ammonia, liquid fertilizer solutions and various pesticides. These products are delivered to the site by truck. Dry fertilizer products stored and handled at the site include potash and diammonium phosphate ("DAP"). Anhydrous ammonia is handled in bulk only and stored in a 30,000 gallon fixed storage tank on-site. Pesticides are handled in bulk, mini-bulks and packaged products. Liquid fertilizer (28% nitrogen) solutions are stored in various, above ground, metal bulk tanks on-site. The products include 28% and 32% nitrogen solution and 10-34-0. Urea-ammonium nitrate is brought to the site by truck. It is delivered as 32% nitrogen solution and is then cut to 28% while on-site.

8-9. Complainant realleges and incorporates by reference herein paragraphs 7 and 8 of Count I as paragraphs 8 and 9 of this Count II.

10. On February 18, 2005, a CPS employee observed a leak of 32% nitrogen fertilizer solution from a 500,000-gallon tank at CPS' facility in White Hall, Illinois. The release came from the bottom of the tank. The tank contained 32% nitrogen solution that was in the process of being cut to 28% solution. The tank failure was on the bottom, or base, of the tank. Due to the location of the failure, the release from the tank could not be stopped.

11. The subject 500,000-gallon tank was located inside a secondary containment structure.

12. The secondary containment structure failed to contain the leak. The material leaked from the secondary containment in two locations. The majority of the release occurred at the southeast corner of the secondary containment structure, from beneath the concrete floor of the secondary containment structure. Material also leaked from a joint between the concrete sidewall and the concrete floor of the secondary containment structure at a location immediately east of the subject tank.

13. The release occurred through an approximately 1-inch hole in the floor of the 500,000 gallon tank. This hole was in proximity to a seam or joint in the concrete floor of the secondary containment structure. The steel tank sat directly on the surface of the concrete floor.

14. The secondary containment structure had been constructed in two phases. The west half was built in 1996 and the east half was poured in 1997. It was the seam or joint between the two phases of construction that was the source of the majority of material that was released from the structure.

15. In response to the release, Respondent CPS excavated soil impacted by the release. Respondent CPS installed four small, subsurface collection drains and sumps. The sumps consisted of limited drain lines positioned directly beneath the northeast corner of the subject secondary containment structure.

16. On October 6, 2005, the Illinois EPA conducted a follow-up compliance inspection. At the time of the inspection, the Illinois EPA collected samples from the collection sumps. Liquid sample collected from the small sump located on the north side of the subject secondary containment was clear with an ammonia odor. The analytical results for this sample were ammonia 6500 mg/l, nitrate/nitrite 1980 mg/l, Total Kjeldahl nitrogen 11,300 mg/l. Liquid sample collected from the small sump adjacent to the secondary containment structure on the east side of the structure, the northernmost sump on the east side, was brown in color and contained a strong ammonia odor. The analytical results for this sample were ammonia 4830 mg/l, nitrate/nitrite 1710 mg/l, Total Kjeldahl nitrogen 7540 mg/l. Liquid sample collected from the small sump adjacent to the secondary containment on the east side of the structure, was clear with an ammonia odor. The analytical results for this sample were ammonia 1600 mg/l, nitrate/nitrite 694 mg/l, Total Kjeldahl nitrogen 2440 mg/l.

17. On May 12, 2006, the Illinois EPA conducted a compliance inspection at the site. Four groundwater monitoring wells had been installed at the site.

18. At the time of the May 12, 2006 inspection, sample results were collected from the shallow sumps located adjacent to the bulk liquid fertilizer storage tank farm and the groundwater monitoring wells.

19. Analytical results of the samples taken from the shallow sumps indicated the following nitrate/nitrite levels for the wells S-2, S-3, S-4, located along the east side of the liquid fertilizer storage tank farm, north to south respectively: S-2, 21.6 mg/l; S-3, 31.8 mg/l; S-4, 154 mg/l.

20. Analytical results of samples taken from the groundwater monitoring wells indicated the following nitrate/nitrite levels: MW-1 located furthest southeast on the site, 101 mg/l; and MW-2 located just southeast of the tank farm, 246 mg/l.

21. Respondent CPS has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the release of liquid fertilizer from its White Hall facility to surface and subsurface drainage at the site.

22. The Respondent CPS has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to a surface and subsurface drainage at the site.

23. The discharge of contaminants from the Respondent's facility has caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

24. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois and/or in violation of the Board's regulations or standards, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

25. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this court grant the following relief:

A. Find that Respondent, Crop Production Services, Inc., has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d);

B. Order the Respondent to cease and desist from further violations of the Act and associated regulations pursuant to section 42(e) of the Act, 415 ILCS 5/42(e);

C. Assess against the Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

D. Grant such other and further relief as the Board deems appropriate.

COUNT III

GALESBURG SITE ROAD SPILL AND SITE RELEASE

1. This Count is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, the 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 Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), 42(e) (2006) .

2-3. Complainant realleges and incorporates by reference herein paragraphs 2 through 3 of Count I as paragraphs 2 through 3 of this Count III.

4. The Respondent, Crop Production Services, Inc. ("CPS"), a subsidiary of United Agri Products, Inc., is a foreign corporation in good standing in the State of Illinois, Inc. CPS' corporate headquarters is located at 7251 W 4th Street Greeley, CO 80634. CPS sells feed by retail and sells farm supplies by both retail and wholesale. CPS' registered agent is CT Corporation Systems, 208 South LaSalle Street, Suite 814, Chicago, IL 60604.

5. At times relevant to the complaint, Respondent CPS owned and operated an agrichemical retail facility located about 1 mile southwest of Galesburg and approximately 1/4 mile east of Highway 41 in Knox County (the "Galesburg facility"). The approximately 4 acre site is located in an agricultural area. It is bordered on the east and west by cropland, on the south by County Road 10 and on the north by an unnamed tributary to Cedar Creek. Surface runoff is to the northwest, into the unnamed tributary to Cedar Creek.

6. At times relevant to the complaint, there was an office, storage building, load out pad, fertilizer tank farm with secondary containment and bulk anhydrous ammonia storage at the Galesburg facility.

7. Complainant realleges and incorporates by reference herein paragraphs 7 of Count I as paragraph 7 of this Count III.

8. On July 21, 2007, the Monmouth Fire Department and Illinois State Police responded to a spill of ammonia nitrate on Route 34 near North 11th Street in Monmouth, IL. The spill was discovered at 6:15 p.m. on July 21, 2007. According to Assistant Fire Chief Pat Spears of the Monmouth Fire Department, at least one car slid through the intersection at 11th Street and Route 34 due to the liquid fertilizer on the road surface. A Monmouth police officer followed the trail of liquid approximately 3/4 mile west and north to a tank on a semi truck and

trailer.

9. The truck was owned by RCM Transport, Inc. ("RCM") of Monmouth. RCM had been contracted to haul a fertilizer storage tank from Respondent CPS' Galesburg facility to CPS' facility in Keithsburg, IL. As the truck approached 11th Street in Monmouth, the traffic light turned red. The driver was unaware that there was liquid remaining in the tank at the time of transport. The truck driver hit the brakes and the liquid in the tank came forward and blew the lid open on the top of the steel tank. The liquid then spilled onto Route 34.

10. Respondent's personnel at the Galeburg facility told an Illinois EPA field inspector that it was their belief that the tank was empty when it was loaded on the truck for transport. The valve on the bottom of the tank had been opened to allow the contents to drain into the secondary containment prior to the tank being loaded on the truck. Nothing came out of the valve when Respondent's employee opened the valve and he assumed the tank was empty. Upon evaluation after the spill, Respondent's personnel concluded the valve must have been plugged, not allowing the contents to drain out.

11. The contents of the tank was 28 percent nitrogen solution. On July 23, 2007, Respondent's personnel pumped out the liquid remaining in the tank that was the source of the road spill. The company pumped out approximately 750 to 800 gallons. Responders estimated that approximately 200 gallons spilled on the road in Monmouth.

12. On July 23, 2007, an Illinois EPA inspector who was investigating the road spill visited the Galesburg facility to inspect the site where the tank had originated. At the time of the inspection, it was apparent that three upright storage tanks had recently been removed from the tank farm area at the Galesburg facility.

13. At the time fo the July 23, 2007 inspection, the Illinois EPA inspector observed significant staining on the surface of the gravel lot on the north side of the load out area at the

Galesburg facility. The yellow colored stain extended north from the load out pad into a low area of liquid ponded on site. It was apparent that liquid from the fertilizer operation was disposed onto the gravel surface of the facility. This liquid accumulated in the area northwest of the fertilizer tank farm with subsequent discharge into the unnamed tributary to Cedar Creek on the north side of the facility. Due to dry conditions at the time of the inspection, there was no runoff occurring from this ponded area at the time of the field visit. The field inspector collected a sample of the accumulation of liquid on the surface of the site located northwest of the fertilizer tank farm. The liquid was amber in color, similar to nitrogen fertilizer solution. The analytical results indicated the following: 8510 mg/l ammonia; 79 mg/l biological oxygen demand; 393 mg/l suspended solids; 5770 mg/l nitrate/nitrite. At the time of the inspection, a release of anhydrous ammonia was occurring from the Galesburg facility.

14. Anhydrous ammonia was stored in two large tanks on the northeast portion of the Galesburg facility. At the time of the inspection, numerous anhydrous ammonia nurse tanks were parked on site.

15. Respondent CPS has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the release of liquid fertilizer from its Galesburg facility to an unnamed tributary of Cedar Creek.

16. The Respondent CPS has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to an unnamed tributary of Cedar Creek.

17. The discharge of contaminants from the Respondent's facility has caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural,

recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

18. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

19. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

A. Find that Respondent Crop Production Services, Inc. has violated Section 12 (a) and (d) of the Act, 415 ILCS 5/12(a) and (d);

B. Order the Respondent from to cease and desist further violations of the Act and associated regulations pursuant to section 42(e) of the Act, 415 ILCS 5/42(e);

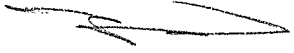
C. Assess against the Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

D. Grant such other and further relief as the Board deems appropriate.

Respectfully Submitted,

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

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

BY: 
THOMAS DAVIS, Bureau Chief
Assistant Attorney General
Environmental Bureau

Of Counsel

JANE E. MCBRIDE

Assistant Attorney General

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: 4/02/09