

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No.
	)	(Enforcement)
EVERGREEN FS, INC.,	)	
an Illinois agricultural cooperative,	)	
	)	
Respondents.	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

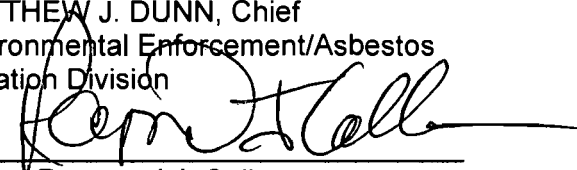
PLEASE TAKE NOTICE that on February 28, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a COMPLAINT, MOTION FOR RELIEF FROM HEARING 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:   
 Raymond J. Callery  
 Assistant Attorney General  
 Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 28, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I did on February 28, 2012, 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, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.

A handwritten signature in black ink, appearing to read "Raymond J. Callery", written over a horizontal line.

RAYMOND J. CALLERY  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

**Katherine D. Hodge**  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No.</b>
	)	<b>(Enforcement)</b>
<b>EVERGREEN FS, INC.,</b>	)	
<b>an Illinois agricultural corporation,</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. A Complaint and Stipulation and Proposal for Settlement are being filed simultaneously 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).

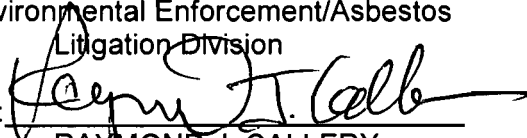
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY:

  
RAYMOND J. CALLERY  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 28, 2012

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
<i>ex rel.</i> <b>LISA MADIGAN, Attorney</b>	)	
<b>General of the State of Illinois,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>NO.</b>
	)	
<b>EVERGREEN FS, INC.,</b>	)	
<b>an Illinois agricultural cooperative,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINT**

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, EVERGREEN FS, INC., an Illinois agricultural cooperative, as follows:

**COUNT I**  
**WATER POLLUTION VIOLATIONS**

1. This Complaint is brought by 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 the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

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 (2010), and 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 (2010) after providing the Respondent with notice and the opportunity for a meeting with the

Illinois EPA.

4. Respondent, EVERGREEN FS, INC. is an Illinois agricultural cooperative with its principal office located at 402 N. Hershey Road, P.O. Box 1367, Bloomington, Illinois 61702-1367.

5. Respondent distributes agricultural chemicals and seeds and operates grain elevators from several branch facilities in five Illinois counties.

6. On April 28, 2010, Respondent applied various herbicides to a 27 acre corn field located just northeast of the City of Washington in Section 13 of Washington Township, Tazewell County, Illinois ("Site").

7. Among the herbicides applied to the Site were Valor XLT, Roundup, and 2, 4-D.

8. One of the two main active ingredients in Valor XLT is Flumioxazin. Flumioxazin is toxic to aquatic life.

9. On May 1, 2010, a fish kill on Farm Creek within the City of Washington, Illinois was reported to the Illinois Department of Natural Resources ("Illinois DNR").

10. Farm Creek flows through the City of Washington, Illinois in a direction generally from the northeast to the southwest and is tributary to the Illinois River.

11. On May 2, 2010, the Illinois DNR conducted an inspection of Farm Creek. The stream had a chemical odor. Rainfall the previous night had resulted in increased stream flow, cloudy water and the flushing of dead fish downstream.

12. On May 3, 2010, the Illinois Environmental Protection Agency ("Illinois EPA") conducted an inspection of Farm Creek and observed dead fish at two locations in the stream.

13. On May 4, 2010, the Illinois EPA re-inspected Farm Creek at locations further

upstream. Dead fish were observed at additional locations.

14. On May 4, 2010, the Illinois EPA inspected that portion of Farm Creek adjacent to the Site. The Site is located on the north side of Farm Creek and slopes significantly toward the stream.

15. On May 4, 2010, the Illinois DNR re-inspected Farm Creek adjacent to the Site. The Illinois DNR observed live minnows and live smallmouth bass upstream of the Site but no live fish in the section of the stream along the Site. There were three to four eroded channels in the north bank of Farm Creek where runoff from the Site drains into the stream.

16. On May 7, 2010, the Illinois EPA returned to the Site and measured the slope and the width of the grass buffer at various locations. One of the eroded channels on the north bank of Farm Creek measured approximately one foot wide by eight feet long.

17. The Illinois DNR determined that the fish kill totaled at least five hundred fifty-eight (558) fish and extended for approximately three miles.

18. Section 12 of the Act, 415 ILCS 5/12 (2010), 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.

\* \* \*



19. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following

definition:

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

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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 is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

21. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), 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 this State.

22. Section 302.210 of the Pollution Control Board's Water Pollution Regulations, 35

Ill. Adm. Code 302.210, provides, in pertinent part:

Waters of the State shall be free from any substance or combination of substances in concentrations toxic or harmful to human health, or to animal, plant or aquatic life . . .

\* \* \*

23. Respondent caused, threatened or allowed the discharge of agricultural chemicals into Farm Creek so as to cause or tend to cause water pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

24. Respondent caused the discharge of toxic substances into Farm Creek resulting in a fish kill, in violation of 35 Ill. Adm. Code 302.210.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, EVERGREEN FS, INC.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010) impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

**COUNT II**  
**WATER POLLUTION HAZARD VIOLATION**

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 of Count I as paragraphs 1 through 21 of this Count II.

22. Respondent applied herbicides to the Site in such a manner that it left deposits on both the ground and the stream bank and created a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, EVERGREEN FS, INC.:

- A. Authorizing a hearing in this matter at which time the Respondent will be

required to answer the allegations herein;

B. Finding the Respondent has violated the Act and the regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010) impose a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board may deem appropriate.

**COUNT III**  
**FISH KILL LIABILITY**

1-24. Complainant realleges and incorporates by reference herein paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count III.

25. Section 42(c) of the Act, 415 ILCS 5/42(c) (2010), provides, in pertinent part:

(c) Any person that violates this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

26. The value of the fish and expenses incurred by the Illinois DNR in investigating the fish kill amounted to \$1,206.33.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, EVERGREEN FS, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be

required to answer the allegations herein;

B. Finding the Respondent has violated the Act and the regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c) (2010), assess to the Respondent the reasonable value of the fish and aquatic life destroyed due to the discharge of contaminated storm water from the Site, and order that such amount be paid to the Wildlife and Fish Fund in the State Treasury; and

E. Granting such other relief as the Board may deem appropriate.

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/Asbestos  
Litigation Division

BY: 

THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

Of Counsel

RAYMOND J. CALLERY  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

Dated: February 28, 2012.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
<i>ex rel.</i> <b>LISA MADIGAN, Attorney</b>	)	
<b>General of the State of Illinois,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>No.</b>
	)	
<b>EVERGREEN FS, INC.,</b>	)	
<b>an Illinois agricultural cooperative,</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 EVERGREEN FS, INC., an Illinois agricultural cooperative ("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 alleged 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 resolution of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. The Complaint in this matter 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 (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. The Respondent is an Illinois agricultural cooperative with its principal office located at 402 N. Hershey Road, P.O. Box 1367, Bloomington, Illinois 61702-1367.

4. The Respondent distributes agricultural chemicals and seeds and operates grain elevators from several branch facilities in five Illinois counties.

5. On April 28, 2010, the Respondent applied various herbicides to a 27 acre corn field located just northeast of the City of Washington in Section 13 of Washington Township, Tazewell County, Illinois ("Site").

6. Among the herbicides applied to the Site were Valor XLT, Roundup, and 2, 4-D.

7. One of the two main active ingredients in Valor XLT is Flumioxazin. Flumioxazin is toxic to aquatic life.

8. On May 1, 2010, a fish kill on Farm Creek within the City of Washington, Illinois was reported to the Illinois Department of Natural Resources ("Illinois DNR").

9. Farm Creek flows through the City of Washington, Illinois in a direction

generally from the northeast to the southwest and is tributary to the Illinois River.

10. Subsequent investigation by the Illinois EPA determined that the cause of the fish kill may have been the improper application of agricultural chemicals at the Site by Respondent.

11. The Illinois DNR determined that the fish kill totaled at least five hundred fifty-eight (558) fish and extended for approximately three miles.

12. The value of the fish and the expenses incurred by the Illinois DNR in investigating the fish kill amounted to \$1,206.33.

**B. Allegations of Non-Compliance**

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

- |            |  |
|------------|--|
| Count I:   | <u>Water Pollution Violations</u><br>Caused, threatened or allowed the discharge of contaminants.<br>415 ILCS 5/12(a)<br><br>Caused the discharge of toxic substances resulting in a fish kill.<br>35 Ill. Adm. Code 302.210 |
| Count II:  | <u>Water Pollution Hazard Violation</u><br>Deposited contaminants in such a manner as to create a water pollution hazard.<br>415 ILCS 5/12(d)  |
| Count III: | <u>Fish Kill Liability</u><br>Caused the death of fish or aquatic life.<br>415 ILCS 5/42(c)  |

**C. Non-Admission of Violations**

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

**D. Compliance Activities to Date**

The Respondent has developed and implemented procedures for the application of agricultural chemicals near water sources.

**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's 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, the Parties to the Stipulation state the following:

1. The alleged injury or interference with the health, general welfare and physical property of the People was the contamination of Farm Creek and the resulting fish kill. The Illinois DNR determined that the fish kill totaled at least five hundred fifty-eight (558) fish and extended for approximately three miles.
2. Herbicides and other agricultural chemicals are appropriately used for agricultural production.
3. Herbicides and other agricultural chemicals can be safely applied if adequate procedures are observed by the applicator.
4. The Parties to the Stipulation agree that complying with the Act and the Board's regulations is technically practicable and economically reasonable; and
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) (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," 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. Complainant alleges that Respondent discharged or caused to be discharged an herbicide into waters of the State, causing a fish kill. The application of the herbicide occurred on April 28, 2010.
2. The Respondent has developed and implemented procedures for the application of agricultural chemicals near water sources.
3. Complainant does not allege that Respondent realized an economic benefit as a result of the alleged violations of the Act and the Board's regulations.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eleven Thousand Dollars (\$11,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and the Board's regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.
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 Eleven Thousand Dollars (\$11,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### B. 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:

Raymond J. Callery  
Environmental Enforcement Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Fish Kill Liability**

Respondent shall make a further payment of Twelve Hundred Six Dollars and Thirty-Three Cents (\$1,206.33) to the State of Illinois Wildlife and Fish Fund for recovery of the value of the fish killed and investigation expenses within thirty (30) days from the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, for deposit in the State Wildlife and Fish Fund, and shall be forwarded as specified in Section V, paragraph C above.

**E. Future Compliance**

1. 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's regulations.

2. The Respondent shall cease and desist from future violations of the Act and the Board's regulations that were the subject matter of the Complaint.

3. The Respondent and all its employees/contractors shall comply with the following procedures regarding the application of agricultural chemicals:

- a) Read and follow all herbicide/pesticide label directions;
- b) Identify any stream or body of water adjacent to or within a field to be sprayed, prior to the actual beginning of an application, and maintain an adequate buffer between the spray application and a body of water;
- c) Acquire and review a field map prior to spray application;
- d) Familiarize applicators with proposed spray fields prior to pesticide spray application. Walk the field prior to pesticide spray application to discern and record important field characteristics including, but not limited to, surrounding/bordering features, residential areas, field tile drainage inlets, waterways, streams, etc.;
- e) Do not apply pesticides where or when runoff is likely to occur; and
- f) Do not apply pesticides when obvious and imminent weather conditions favor drift from treated areas.

**F. Release from Liability**

In consideration of the Respondent's payment of the \$11,000.00 penalty, its further payment of \$1,206.33 to the State of Illinois Wildlife and Fish Fund, its commitment to cease and desist as contained in Section V, paragraph E above,

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 the Board's 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 in this matter. 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 other 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 including those individuals employed by or contracted with the Respondent.

**G. Enforcement**

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.

**H. 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,

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

LISA MADIGAN  
Attorney General  
State of Illinois

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

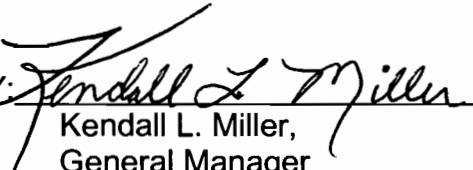
BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KIM, Interim Director

DATE: 2/27/12

DATE: 2/22/12

EVERGREEN FS, INC.:

BY:   
Kendall L. Miller,  
General Manager

DATE: 1/19/12