

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 12-13
	)	(Enforcement - Water)
KNIGHT HAWK COAL, LLC,	)	
a Virginia limited liability company,	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on December 19, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, 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

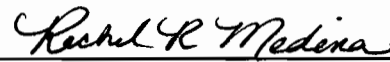
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: *Rachel R. Medina*  
Rachel R. Medina  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: December 19, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I did on December 19, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



Rachel R. Medina  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Edward J. Heller  
Reed, Heller & Mansfield  
1100 Walnut Street  
P.O. Box 727  
Murphysboro, IL 62966

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No. 12-13</b>
	)	<b>(Enforcement - Water)</b>
<b>KNIGHT HAWK COAL, LLC,</b>	)	
<b>a Virginia limited liability company,</b>	)	
	)	
<b>Respondent.</b>	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010). In support of this motion, Complainant states as follows:


1. On July 12, 2011, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY:   
Rachel R. Medina  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
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Dated: December 19, 2011

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
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<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 2012-013</b>
	)	<b>(Enforcement - Water)</b>
<b>KNIGHT HAWK COAL, LLC,</b>	)	
<b>a Virginia limited liability company,</b>	)	
	)	
<b>Respondent.</b>	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and KNIGHT HAWK COAL, LLC, a Virginia limited liability company ("Respondent") ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2010), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On July 12, 2011, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008), 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 (2008).

3. At all times relevant to the Complaint, Respondent was and is a Virginia limited liability company which operates, among other sites, Creek Paum Mine North in Ava, Jackson County, Illinois. The registered agent for the Respondent is CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

4. Creek Paum Mine North ("site") discharges alkaline mine drainage through outfalls, including outfalls 026, 027, 028, and 029. The effluent from outfall 026 is discharged to an unnamed tributary to Galum Creek. The effluent from outfalls 027, 028 and 029 is discharged to Galum Creek. Galum Creek is tributary to Beaucoup Creek, a tributary to Big Muddy River. Discharges through these outfalls are regulated pursuant to NPDES Permit No. IL0077381.

5. NPDES Permit No. IL0077381 imposes concentration limits for Total Suspended Solids ("TSS" or "Suspended Solids"), Iron, pH, Alkalinity/Acidity, Sulfates and Chlorides. The 30 Day Average limitation for TSS is 35.0 milligrams/liter ("mg/l") and the Daily Maximum limitation is 70.0 mg/l. The 30 Day Average limitation for Iron is 3.0 mg/l and the Daily Maximum limitation is 6.0 mg/l. The permit requires that the pH shall not be less than 6.0 nor greater than 9.0 and the total acidity shall not exceed total alkalinity based on a once per month grab sample. The Daily Maximum for Sulfates is 500 mg/l. The Daily Maximum for Chlorides is 500 mg/l. In addition, discharges or increases in the volume of a discharge caused by precipitation ("precipitation event") shall also be tested for Settleable Solids and pH. The Daily Maximum for Settleable Solids is 0.5 milliliters/liter ("ml/l"), and pH shall not be less than 6.0 nor greater than 9.0 at all times. Discharge Monitoring Reports ("DMRs") are submitted quarterly in accordance with the NPDES Permit to report the concentrations of contaminants in the effluent.

6. During 2008, the following effluent limit excursions were reported in the DMRs submitted by the Defendant:

<i>Date</i>	<i>Outfall</i>	<i>Reported Excursion</i>
February 29, 2008	026	Acidity, 9 mg/l, exceeded Alkalinity, 1 mg/l
February 29, 2008	029	Suspended Solids, 91 mg/l
February 29, 2008	029	Total Iron, Daily Maximum, 8.83 mg/l
March 31, 2008	026	Acidity, 8 mg/l, exceeded Alkalinity, 2 mg/l
March 31, 2008	027	Acidity, 5 mg/l, exceeded Alkalinity, 4 mg/l
April 30, 2008	026	Acidity, 12 mg/l, exceeded Alkalinity, 1 mg/l
April 30, 2008	026	Suspended Solids, Daily Maximum, 93 mg/l
April 30, 2008	028	Suspended Solids, Daily Maximum, 1265 mg/l
April 30, 2008	028	Total Iron, Daily Maximum, 22.30 mg/l
April 30, 2008	029	Suspended Solids, Daily Maximum, 134 mg/l
April 30, 2008	029	Total Iron, Daily Maximum, 6.02 mg/l

7. The following additional effluent limit excursions were reported by the Defendant in 2008:

<i>Date</i>	<i>Outfall</i>	<i>Reported Excursion</i>
January 31, 2008	026	Acidity, 9 mg/l, exceeded Alkalinity, 2 mg/l
January 31, 2008	026	Total Iron, Daily Maximum, 6.46 mg/l
January 31, 2008	027	Suspended Solids, Daily Maximum, 106 mg/l
January 31, 2008	027	Total Iron, Daily Maximum, 11.70 mg/l
January 31, 2008	029	Suspended Solids, Daily Maximum, 169 mg/l
January 31, 2008	029	Total Iron, Daily Maximum, 28.40 mg/l
May 31, 2008	027	Suspended Solids, Daily Maximum, 183 mg/l
May 31, 2008	027	Total Iron, Daily Maximum, 10.40 mg/l
May 31, 2008	028	Suspended Solids, Daily Maximum, 110 mg/l
May 31, 2008	028	Total Iron, Daily Maximum, 7.60 mg/l
July 31, 2008	026	pH, 4.76
July 31, 2008	026	Acidity, 44 mg/l, exceeded Alkalinity, 2 mg/l
July 31, 2008	026	Sulfate, 626 mg/l
July 31, 2008 (Precipitation Event)	026	pH, 4.44
August 22, 2008 (Precipitation Event)	026	pH, 4.20
December 31, 2008	026	Acidity, 34 mg/l, exceeds Alkalinity, 2 mg/l
December 31, 2008	026	Sulfate, 677 mg/l
December 31, 2008	028	Suspended Solids, Daily Maximum, 1188 mg/l
December 31, 2008	028	Total Iron, Daily Maximum, 24.6 mg/l



8. During 2009, the following effluent limit excursions were reported by the

Defendant:

<i>Date</i>	<i>Outfall</i>	<i>Reported Excursion</i>
March 31, 2009	028	Suspended Solids, Daily Maximum, 83 mg/l
April 30, 2009	028	Suspended Solids, Daily Maximum, 73 mg/l
April 30, 2009	029	Suspended Solids, Daily Maximum, 77 mg/l
September 30, 2009 (Precipitation Event)	028	Settleable Solids, 0.6 ml/l

9. During 2010, the following effluent limit excursions were reported by the

Defendant:

<i>Date</i>	<i>Outfall</i>	<i>Reported Excursion</i>
March 31, 2010	029	Suspended Solids, Daily Maximum, 71 mg/l

#### **B. Allegations of Non-Compliance**

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

##### **Count I: NPDES Permit Violations**

By discharging effluent with levels of TSS and Iron in excess of the limitations for these contaminants in Respondent's NPDES Permit, Respondent violated Section 304.141 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.141.

By causing, threatening, or allowing the discharge of effluent with excess levels of TSS, Iron, or Acidity/Alkalinity into the environment so as to cause or tend to cause water pollution or so as to violate regulations adopted by the Pollution Control Board, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

By causing, threatening, or allowing the discharge of effluent with levels of TSS, Iron or Acidity/Alkalinity in excess of Respondent's NPDES Permit concentration limits, Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

##### **Count II: Additional NPDES Permit Violations**

By discharging effluent with levels of TSS, Iron, Sulfate, or Settleable Solids in excess of the limitations for these contaminants in Respondent's NPDES Permit, Respondent violated Section 304.141 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.141.

By causing, threatening, or allowing the discharge of effluent with excess levels of TSS, Iron, Sulfate, Settleable Solids, pH or Acidity/Alkalinity into the environment so as to cause or tend to cause water pollution or so as to violate regulations adopted by the Pollution Control Board, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

By causing, threatening, or allowing the discharge of effluent with levels of TSS, Iron, Sulfate, Settleable Solids, pH or Acidity/Alkalinity in excess of Respondent's NPDES Permit concentration limits, Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

**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 does not affirmatively admit 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.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), provides as follows:

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

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

In response to these factors, the Parties to the Stipulation state the following:

1. The unlawful discharge of effluent above permit limitations threatened human health and the environment.
2. The parties agree that the Respondent's operations are of economic benefit to the surrounding community. Any social benefit is derived primarily from those employed by the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Compliance with the terms of Respondent's NPDES permit, the Act, and Board regulations is both technically practicable and economically reasonable.
5. Respondent has subsequently complied 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)(2008), provides as follows:

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Parties to the Stipulation state as follows:

1. The Respondent reported 35 excursions in their discharge monitoring reports between January 2008 and March 2010.
2. While Respondent has since taken diligent steps towards compliance, including the use of a flocculant to improve monitoring results, they failed to take a more proactive approach with erosion control to avoid the violations.
3. The Respondent enjoyed the economic benefit of delaying the use of flocculant and other techniques to prevent the effluent problem at the site.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fourteen Thousand Seven Hundred Fifty Dollars (\$14,750.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent has no previously adjudicated violations of the Act.

6. The violations were self-reported in Respondent's discharge monitoring reports.

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

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

The Respondent shall pay a civil penalty in the sum of Fourteen Thousand Seven Hundred Fifty Dollars (\$14,750.00) 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.

**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:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**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 cease and desist from future violations 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 \$14,750.00 penalty, its commitment to cease and desist as contained in Section V.D. above, 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 12, 2011. 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, 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.

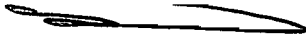
PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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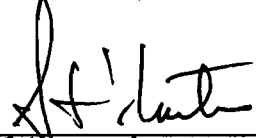
BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE: 12/19/11

DATE: \_\_\_\_\_

KNIGHT HAWK COAL, LLC

BY:   
\_\_\_\_\_  
Steve A. Carter  
\_\_\_\_\_  
President

DATE: 11/18/11



FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY:



JOHN J. KIM  
Interim Director

DATE:

12/14/14