

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

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	PCB 08-7
)	(Enforcement – Water)
v.)	
)	
UNION PACIFIC RAILROAD COMPANY,)	<u>VIA ELECTRONIC FILING</u>
a Delaware corporation,)	
)	
Respondent.)	

**AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the parties filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2010) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2010).

Electronic Filing - Received, Clerk's Office, March 7, 2011

WHEREFORE, Complainant and Respondent, request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



ZEMEHERET BEREKET-AB
Environmental Bureau
Assistant Attorneys General
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Chicago, Illinois 60602
(312) 814-3094

DATE: March 7, 2011

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), 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 (2010).

3. At all times relevant to the Complaint, Respondent was and is a Delaware corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owns and operates a classification yard, the Proviso Yard, located at 5050 W. Lake Street, Melrose Park, Illinois and an intermodal facility, Global II, located at 301 W. Lake Street, Northlake, Illinois, Cook County.

4. According to the Respondent, Union Pacific acquired the former Chicago & Northwestern Railway Company ("CNW") in 1995. The CNW formerly operated the Proviso Yard and Global II. Since its acquisition of the CNW, Union Pacific has used structural and non-structural activities to mitigate storm water impacts at the Proviso Yard and Global II, including the effects of off-site and/or residual subsurface pollution.

5. On November 23, 2005, the Illinois EPA inspected the Proviso Yard facility and observed rainbow and silver colored sheen along the length of the former oil/water separator structure located there, continuing past the final weir structure, and, ultimately, in Mud Creek. This oil/water separator was owned and operated by the Respondent and was used to treat stormwater flows from the Proviso Yard.

6. On February 19, 2006, diesel fuel was discharged at the Global II intermodal facility when a third party, non-railroad contractor released approximately 400 gallons of diesel fuel.

7. The February 19, 2006, diesel fuel release entered the storm sewer system which discharges to a detention pond locally referred to as "Miller's Pond."

8. On December 23, 2005, and April 25, 2006, respectively, the Illinois EPA sent violation notices to Respondent regarding the oil sheen observed at the Proviso Yard and the February 19, 2006, diesel fuel discharge at the Global II intermodal facility.

9. On January 30, 2006, and June 6, 2006, respectively, Respondent responded to the violation notices and proposed compliance commitment agreements ("CCAs").

10. On February 28, 2006, and July 6, 2006, respectively, the Illinois EPA rejected Respondent's CCAs.

11. On June 14, 2006, and September 1, 2006, respectively, the Illinois EPA sent to Respondent notices of intent to pursue legal action ("NIPLA").

12. On July 18, 2006, and October 3, 2006, respectively, meetings were held pursuant to the NIPLAs.

B. Allegations of Non-Compliance

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

Count I: Causing, Threatening or Allowing Water Pollution: in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);

Count II: Creating a Water Pollution Hazard: in violation of Section 12(d) of the Act, 425 ILCS 5/12(d) (2010);

Count III: Failure to Comply with the Terms and Conditions of the NPDES Permit: in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and 35 Ill. Adm. Code 309.102(a);

Count IV: Violation of Water Quality and Effluent Standards: in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010, and 35 Ill. Adm. Code 302.203 and 304.105.

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent denies the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

In June 2003, Union Pacific entered the Proviso Yard into the Illinois EPA's voluntary Site Remediation Program (SRP # 0311865222) to address issues associated with storm water and residual subsurface contamination at the site.

In summer 2005, Union Pacific completed improvements on the storm sewer adjacent to the Diesel Shop. These improvements replaced or slip-lined approximately 1,500 feet of underground corrugated metal pipe. At the same time, Union Pacific installed a remediation trench beneath the Diesel Shop fueling area to collect residual FPH.

In connection with these improvements, Union Pacific also constructed a new outdoor fueling facility at the Diesel Shop to replace the existing one. The improvements to the fueling facility included a PVC secondary containment liner beneath a new concrete slab, new track pans and a new inspection pit. The Diesel Shop fueling upgrade was completed by summer 2006.

In January 2006, TRC Environmental advised Illinois EPA on behalf of Union Pacific of additional planned storm water improvements at the Proviso Yard and Global II. These included

plans to: (1) segregate the off-site BFI/Onyx storm water flows; (2) demolish the then-existing weir structure and replace it with a new oil-water separator; (3) install an oil-water separator at the Global II tractor fueling containment area; and (4) install an oil-water separator at the Global II crane wash pad.

The oil-water separator Union Pacific identified for Illinois EPA as part of the additional improvements was a Vortechs Model 16000 unit. This technology was chosen as a best practice to manage sediment and hydrocarbon loads in storm water.

Construction began on replacement of the weir structure in November 2006. The new oil-water separator at the outfall to Mud Creek was operational by May 2007. Union Pacific provided Illinois EPA with written confirmation of the start and completion of construction on the weir replacement project in December 2006 and June 2007, respectively.

In 2008, storm water from the two maintenance areas at Global II (the tractor fueling area and crane wash pad) was segregated from clean storm water flows by installing new oil-water separators at each location. This work was completed in 2009.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for

all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2010), 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, Complainant states as follows:

1. The presence of oil sheens and diesel fuel in Mud Creek caused water quality and effluent standard violations in the receiving stream.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Implementing measures to prevent the presence of oil sheens and discoloration in the receiving stream was both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board Regulations.

In response to factors Nos. 4-5, Respondent states as follows:

4. The Proviso Yard was entered into the Illinois EPA's voluntary Site Remediation Program (SRP # 0311865222) in 2003 to address the technical practicability and economic reasonableness of reducing or eliminating residual subsurface contamination in storm water flows at the site.

5. The Proviso Yard and Global II were at all times in compliance with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2010), 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,⁶ 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, Complainant states as follows:

1. Through its actions/inaction, Respondent allowed petroleum products to contaminate surface waters and possibly groundwater. The sheening from the 2005 incident was pronounced in the receiving waters. Because no single source or event had been uncovered to account for the sheening, it is unknown how long this situation was occurring. The majority of the 2006 release was recovered or had discharged downstream off Respondent's site within a few days of the initial release.

2. Although Respondent claims to have investigated the 2005 discharge of contaminants, it has not been able to pinpoint a source or sources of the contamination.

Respondent has been slip-lining the storm sewer line in question since 2003 and has implemented plans to improve its existing oil/water separator and to add additional separators at other points on its property.

3. Economic benefits accrued by Respondent are accounted for in the \$20,000.00 penalty agreed herein.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty Thousand Dollars (\$20,000.00) will serve to deter further violations of the Act

and Board regulations and aid in future voluntary compliance with the Act and Board regulations.

5. Complainant and Respondent entered into a Consent Order in People v. Union Pacific Railroad Company, 98 CH 1398 where Respondent paid a civil penalty of \$80,000.00 and agreed to enter its locomotive servicing area located in West Chicago, DuPage County, Illinois, into the Illinois EPA Site Remediation Program.

6. Self-disclosure is not at issue in this matter.

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

In response to factors Nos. 1-4, Respondent states as follows:

1. Respondent denies that any release occurred at the Proviso Yard in November 2005 to cause the sheen alleged in the complaint. Furthermore, prior to its replacement, Union Pacific maintained and monitored the former weir structure at the outflow to Mud Creek on a periodic basis, including daily inspections. The outflow was sampled quarterly. Historical sampling events showed that the then-existing weir was efficient in removing oils and greases to levels below 15 ppm as required by the applicable NPDES permit (No. IL0002127).

2. The Complainant has not alleged facts showing the existence of any release at the Proviso Yard in November 2005 and has not investigated or eliminated off-site sources as the cause of the alleged sheen.

3. Respondent obtained no economic benefit from delay in compliance with any Board regulations as it claims it did not violate any Board regulations in this matter.

4. Respondent agreed to the \$20,000 civil penalty for purposes of settlement only.

Respondent has denied liability and denies that there is any need to deter further violations of the Act and Board regulations.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of Twenty Thousand Dollars (\$20,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

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

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

3. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Zemeheret Bereket-Ab
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. 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.

3. The Respondent shall comply with provisions of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$20,000.00 penalty, its commitment to comply with provisions of the Act and Board Regulations that were the subject matter of the Complaint, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of 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 July 16, 2007. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

G. Execution of Stipulation

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

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


PEOPLE OF THE STATE OF ILLINOIS


ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN, Attorney General
State of Illinois

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 3/2/11

DATE: 1/28/11

UNION PACIFIC RAILROAD

BY: _____

DATE: _____

Name: _____

Title: _____

WHEREFORE, the Parties to the Stipulation 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

ILLINOIS ENVIRONMENTAL
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DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

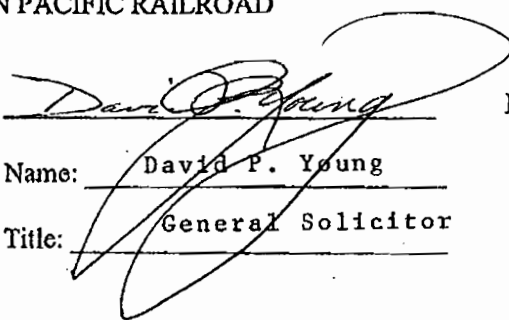
BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

UNION PACIFIC RAILROAD

BY:  _____
Name: David P. Young
Title: General Solicitor

DATE: _____

CERTIFICATE OF SERVICE

I, Zemeheret Bereket-Ab, an attorney, hereby certify that I caused a copy of the Stipulation and Proposal for Settlement, Agreed Motion to Request Relief from the Hearing Requirement, along with a Notice of Filing and a Certificate of Service, to be served upon the persons listed on the Notice of Filing, via electronic and regular mail.



ZEMEHERET BEREKET-AB