

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 07-95
)	(Enforcement)
AET ENVIRONMENTAL, INC. AND)	
E.O.R. ENERGY, LLC,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List


PLEASE TAKE NOTICE that on June 27, 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 MOTION FOR SUMMARY JUDGMENT AGAINST E.O.R. ENERGY, LLC, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

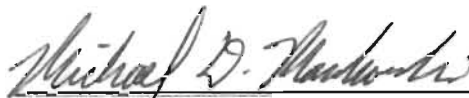
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
Michael D. Mankowski
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on June 27, 2012, cause to be served by ~~First Class~~ ^{Certified} 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 and MOTION FOR SUMMARY JUDGMENT AGAINST E.O.R. Energy, LLC upon the persons listed on the Service List.



Michael D. Mankowski
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

James Hamilton
E.O.R. Energy, LLC
14 Lakeside Lane
Denver, CO 80212

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,

v.

AET ENVIRONMENTAL, INC., a Colorado
corporation, E.O.R. ENERGY, LLC, a
Colorado limited liability company,

Respondents.

PCB No. 07-95
(Enforcement)

MOTION FOR LEAVE TO EXCEED PAGE LIMIT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby moves for leave to file a Motion for Summary Judgment in excess of 50 pages and in support thereof states the following:

1. Section 101.302(k) of the Board's General Rules, 35 Ill. Adm. Code 101.302(k), states that no motion, brief in support of motion, or brief may exceed 50 pages without prior approval of the Board or hearing officer.
2. All of the violations alleged in the State's 5-count Complaint against E.O.R. Energy, LLC, cannot be dealt with completely within the normal 50 page limit of Section 101.302(k) of the Board's General Rules.
3. The Complainant respectfully requests leave to file a Motion for Summary Judgment against E.O.R. Energy, LLC, which exceeds the Board's 50 page limit.

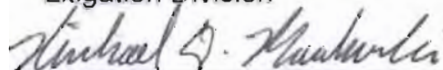
WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests leave to file a Motion for Summary Judgment Against E.O.R. Energy, LLC, to the Board in excess of 50 pages.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

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

BY:



MICHAEL D. MANKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 6/26/2012

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

v.

AET ENVIRONMENTAL, INC., a Colorado corporation, E.O.R. ENERGY, LLC, a Colorado limited liability company,

**PCB No. 07-95
(Enforcement)**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA

I. INTRODUCTION

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725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a) and 725.274 for the improper management of hazardous waste. Finally, Count V alleges violations of Section 12(g) of the Act, 415 ILCS 5/12(g) (2004), and Sections 704.121 and 704.203 of the Board's Underground Injection Control Program Regulations, 35 Ill. Adm. Code 704.121 and 704.203 for noncompliance with the Underground Injection Control Permit Program.

On June 18, 2007, Respondent filed an Answer to the Complaint. The June 18, 2007 Answer was unsworn and submitted by James Hamilton III. James Hamilton III is not an attorney licensed to practice law in the State of Illinois. As such, no attorney had filed an appearance on behalf of EOR with the June 18, 2007 Answer. In June of 2007, EOR was unrepresented before the Board. On October 18, 2007, attorney David S. O'Neill filed an appearance for EOR. On October 18, 2007, David S. O'Neill filed an Answer to the Complaint on behalf of the Respondent. The October 18, 2007 Answer pleaded no affirmative defenses. On January 24, 2008, David S. O'Neill, filed a motion to withdraw his appearance on behalf of EOR. On March 21, 2008, the People served its Request to Admit Facts on Respondent, EOR, via first-class mail. On January 20, 2009, Respondent claimed that it did not receive the People's Request to Admit Facts. The hearing officer requested that the People re-submit their Request to Admit Facts. The People served a second copy of the Request to Admit Facts on Respondent, via first-class mail, on January 22, 2009. On February 18, 2009, Diane F. O'Neill, an attorney-at-law licensed and registered to practice law, filed an appearance for EOR. On April February 20, 2009, Respondent served on the People an unsigned Answer to Complainant's Request to Admit Facts. On March 15, 2010, Diane O'Neill filed a motion to withdraw her appearance on behalf of EOR.

Respondent is currently unrepresented before the Board.

On August 17, 2010, the State filed a Motion to Deem Facts Admitted by EOR. Complainant's Motion to Deem Facts Admitted by EOR asked the Board to deem admitted all of the facts listed in Complainant's Request to Admit Facts by EOR. On September 16, 2010, the Board granted Complainant's Motion to Deem Facts Admitted. *People v. AET Environmental, Inc. and E.O.R. Energy LLC.*, PCB 07-95 slip op. at 3 (September 16, 2010). As such, all of the matters of fact included in Complainant's Motion to Deem Facts Admitted are taken as admitted. *Id.* Complainant's Request to Admit Facts by EOR is attached to and incorporated by reference into this motion as Exhibit A ("Exhibit A" or "Complainant's Request to Admit Facts by EOR").

The Respondent's admissions, together with the affidavit and exhibits supporting this motion, contain all material facts necessary to establish liability on Counts I through V of the Complaint and Complainant's entitlement to penalties. Accordingly, since there is no genuine issue of material fact, Complainant is entitled to judgment as a matter of law.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Section 101.516(b) of the Board's Procedural regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

Summary judgment is appropriate when the pleadings, deposition, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); see *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). A genuine issue of material fact exists when "the material facts are disputed, or, if [they] are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adames v. Sheahan*, 233 Ill. 2d 276,

296, 909 N.E.2d 742, 754 (2009).

When ruling on a motion for summary judgment, the facts "must be construed strictly against the movant and liberally in favor of the opponent." *Id.*, 233 Ill. 2d at 295-96, 909 N.E. 2d at 754. A party opposing a motion for summary judgment may not rest on his pleadings, but must "present a factual basis which would arguably entitle [him] to judgment." *Gauthier v. Westfall*, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994). However, summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to relief, based on all the evidence contained in the filings, is "clear and free from doubt." *Dowd*, 181 Ill. at 483, 693 N.E.2d at 370, citing *Purtill v. Hess*, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986).

III. BURDEN OF PROOF

Section 31(e) of the Act, states the burden of proof applicable to enforcement proceedings before the Board:

- (e) In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof. If such proof has been made, the burden shall be on the respondent to show that compliance with the Board's regulations would impose an arbitrary or unreasonable hardship.

415 ILCS 5/31(e) (2008). The Board may only find in the State's favor if it has proven each element of the claim by a preponderance of the evidence. *People v. Chalmers*, PCB 96-111, slip op. at 4 (Jan. 6, 2000); *Processing and Books, Inc. v. PCB*, 64 Ill. 2d 68, 75-76, 351 N.E.2d 865 (1976); *Village of South Elgin v. Waste Management of Illinois, Inc.*, PCB 03-106 (Feb. 20, 2003); citing *People v. Fosnock*, PCB 41-1, slip op. at 19 (Sept. 15, 1994). A proposition is proved by a preponderance of the evidence when it is probably more true than not. *Village of South Elgin*, slip op. at 19; citing *Nelson v. Kane County Forest Preserve*, PCB 94-244 (July 18, 1996).

IV. ISSUES

The People's five-count Complaint alleges numerous violations of the Act and Board regulations. As such, the issues before the Board are manifold.

A. Count I: Hazardous Waste Transport Violations

The Board must decide whether EOR violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004). More specifically, the Board must determine if EOR transported waste into the State of Illinois for disposal, treatment, storage or abandonment, at a site or facility which does not meet the requirements of the Act and of regulations and standards thereunder.

B. Count II: Hazardous Waste Storage and Disposal Violations

The Board must decide whether EOR violated Sections 21(e) and (f)(1) of the Act, 415 ILCS 5/21(e) and (f)(1) (2004). More specifically, the Board must determine if EOR stored, disposed, and/or abandoned wastes, including hazardous wastes, at a site which does not meet the requirements of the Act and of regulations and standards thereunder. The Board must also determine if EOR conducted a hazardous waste-storage operation without a RCRA permit.

C. Count III: Operation Without a Hazardous Waste Permit

The Board must decide whether EOR violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), and Sections 703.121(a) and (b) and 703.151(a)(2) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b) and 703.151(a)(2). More specifically, the Board must decide if EOR:

1. owned or operated a hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation;
2. conducted a hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation without a RCRA permit for the hazardous waste management facility;
3. failed to acquire a RCRA permit to store hazardous waste at a facility during its

active life;

4. failed to apply for a RCRA permit within 30 days after being subject to the standards of 35 Ill. Adm. Code, Part 725 or 726.

D. Count IV: Hazardous Waste Management Violations

The State has alleged numerous hazardous waste management violations by EOR.

Therefore, the Board must decide if EOR violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), and Sections 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278. More specifically, the Board must determine if EOR:

1. owned or operated a hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation;
2. conducted a hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation without a RCRA permit for the hazardous waste management facility;
3. failed to apply to USEPA for a USEPA identification number in accordance with the USEPA notification procedures;
4. failed to obtain a detailed chemical and physical analysis of a representative sample of any hazardous waste to be brought to its facility, prior to any treatment, storage, or disposal of the hazardous waste;
5. failed to follow proper security procedures to prevent unauthorized entry, including use of a surveillance system, fencing, and signs at its facility;
6. failed to conduct inspections according to a written schedule to identify and correct

conditions that might lead to a release of hazardous waste constituents or a threat to human health;

7. failed to follow procedures for training its personnel and documenting said training;
8. failed to take all necessary precautions to prevent the ignition or reaction of ignitable or reactive wastes;
9. failed to maintain and operate its facility to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment;
10. failed to implement and maintain communications, alarms, spill controls and fire protection systems at its facility;
11. failed to familiarize the local police, fire department and hospital concerning the type of hazardous waste stored at the site;
12. failed to develop a contingency plan for its facility;
13. failed to designate an employee of the facility as the emergency coordinator with the responsibility to coordinate all emergency response measures;
14. failed to prepare Illinois EPA manifests and make sure the manifests accompany any hazardous waste during transport;
15. failed to keep a written operating record at its facility, until closure, including: the quantity of each hazardous waste received; methods used for its treatment, storage or disposal; the location of each hazardous waste within the facility and the quantity at each location;
16. failed to prepare and submit, using forms provided by the Illinois EPA, annual reports for the hazardous waste acid stored at the site;
17. failed to develop and keep a written closure plan on site within six months after the

- effective date of the rule that first subjects a facility to provisions of Section 725;
18. failed to prepare a detailed written estimate, in current dollars, of the cost of closing the storage unit for any hazardous waste;
 19. failed to establish financial assurance for closure of its facility;
 20. failed to have facility personnel inspect the building containing the hazardous waste acid containers at least weekly for leaks or deterioration;
 21. failed to manage all hazardous waste placed in a container in accordance with the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724.

E. Count V: Underground Injection Control Permit Program

The Board must decide whether EOR violated Section 12(g) of the Act, 415 ILCS 5/12(g), and Sections 704.121 and 704.203 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 704.121 and 704.203. More specifically, the Board must determine whether EOR caused, threatened or allowed the underground injection of contaminants without a UIC permit.

V. SUMMARY OF THE RELIEF SOUGHT BY COMPLAINANT

Complainant seeks a finding of liability by EOR on all Counts of the Complaint, and assessment of a civil penalty in the amount of \$200,000. Complainant also requests that the Board order Respondent to cease and desist from future violations of the Act and Illinois Pollution Control Board regulations.

VI. FACTUAL BACKGROUND

E.O.R. Energy, LLC ("EOR") is a Colorado company based in Denver, Colorado, which is involved in the petroleum production industry.¹ EOR has two principal corporate officers, Arthur Clark ("Clark") and James Hamilton III ("Hamilton").² Both Clark and Hamilton have been

¹ October 18, 2007 Answer to Complaint ¶ 5.

² Complainant's Request to Admit Facts by EOR ¶¶ 6 & 11.

corporate officers in EOR since at least July 2002, continuing to the present date.³ Clark is also employed by a hazardous waste management company known as AET Environmental, Inc. ("AET").⁴ Clark was employed by AET in July of 2002.⁵ AET and EOR's offices are located in the same building.⁶

As part of its business, EOR controls oil leases for two oil fields near Pawnee, Illinois.⁷ The first oil field ("Rink-Truax Lease") is located north of 2050 N Road and 400 E Road, South Fork Township, Christian County, Illinois.⁸ The second oil field ("Galloway Lease") is located along Township Road 4.25E South East of the junction with Township Road 13S, Pawnee, Cotton Hill Township, Sangamon County, Illinois.⁹ On both Leases, EOR operates crude oil, coal gas and brine water injection wells (hereafter collectively known as the "EOR Wells").¹⁰ A company known as Kincaid P&P operates a facility located near the Rinx-Truax and Galloway Leases.¹¹ The facility is located off of Route 104, East of Pawnee, IL 62558 ("Kincaid P&P Site").¹² In July of 2002, and continuing until at least February of 2004, EOR paid two Kincaid P&P employees, Rick Wake ("Wake") and Charles Geary ("Geary") to service and monitor the EOR Wells.¹³

In July of 2002, AET was hired to remove and dispose of acid material from a Grand Junction, Colorado, manufacturer of custom automobile wheels, known as Luxury Wheels.¹⁴ Luxury Wheels previously used the acid material to treat aluminum automobile wheels prior to the

³ Complainant's Request to Admit Facts by EOR ¶¶ 8 & 13.

⁴ Complainant's Request to Admit Facts by EOR ¶ 9.

⁵ Complainant's Request to Admit Facts by EOR ¶ 10.

⁶ Complainant's Request to Admit Facts by EOR ¶ 17.

⁷ October 18, 2007 Answer to Complaint ¶ 6; Complainant's Request to Admit Facts by EOR ¶¶ 3-5, 76, 78-79, 81 & 83-84.

⁸ October 18, 2007 Answer to Complaint ¶ 6; Complainant's Request to Admit Facts by EOR ¶ 80.

⁹ October 18, 2007 Answer to Complaint ¶ 6; Complainant's Request to Admit Facts by EOR ¶ 82.

¹⁰ October 18, 2007 Answer to Complaint ¶ 6; Complainant's Request to Admit Facts by EOR ¶¶ 85-85 & 87.

¹¹ Complainant's Request to Admit Facts by EOR ¶ 48.

¹² Complainant's Request to Admit Facts by EOR ¶ 54.

¹³ Complainant's Request to Admit Facts by EOR ¶¶ 88-93.

¹⁴ Complainant's Request to Admit Facts by EOR ¶ 44.

chrome plating process.¹⁵ In July of 2002, Luxury Wheels stored approximately one thousand and five hundred (1500) gallons of the acid material at their facility.¹⁶ On or about July 15, 2002, the Grand Junction Fire Department ("GJFD") responded to an emergency response incident at Luxury Wheels.¹⁷ This incident was recorded in an incident report, a certified copy of which has been attached to and incorporated by reference into this motion as Exhibit B ("Exhibit B" or "Grand Junction Incident Report"). When the GJFD arrived at the Luxury Wheels site, they observed a 1500 gallon storage tank located in an attached storage building on the west side of Luxury Wheels.¹⁸ The tank was full of acid material which was fuming and producing a large orange-brown cloud.¹⁹ The GJFD stabilized the acid material using ice.²⁰ After stabilization, the acid material was pumped out of the tank and transferred to a vat near the storage room.²¹ The GJFD identified the acid material as a solution made up of phosphoric, nitric, glycolic and fluoroboric acids which were combined with a product known as Alum Etch-G.²² Alum Etch-G is a product manufactured by Atotech USA, a copy of the Atotech USA material safety data sheet ("MSDS") for Alum Etch-G has been attached to and incorporated by reference into this motion as Exhibit C ("Exhibit C" or "Alum Etch-G MSDS"). After the acid material was stabilized, Luxury Wheels contacted AET to remove and dispose of the acid material.²³ In July of 2002, AET took control of eight (8), two hundred and seventy five (275) gallon totes of the acid material from Luxury Wheels.²⁴ On or about July 18, 2002, the acid material arrived at the AET 10-day transfer

¹⁵ Complainant's Request to Admit Facts by EOR ¶ 15.

¹⁶ Grand Junction Incident Report pp. 5-6.

¹⁷ Grand Junction Incident Report pp. 5-7.

¹⁸ Grand Junction Incident Report pp. 5-7.

¹⁹ Grand Junction Incident Report pp. 5-7.

²⁰ Grand Junction Incident Report pp. 5-7.

²¹ Grand Junction Incident Report p. 6.

²² Grand Junction Incident Report p. 7.

²³ Complainant's Request to Admit Facts by EOR ¶ 14; Grand Junction Incident Report.

²⁴ Complainant's Request to Admit Facts by EOR ¶ 15.

facility in Denver, Colorado. ("AET Facility").²⁵ As an employee of AET, Clark was aware that AET was hired to dispose of the acid material.²⁶

AET attempted to dispose of the acid material at the Arvada Treatment Center ("ATC") in Arvada, Colorado and Safety Kleen (formerly known as "Clean Harbors"), in Deer Trail, Colorado.²⁷ AET created a waste profile for the acid material which was submitted to ATC ("ATC Hazardous Waste Profile"). The ATC Waste Profile is attached to and incorporated by reference into this motion as Exhibit D. AET created a Hazardous Waste Manifest ("ATC Hazardous Waste Manifest") to accompany the shipment of acid material to ATC, which is attached to and incorporated by reference into this motion as Exhibit E. In July of 2002, the acid material was rejected for disposal at ATC.²⁸ After the load of material was rejected by ATC, the ATC Hazardous Waste Manifest was modified by an AET employee for shipment to Safety Kleen ("Modified ATC Hazardous Waste Manifest"). The Modified ATC Hazardous Waste Manifest is attached to and incorporated by reference into this motion as Exhibit F. AET also prepared a profile for the acid material on a Clean Harbors form and submitted it to Safety Kleen ("Safety Kleen Hazardous Waste Profile"). The Safety Kleen Hazardous Waste Profile is attached to and incorporated by reference into this motion as Exhibit G. The acid material was also rejected for disposal at Safety Kleen.²⁹ During AET's attempts to dispose of the acid material, AET manifested it as a hazardous waste.³⁰ Both hazardous waste profiles listed the acid material as "Spent Aluminum Etchant" which was generated by the "Etching of Aluminum Wheels."³¹ The acid material was also listed as a "Waste by-product from process, D002 corrosive hazardous

²⁵ Complainant's Request to Admit Facts by EOR ¶ 16.

²⁶ Complainant's Request to Admit Facts by EOR ¶ 18.

²⁷ Complainant's Request to Admit Facts by EOR ¶¶ 20-22; ATC Hazardous Waste Profile; ATC Hazardous Waste Manifest; Safety Kleen Hazardous Waste Profile.

²⁸ Complainant's Request to Admit Facts by EOR ¶ 21.

²⁹ Complainant's Request to Admit Facts by EOR ¶ 22.

³⁰ ATC Hazardous Waste Profile; ATC Hazardous Waste Manifest; Modified ATC Hazardous Waste Manifest; Safety Kleen Hazardous Waste Profile.

³¹ ATC Hazardous Waste Profile; Safety Kleen Hazardous Waste Profile.

waste and "waste corrosive liquid."³² Although it had the option, AET failed to list the acid material as an unused chemical or product on the Safety Kleen Hazardous Waste Profile.³³ AET did describe the acid material "as having an undisclosed or prior incident associated with it which could affect the way it should be handled."³⁴ AET also stated that the acid material "may form an orange cloud under extreme heat."³⁵

Clark handled the acid material while it was at the AET Facility.³⁶ When the acid material arrived at the AET Facility, it was creating and off-gassing an orange gas.³⁷ Under Clark's direction, the acid material was stored in a semi-trailer which was left open during the daytime.³⁸ The totes containing the acid material were left slightly open to vent the orange gas which was building up in the totes.³⁹ A fan was also utilized to help remove the orange gas from the trailer.⁴⁰

While the acid material was at the AET Facility, under Clark's direction, AET added additional water, glycolic acid, and Alum Etch-G to the totes of acid material.⁴¹ After dilution, the acid material filled twelve (12) two hundred and seventy five (275) gallon plastic totes.⁴²

In August of 2002, EOR inquired if it could take possession of the acid material from AET. EOR wanted to discharge the acid material into the EOR Wells.⁴³ AET agreed and EOR, free of charge.⁴⁴ Clark and Hamilton made the decision to ship the acid material to the Kincaid P&P

³² ATC Hazardous Waste Manifest; Modified ATC Hazardous Waste Manifest; Safety Kleen Waste Profile.

³³ Safety Kleen Hazardous Waste Profile.

³⁴ Safety Kleen Hazardous Waste Profile.

³⁵ Safety Kleen Hazardous Waste Profile.

³⁶ Complainant's Request to Admit Facts by EOR ¶¶ 23-25.

³⁷ Complainant's Request to Admit Facts by EOR ¶¶ 26-27.

³⁸ Complainant's Request to Admit Facts by EOR ¶¶ 28-29.

³⁹ Complainant's Request to Admit Facts by EOR ¶ 31.

⁴⁰ Complainant's Request to Admit Facts by EOR ¶ 30.

⁴¹ Complainant's Request to Admit Facts by EOR ¶¶ 33-46.

⁴² Complainant's Request to Admit Facts by EOR ¶ 47.

⁴³ Complainant's Request to Admit Facts by EOR ¶¶ 140-141.

⁴⁴ Complainant's Request to Admit Facts by EOR ¶¶ 62.

Site.⁴⁵ Under EOR's direction, AET arranged to have the twelve totes of acid material shipped from the AET Facility to the Kincaid P&P Site.⁴⁶ Prior to the acid's arrival, EOR contacted a Kincaid P&P employee and notified him that a shipment was being sent to the Kincaid P&P Site.⁴⁷ EOR did not disclose to Kincaid P&P that the acid material was a hazardous waste.

When AET sent the acid material to the Kincaid P&P Site, it failed to ship it with a Hazardous Waste Manifest.⁴⁸ Instead, under Clark's direction, AET shipped it under a Hazardous Material Bill of Lading ("Bill of Lading").⁴⁹ The Bill of Lading is attached to and incorporated by reference into this motion as Exhibit H. The Bill of Lading was dated "8/30/02."⁵⁰ It listed the Shipper as Luxury Wheels, and even though the acid material was shipped to the Kincaid P&P Site for use by EOR, the Consignee was listed as Kincaid P&P.⁵¹

The Bill of Lading listed the Kincaid P&P Site address as "Route 104 (EAST OF PAWNEE)," Pawnee, IL 62558.⁵² It also listed the acid material as "CORROSIVE LIQUID ACID, INORGANIC, N.O.S. (PHOSPHORIC, NITRIC), 8, UN3264, PGII."⁵³ The Bill of Lading was signed by AET employee Frank Gines.⁵⁴ After the acid material arrived at the Kincaid P&P Site, EOR stored it in a structure owned by Kincaid P&P.⁵⁵ The structure had no electric power, was not heated and did not entirely keep out the outside weather.⁵⁶ The structure incorporated no containment structures to collect the acid material in event of a spill.⁵⁷ The building was not

⁴⁵ Complainant's Request to Admit Facts by EOR ¶¶ 66-67.

⁴⁶ Complainant's Request to Admit Facts by EOR ¶ 65.

⁴⁷ Complainant's Request to Admit Facts by EOR ¶ 68.

⁴⁸ Complainant's Request to Admit Facts by EOR ¶¶ 48-49.

⁴⁹ Complainant's Request to Admit Facts by EOR ¶ 50; Bill of Lading.

⁵⁰ Complainant's Request to Admit Facts by EOR ¶ 51; Bill of Lading.

⁵¹ Complainant's Request to Admit Facts by EOR ¶ 53; Bill of Lading.

⁵² Complainant's Request to Admit Facts by EOR ¶ 54; Bill of Lading.

⁵³ Complainant's Request to Admit Facts by EOR ¶ 55; Bill of Lading.

⁵⁴ Complainant's Request to Admit Facts by EOR ¶¶ 56-57; Bill of Lading.

⁵⁵ Complainant's Request to Admit Facts by EOR ¶ 94, Johnson Affidavit ¶ 11.

⁵⁶ Complainant's Request to Admit Facts by EOR ¶¶ 97-99, Johnson Affidavit ¶ 11.

⁵⁷ Johnson Affidavit ¶ 11.

secured by a fence or any other means.⁵⁸ There were no signs posted on or near the structure warning that the structure contained a hazardous waste.⁵⁹ Neither EOR nor Kincaid P&P utilized any security or warning system for the structure.⁶⁰

Wake and Geary were employed by Kincaid P&P at the time that the acid material arrived at the Kincaid P&P Site.⁶¹ Upon its arrival, EOR did not disclose to Wake or Geary that the acid material was a hazardous waste.⁶² EOR's only warning to Wake and Geary about the acid came from Clark who told them that it was a "light grade acid" and that they should "keep it out of their eyes and wash it off if they get it on them."⁶³ EOR did not provide a Material Safety Data Sheet ("MSDS") sheet or any other documentation for the acid.⁶⁴ EOR did not instruct Wake and Geary how to properly handle and store the acid material. At some time between August of 2002 and November of 2004, bags of hydrated lime were stored on pallets near the plastic totes containing the acid material. Several of the bags of lime had deteriorated to the point that the paper was split and the material fell on the ground around the bags.⁶⁵ Hydrated lime is a strong base which would react violently if mixed with a strong acid.⁶⁶ EOR did not instruct Wake and Geary to separate the acid totes and the bags of hydrated lime.

The Kincaid P&P Pawnee site is not a hazardous waste storage or disposal facility and has never been issued a RCRA permit granting it permission to serve as a hazardous waste management facility.⁶⁷ The Kincaid P&P Site also does not have a USEPA identification

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Complainant's Request to Admit Facts by EOR ¶¶ 88 & 90; Johnson Affidavit ¶¶ 7-8.

⁶² Johnson Affidavit ¶ 10.

⁶³ Complainant's Request to Admit Facts by EOR ¶¶ 120-125.

⁶⁴ Johnson Affidavit ¶ 8.

⁶⁵ Johnson Affidavit ¶ 14.

⁶⁶ Complainant's Request to Admit Facts by EOR ¶¶ 100-104.

⁶⁷ Johnson Affidavit ¶ 5.

number.⁶⁸ EOR was aware of all of the conditions in which the acid was stored.⁶⁹ Clark and Hamilton had personally observed where and how the acid was stored and did not advise Wake and Geary to change their storage or handling practices.⁷⁰

EOR directed Wake and Geary to put the acid material into the EOR Wells.⁷¹ Wake and Geary had no prior experience handling acid or applying it to oil or brine wells.⁷² EOR gave no specific instructions on how to apply the acid material to the wells.⁷³

Wake and Geary fabricated a hose fitting to attach the 275 gallon plastic totes to various fittings on the EOR Wells.⁷⁴ Within a three to four month period, Wake and Geary placed approximately eight and a half totes of acid material down various EOR Wells.⁷⁵ According to Wake and Geary, acid material was discharged into the following wells:

⁶⁸ *Id.*

⁶⁹ Complainant's Request to Admit Facts by EOR ¶¶ 126 & 128.

⁷⁰ Complainant's Request to Admit Facts by EOR ¶¶ 126-129.

⁷¹ Complainant's Request to Admit Facts by EOR ¶¶ 130-131, 140-141; Johnson Affidavit ¶ 8.

⁷² Complainant's Request to Admit Facts by EOR ¶¶ 138-139; Johnson Affidavit ¶ 10.

⁷³ Complainant's Request to Admit Facts by EOR ¶¶ 156-157; Johnson Affidavit ¶ 10.

⁷⁴ Complainant's Request to Admit Facts by EOR ¶¶ 150-151; Johnson Affidavit ¶ 9 & 25.

⁷⁵ Johnson Affidavit ¶ 9.

Chart 1: EOR Well Discharge Amounts⁷⁶

Well Name	Well Location	Type of Well	Approximate Amount of Acid Material (Gallons)
Galloway #3	Galloway Lease	Oil Production Well	15
Galloway #1	Galloway Lease	Gas Injection Well	275
Rink #4	Rink/Truax Lease	Oil Production Well	25
Rink #1	Rink/Truax Lease	Salt Water Disposal Well	1925
Truax #3	Rink/Truax Lease	Oil Production Well	25

EOR was aware that Wake and Geary were discharging the acid down various EOR Wells.⁷⁷

In January of 2004, Hamilton contacted Geary at his residence and told him to place all remaining acid material down the EOR Wells as soon as possible.⁷⁸ Hamilton also instructed

⁷⁶ Johnson Affidavit ¶¶ 28-32.

⁷⁷ Complainant's Request to Admit Facts by EOR ¶¶ 158-161.

⁷⁸ Complainant's Request to Admit Facts by EOR ¶ 164.

Geary to rinse out all twelve of the plastic totes.⁷⁹ Geary did not follow Hamilton's instructions.

On February 4, 2004, the USEPA and the National Enforcement Investigations Center ("NEIC") served a search warrant and conducted sampling activities at the Kincaid P&P Site.

On February 4, 2004, the twelve totes were still present at the Kincaid P&P Site.⁸⁰ Three totes were full and one tote was partially full of acid material. The remaining eight totes contained residue from the acid material. NEIC employees collected liquid and headspace samples from the twelve (12) totes. The NEIC later performed tests on the samples. The results of the testing were recorded in a report ("NEIC Report"). The NEIC Report is attached to and incorporated by reference into this motion as Attachment 2 to Exhibit I. NEIC testing confirmed that the liquid samples from the three full totes and one partially full tote all contained greater than 5.0 mg/L of leachable chromium. Results of the NEIC testing also showed that material contained in ten of the twelve totes had a pH of less than 2 standard units.⁸¹

On November 17, 2004, Richard Johnson ("Johnson"), an Illinois EPA, Bureau of Land, Field Inspector, inspected the Kincaid P&P Site. Johnson's sworn affidavit ("Johnson Affidavit") has been attached to and incorporated by reference into this motion as Exhibit I. Johnson recorded an account of his inspection in an inspection report ("Johnson November 17, 2004 Inspection Report"). Johnson's November 17, 2004 Inspection Report has been attached to and incorporated by reference into this motion as Attachment 1 to Exhibit I. Prior to his inspection, Johnson performed a review of Illinois EPA records.⁸² Johnson discovered that the Kincaid P&P Site is not a hazardous waste storage or disposal facility and has never been issued a RCRA permit granting it permission to serve as a hazardous waste management facility.⁸³

⁷⁹ Complainant's Request to Admit Facts by EOR ¶ 165.

⁸⁰ Johnson Affidavit ¶ 3; NEIC Report.

⁸¹ NEIC Report.

⁸² Johnson Affidavit ¶ 5.

⁸³ Johnson Affidavit ¶ 5.

Upon arrival at the Kincaid P&P Site, Johnson interviewed Wake.⁸⁴ Wake informed Johnson that he and Geary were paid by EOR to service and monitor the EOR Wells located in two nearby oil fields.⁸⁵ According to Wake, the twelve (12) totes of acid material were shipped to the Kincaid P&P Site in August 2002.⁸⁶ He also stated that EOR directed them to discharge the acid material down the EOR Wells.⁸⁷

Wake described the process used to discharge the acid.⁸⁸ First a tote of the acid material would be loaded on the back of a pickup truck and driven to the oil field. From the back of the truck, the tote would be connected to a valve on an aboveground pipe attached to one of the EOR Wells. Wake and Geary fabricated a hose attachment to connect the plastic totes to the valves on the EOR Wells. Using the hose attachment, Wake and Geary would use gravity to feed the acid material into the well and the underground formation. Over 3 or 4 months, Wake and Geary stated that they discharged approximately eight (8) and a one-half totes of the acid material down various EOR Wells, as outlined in Chart 1.⁸⁹

During his November 17, 2004, site inspection, Rich Johnson observed twelve (12) plastic totes stored in a structure at the Kincaid P&P Site.⁹⁰ The building was not secured. It contained no signs warning of the presence of the acid. The building's concrete floor was wet in several spots where the ceiling was leaking. The structure was not heated, had no electricity, and did not entirely keep out the outside weather. The structure also failed to include any containment structures to retain the acid if any of the totes leaked. There were no alarms or other warning systems to sound an alert if any of the totes failed to contain the acid.⁹¹

⁸⁴ Johnson Affidavit ¶ 7.

⁸⁵ *Id.*

⁸⁶ Johnson Affidavit ¶ 8.

⁸⁷ *Id.*

⁸⁸ Johnson Affidavit ¶ 9.

⁸⁹ *Id.*

⁹⁰ Johnson Affidavit ¶ 11.

⁹¹ Johnson Affidavit ¶ 11.

Three (3) of the totes were full of an aqua-colored liquid.⁹² A fourth tote was slightly less than one-half full. Eight other totes appeared to be empty except for some residue present in the bottoms of the totes. A copy of a federal search warrant had been attached to the side of one of the totes.⁹³ The warrant was dated February 2004 and stated that the totes had been sampled at the time that the warrant had been served.

Johnson also observed pallets containing 50-pound bags of hydrated lime and soda ash-like material stored next to the totes of acid.⁹⁴ Several of the older bags of lime and ash had deteriorated to the point that the paper was split and a white material could be observed.

Following the November 17, 2004 inspection, Johnson received a copy of the NEIC Report detailing the results of testing performed by the NEIC on samples of acid material which were taken on February 4, 2004.⁹⁵

On February 25, 2005, the Illinois EPA sent a Violation Notice ("VN") to EOR concerning the transport of the acid material from Colorado to Pawnee, Illinois and the improper handling, storage and disposal of the same acid material. EOR responded to the VN on March 23, 2005. On April 14, 2005, the Illinois EPA responded to EOR's March 23rd letter and rejected EOR's Compliance Commitment Agreement ("CCA"). On August 23, 2005, the Illinois EPA sent AET a Notice of Intent to Pursue Legal Action ("NIPLA") concerning the violations outlined in the February 25, 2005 VN, as required by Section 31(b) of the Act.

On April 19, 2005, Johnson re-inspected the Kincaid P&P Site. Johnson recorded an account of his inspection in an inspection report ("Johnson April 19, 2005 Inspection Report"). Johnson's April 19, 2005 Inspection Report has been attached to and incorporated by reference into this motion as Attachment 3 to Exhibit I ("Attachment 3" or "Johnson April 19, 2005 Inspection

⁹² Johnson Affidavit ¶ 12.

⁹³ Johnson Affidavit ¶ 13.

⁹⁴ Johnson Affidavit ¶ 14.

⁹⁵ Johnson Affidavit ¶ 19.

Report"). He once again met with Wake.⁹⁶ During the April 19, 2005 inspection, all 12 plastic totes of acid material were gone.⁹⁷ Wake provided Johnson with a uniform hazardous waste manifest which indicating that 1000 gallons of corrosive and toxic hazardous waste was shipped from the Kincaid P&P Site to SET Environmental, Inc. in Huston, Texas on April 14, 2005.⁹⁸ The manifest identified the waste as containing nitric and phosphoric acid. A Land Disposal Restriction notice accompanied the manifest. The Land Disposal Restriction notice indicated that the waste exhibited the hazardous waste characteristic for TCLP chrome, D007.⁹⁹ The SET Environmental Hazardous Waste Manifest and the Land Disposal Restriction Notice are both included in the Johnson April 19, 2005 Inspection Report.

During the April 19, 2005 inspection, Wake agreed to take Johnson to the various EOR Wells where he and Geary discharged the waste acid.¹⁰⁰ Two of the wells were located on the Galloway Lease property.¹⁰¹ Three wells were located on the Rinx-Truax Lease property.¹⁰²

Wake led Johnson to the Galloway Lease property.¹⁰³ Upon arrival at the Galloway Lease property they met the property owner and made him aware of the investigation.¹⁰⁴ Geary was also present at the Galloway Lease property.¹⁰⁵ Geary accompanied Johnson and Wake on the rest of the inspection.¹⁰⁶

⁹⁶ Johnson Affidavit ¶ 23.

⁹⁷ Johnson Affidavit ¶ 24.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Johnson Affidavit ¶ 26.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Johnson Affidavit ¶ 27.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

They first inspected an oil production well known as Galloway #3.¹⁰⁷ At Galloway #3, Wake and Geary stated that they discharged approximately 15 gallons of waste acid into the wellhead.¹⁰⁸

After inspecting Galloway #3, they moved on to a gas injection well known as Galloway #1.¹⁰⁹ Wake and Geary explained that they discharged a full tote (approximately 275 gallons) of waste acid into Galloway #1.¹¹⁰ They stated that it took awhile to gravity-feed the waste acid down the well.¹¹¹ They also stated that they noticed very strong odors from the waste acid.¹¹²

Their next stop was an oil production well known as Rink #4.¹¹³ At Rink #4, Wake and Geary stated that they discharged approximately 25 gallons of waste acid into the wellhead.¹¹⁴

Following Rink #4, they inspected a salt water disposal well known as Rink #1.¹¹⁵ Wake and Geary stated that they discharged seven full totes (approximately 1925 gallons) of waste acid into Rink #1.¹¹⁶

Finally, they inspected an oil production well known as Truax #3.¹¹⁷ Wake and Geary stated that they discharged approximately 25 gallons of waste acid into Truax #3.¹¹⁸

VII. ARGUMENT AND ANALYSIS

There exists no genuine issue of material fact. The evidence present in the record, including Respondent's Answer, admissions, Johnson's affidavit and reports and the NEIC Report all show that it is more likely than not that Respondent caused twelve 275 gallon plastic totes of

¹⁰⁷ Johnson Affidavit ¶ 28.

¹⁰⁸ *Id.*

¹⁰⁹ Johnson Affidavit ¶ 29.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Johnson Affidavit ¶ 30.

¹¹⁴ *Id.*

¹¹⁵ Johnson Affidavit ¶ 31.

¹¹⁶ *Id.*

¹¹⁷ Johnson Affidavit ¶ 32.

¹¹⁸ *Id.*

hazardous waste acid, containing greater than 5.0 mg/L of chromium and a pH lower than 2 to be transported to the Kincaid P&P Site, which does not meet the requirements of the Act and of regulations and standards thereunder. Furthermore, the record is clear that after arriving at the Kincaid P&P Site, parties hired, paid and supervised by EOR improperly handled and stored the acid material. These same parties disposed of over 2000 gallons of the hazardous waste acid down 5 of the EOR Wells. Finally, hazardous waste acid was injected into the ground in violation of the UIC program.

A. Count I: Hazardous Waste Transportation Violations

In order to prevail on Count I, the State must prove that the Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004). Section 21(e) states as follows:

No person shall:

* * *

- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

* * *

Therefore, the State must show that it is more likely than not that the Respondent transported a waste into the State of Illinois for disposal, treatment, storage or abandonment, at a site or facility which did not meet the requirements of the Act and of regulations and standards thereunder.

More specifically, the State must prove the following:

- The acid material was a waste;
- Respondent transported the acid material to Illinois;
- The acid material was transported to Illinois for disposal, treatment, storage or abandonment;
- The Kincaid P&P Site and the EOR Wells do not meet the requirements of the Act

and of regulations and standards thereunder.

1. The Acid Material Was A Waste

In order for the acid material shipped from Colorado to the Kincaid P&P Site to be considered a "waste," it must be garbage or other *discarded material*, including solid, *liquid*, semi-solid, or contained gaseous material resulting from *industrial activities*.¹¹⁹ The acid material shipped to the Kincaid P&P Pawnee site was spent aluminum etchant used by Luxury Wheels to etch aluminum wheels prior to treating them with a chrome plating process.

Luxury Wheels stored the material at its facility in Junction City, Colorado. On July 15, 2002, the acid material was involved in an emergency incident where it became unstable, reaching a high temperature and subsequently producing a large quantity of hazardous gas, requiring emergency response by the Grand Junction Fire Department. After the material was temporarily stabilized, Luxury Wheels hired Clark's employer, AET to dispose of the acid material. AET made numerous attempts to dispose of the material at various hazardous waste disposal sites. When characterizing the material on hazardous waste profiles, AET described the material as *spent* aluminum etchant, a D002 corrosive hazardous waste and waste *corrosive liquid* that was created in an *industrial process*. An AET employee signed the hazardous waste profiles and certified that all the information contained in them was correct. Clark oversaw the handling of the acid while it was in AET's possession and knew of profiles and manifests created by AET. The material was rejected by two hazardous waste disposal facilities, ATC and Safety Kleen, due to the fact that it was in an unstable state and producing an orange colored gas inside its storage containers. Clark was aware that the acid was rejected for disposal.

a. The Acid Material Was Discarded

There is no question that Luxury Wheels discarded the material. They were unable to

¹¹⁹ Section 3.535 of the Act, 415 ILCS 5/3.535 (2004), Section 3.470 of the Act, 415 ILCS 5/3.470 (2004).

safely store the material, had no use for it and hired AET to dispose of it at a properly permitted hazardous waste disposal site. This is exactly what AET attempted to do. It was only after rejections by ATC and Safety Kleen that AET, acting as an agent for Luxury Wheels, decided to give the material, *free of charge*, to EOR. EOR and AET arranged shipment of the acid material to the Kincaid P&P Site to be discharged into the EOR Wells. Although the Bill of Lading states that the Consignee for the acid was Kincaid P&P, the acid was shipped to Illinois to be used by EOR. Kincaid P&P did not arrange the shipment and was not made aware of the acid until it was enroute to the Kincaid P&P Site.

Luxury Wheels paid AET to dispose of the material and expected AET to dispose of it. After the material was sent to the Kincaid P&P Pawnee site, AET never refunded any money to Luxury Wheels. If the material had any value, Luxury Wheels would not have paid AET to take it away and AET would not have been able to transfer the acid to EOR for nothing in return.

The acid material was discarded by Luxury Wheels and given away for free to EOR. For those reasons, the acid material should be considered a discarded liquid.

b. The Acid Material Resulted from an Industrial Process

Section 3.235 of the Act, 415 ILCS 5/3.235 (2010) defines "industrial process waste" as "*any liquid...waste generated as a direct or indirect result of the manufacture of a product...*" "Industrial Process Waste" includes but is not limited to...*etching acids...*"

Luxury Wheels manufactured custom automobile wheels which it chrome plated at its facility in Grand Junction, CO. As part of the plating process, Luxury Wheels etched the aluminum wheels with an acid solution. The acid material which was shipped to the Kincaid P&P Pawnee Site was used by Luxury Wheels to etch aluminum wheels. Therefore, the acid material was an "*etching acid*" generated as the direct result of the manufacturing of a *product*, aluminum automobile wheels. As a result the acid material is an industrial process waste.

Because the acid material was a *discarded liquid* material resulting from *industrial*

activities, it was a "waste" as defined under Section 3.535 of the Act, 415 ILCS 5/3.535 (2004).

c. The Waste Acid was also a Hazardous Waste

Furthermore, the waste acid was a hazardous waste. Section 3.220 of the Act, 415 ILCS 5/3.220 (2004), defines "hazardous waste" as a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act ("RCRA") of 1976, P.L. 94-580, or pursuant to Board regulations.

Pursuant to RCRA, Congress requires the USEPA to identify and list "solid wastes" which meet the statutory definition of "hazardous waste." Determining whether a material is a RCRA hazardous waste is therefore a two-step process. The material must first come within the definition of *solid waste*, and then meet the definition of *hazardous waste*. Both terms are defined in 40 CFR Part 261.

The USEPA regulations define "solid waste" as any *discarded material* that has not been excluded under the regulations. 40 CFR § 261.2(a)(1). A "discarded material" is any material that is *abandoned, recycled, or inherently waste-like*. 40 CFR § 261.2(a)(2). As previously outlined, the acid material at issue was a waste under Illinois law. For the same reasons, under the RCRA definition, it was abandoned and therefore was a solid waste.¹²⁰

If a material can be classified as a solid waste, it is considered a hazardous waste if it either (1) exhibits one of four characteristics (ignitability, corrosivity, reactivity, or toxicity) (known

¹²⁰ Section 3.470 of the Act, 415 ILCS 5/3.470 (2004), provides as follows: "SOLID WASTE" means waste.

as "characteristic" hazardous waste); or (2) is specifically listed as a hazardous waste in the regulations (known as "listed" hazardous waste). 40 CFR § 261.3. The waste material at issue in this matter was generated by a company that produces chrome plated automotive wheels. The NEIC sampled and tested the waste at issue and found that it exhibited the hazardous characteristics of corrosivity and toxicity.

A solid waste exhibits the characteristic of corrosivity if, among other things, a representative sample of the waste is aqueous and has a pH less than or equal to 2. 40 CFR § 261.22. 10 of 12 samples of the waste acid gathered from the Kincaid P&P Site on February 22, 2004, were aqueous and had pH levels less than 2 standard units.

A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure ("TCLP"), test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR § 260.11, the extract from a representative sample of the waste contains greater than 5.0 mg/L of leachable chromium. 40 CFR § 261.2(a). Samples from the 3 full totes and the one half-full tote gathered on February 22, 2004, contained greater than 5.0 mg/L of leachable chromium when tested by the NEIC using TCLP.

Analysis of the samples of acid collected on February 22, 2004, establish that the acid waste exhibited the hazardous characteristics of corrosivity and toxicity. Since the waste acid at issue in this matter exhibited the characteristics of *corrosivity* and *toxicity*, the waste acid was a characteristic hazardous waste.

2. EOR Transported the Waste Acid to Illinois

Once AET made the decision to transfer the hazardous waste acid to EOR, EOR directed AET to ship the acid to the Kincaid P&P Site. On EOR's direction, AET employees created a bill of lading to accompany the acid. The Bill of Lading named Kincaid P&P as the consignee for the acid. However, the acid was shipped to the Kincaid P&P Site for use by EOR. Kincaid P&P did

not arrange for the acid to be shipped to their site. In fact, they were only notified of the shipment of the acid after it was enroute from Colorado to Illinois. The acid was only stored at the Kincaid P&P Site because EOR employed Kincaid P&P employees, Wake and Geary, to manage the EOR Wells. Without that connection, the acid would have never been shipped to Illinois. Kincaid P&P is not in the oil production business and had no use for the acid material.

EOR may not have physically driven the truck containing the acid material, but by directing AET to ship the hazardous waste acid to the Kincaid P&P Site, EOR effectively caused the waste acid to be transported to the State of Illinois. If not for EOR's direction, the hazardous waste acid would not have been shipped from Colorado to Illinois. Therefore, the Board should find that EOR transported the hazardous waste acid to Illinois.

3. The Waste Acid was Transported to Illinois for Storage and Disposal

The hazardous waste acid arrived at the Kincaid P&P Site on August 30, 2002. After its arrival, the acid was stored in a shed located at the Kincaid P&P Site. Under the direction of EOR, Wake and Geary discharged the hazardous waste acid into the EOR Wells.

a. The Element of "Storage"

The Act defines "storage" as the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.¹²¹ The hazardous waste acid arrived at the Kincaid P&P Site on August 30, 2002. On April 12, 2005, the remaining totes of acid (3 full, 1 half full, and 8 containing residue) were shipped to Texas for disposal. Therefore, for thirty one and one half months (31.5), EOR stored hazardous waste acid at the Kincaid P&P Site.

b. The Element of "Disposal"

The Act defines "disposal" as the discharge, deposit, injection, dumping, spilling, leaking

¹²¹ Section 3.480 of the Act, 415 ILCS 5/3.480 (2004).

or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.¹²² While the hazardous waste acid was onsite, the Respondent paid Wake and Geary to discharge it into the EOR Wells. The discharge sites included oil wells, a gas well, and a salt water injection well. During these activities, part of the chromium laden hazardous waste acid was spilled on the ground at various locations at the Kincaid P&P Site and in the fields surrounding the EOR Wells. While being discharged into the Rink #1 Brine Injection Well, the chromium laden hazardous waste acid came in contact with ground water contained within the well. The acid also had the potential to reach the underground environment through any leaks in the casings and other fittings attached to the EOR Wells. Also, when spilled on the ground, the chromium laden hazardous waste acid was emitted into the air and came in contact with the land. Therefore, the hazardous waste acid was allowed to enter the environment. Discharging the waste acid into the EOR Wells was an act which constituted disposal. Spilling the acid also constituted disposal. Under EOR's direction, the hazardous waste acid was disposed of in Illinois.

c. The Hazardous Waste Acid was Stored and Disposed of in Illinois

For the foregoing reasons, the Board should find that it is more likely than not that EOR transported the hazardous waste acid was transported to Illinois for storage and disposal.

4. The Kincaid P&P Site and EOR's Leased Wells do not Meet the Requirements of the Act and of Regulations and Standards Thereunder

A search of Illinois EPA records conducted by Johnson showed that the Kincaid P&P Site has neither RCRA interim status nor a RCRA permit to store hazardous waste onsite. It also showed that EOR does not have RCRA interim status or a RCRA permit to dispose of hazardous waste in the EOR Wells. EOR effectively owned and controlled the EOR Wells. They should

¹²² Section 3.185 of the Act, 415 ILCS 5/3.185 (2004).

have been aware that such oil wells did not have permits to treat, store, or dispose of hazardous waste. Furthermore, EOR had a working relationship with Kincaid P&P, hiring two Kincaid P&P employees to work for them. EOR should have known that the Kincaid P&P Site did not have permits to treat, store, or dispose of hazardous waste. There is nothing in the Record which shows that the Kincaid P&P Site was ever permitted to treat, store, or dispose of hazardous waste.

Because neither the Kincaid P&P Site nor EOR's wells are permitted to treat, store, or dispose of hazardous waste, they do not meet the requirements of the Act and of the regulations and standards thereunder.

5. EOR Violated the Section 21(e) of the Act by Transporting a Waste into the State for Storage and Disposal

It is clear that EOR effectively caused the transportation of hazardous waste acid, an industrial process waste, into the State of Illinois for storage and disposal at the Kincaid P&P Site and the EOR Wells, both of which are sites which do not meet the requirements of the Act and of regulations and standards thereunder and therefore violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

B. Count II: Hazardous Waste Storage and Disposal Violations

In order to prevail on Count II, the State must prove that the Respondent violated Sections 21(e) and (f)(1) of the Act, 415 ILCS 5/21(e) and (f)(1) (2004). Section 21(e) has been outlined above. Section 21(f)(1) states as follows:

No person shall:

* * *

- (f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
 - (1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the

inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

Therefore, the State must show that it is more likely than not that the Respondent stored, disposed and/or abandoned the hazardous waste acid at a site or facility which did not meet the requirements of the Act and of regulations and standards thereunder. The State must also show that it is more likely than not that the Respondent conducted a hazardous waste storage operation without a RCRA permit. More specifically, the State must prove the following:

- The acid material was a waste;
- Respondent stored, disposed and/or abandoned the acid material at the Kincaid P&P Site and the EOR Wells;
- The Kincaid P&P Site and the EOR Wells do not meet the requirements of the Act and of regulations and standards thereunder;
- EOR conducted a hazardous waste storage operation at the Kincaid P&P Site;
- EOR was not issued a permit to conduct a hazardous waste storage operation at the Kincaid P&P Site.

The first three elements have already been discussed above.

1. EOR Conducted a Hazardous Waste Storage Operation at the Kincaid P&P Site

The Act does not specifically define "hazardous waste storage operation." However, as previously discussed, the Act does define "hazardous waste"¹²³ and "storage"¹²⁴. Furthermore, Section 3.485 of the Act¹²⁵ defines a "storage site" as a site at which waste is stored.

As outlined in Section VII.A., Respondent stored the hazardous waste acid at the Kincaid P&P Site for thirty one and one half months. During that time, some of the waste was disposed of in the EOR Wells. However, three and one half totes of acid remained onsite until it was sent

¹²³ 415 ILCS 5/3.220 (2004).

¹²⁴ 415 ILCS 5/3.480 (2004).

¹²⁵ 415 ILCS 5/3.480 (2004).

away for proper disposal on April 15, 2005. Therefore, from August 30, 2002 until April 15, 2005, Respondent conducted a hazardous waste storage operation at the Kincaid P&P Site.

2. EOR was not Issued a Permit to Conduct a Hazardous Waste Storage Operation at the Kincaid P&P Site

Johnson's review of Illinois EPA records found no RCRA permit issued to EOR or Kincaid P&P to conduct a hazardous waste storage operation at the Kincaid P&P Site.

3. EOR Violated the Sections 21(e) and (f)(1) of the Act

The Record clearly shows that Respondent stored corrosive, chromium-laden, hazardous waste acid material at the Kincaid P&P Site for approximately thirty one and one half months. While storing the acid at the Kincaid P&P Site, Respondent conducted a hazardous waste storage operation. Respondent was never issued a RCRA permit by the Illinois EPA to conduct a hazardous waste storage operation at the Kincaid P&P Site. Therefore, it is clear that the Respondent violated Sections 21(e) and (f)(1) of the Act, 415, ILCS 5/21(e) and (f)(1) (2004).

C. Count III: Operation Without a Hazardous Waste Permit

In order to prevail on Count III, the State must prove that the Respondent violated Section 703.121(a) and (b) and 703.150(a)(2) of the Board's RCRA Permit Regulations, 35 Ill. Adm. Code 703.150(a)(2) and consequently violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004). Section 703.121 states as follows:

- a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:
 - 1) Without a RCRA permit for the HWM (hazardous waste management) facility; or
 - 2) In violation of any condition imposed by a RCRA permit.
- b) An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit. An owner or operator of a surface impoundment, landfill, land treatment unit or a waste pile unit that received wastes after July 26, 1982, or that certified closure (according to 35 Ill. Adm. Code 725.215) after January 26, 1983, must have a post-closure care permit, unless it demonstrates closure by removal or decontamination, as provided under Sections 703.159 and 703.160, or obtains enforceable documents containing alternative requirements, as provided under Section 703.161. If a

post-closure care permit is required, the permit must address applicable 35 Ill. Adm. Code 724 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements.

* * *

Section 703.150(a)(2) states as follows:

- a) The owner or operator of an existing HWM facility or of an HWM facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit must submit Part A of the permit application to the Agency no later than the following times, whichever comes first:

* * *

- 2) Thirty days after the date the owner or operator first becomes subject to the standards in 35 Ill. Adm. Code 725 or 726; or

* * *

Section 21(f) states as follows:

No person shall:

- (f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

* * *

- (2) in violation of any regulations or standards adopted by the Board under this Act; or

* * *

Therefore, the State must show that it is more likely than not that the Respondent conducted a hazardous waste storage operation without a RCRA permit, as required by Board Rules and Regulations. More specifically, the State must prove the following:

- EOR conducted a hazardous waste storage operation at the Kincaid P&P Site;
- EOR was subject to the standards in 35 Ill. Adm. Code 725 or 726;
- EOR failed to submit a permit application to the Illinois EPA no later than thirty days after the date EOR first became subject to the standards in 35 Ill. Adm. Code 725 or 726;
- EOR was not issued a RCRA permit to conduct a hazardous waste storage operation at the Kincaid P&P Site.

- EOR conducted a waste storage operation in violation of Board regulations

The first element has been discussed above.

1. EOR was Subject to the Standards in 35 Ill. Adm. Code 725 or 726

Section 725 of the Board's Waste Disposal Regulations applies to the owners and operators of all hazardous waste facilities, except as Section 725.101 provides otherwise¹²⁶.

The exceptions found in Section 725.101 do not apply to EOR's activities. As discussed above, by storing the hazardous waste acid at the Kincaid P&P Site for thirty one and one half months, EOR acted as a hazardous waste storage facility. Therefore, Section 725 of the Board's Waste Disposal Regulations applied to EOR from August 30, 2002 until the waste was taken offsite on April 15, 2005.

2. EOR failed to submit a permit application to the Illinois EPA no later than thirty days after the date EOR first became subject to the standards in 35 Ill. Adm. Code 725 or 726;

As previously stated, there is no record of EOR ever submitting an application to the Illinois EPA to create and operate a hazardous waste storage facility at the Kincaid P&P Site. Therefore, EOR violated Section 703.150(a)(2) by failing to apply for a RCRA permit to operate a hazardous waste storage facility at the Kincaid P&P Site.

3. The Illinois EPA Never Granted a Permit to Operate a Hazardous Waste Storage Facility at the Kincaid P&P Site.

As stated above, Johnson's search of Illinois EPA records found that the Illinois EPA never granted a permit to EOR to operate a hazardous waste storage facility at the Kincaid P&P Site. Therefore, EOR conducted a hazardous waste storage facility without a permit during its active lifetime. Consequently EOR violated Section 703.121(a) and (b) of the Board's Waste Disposal Violations.

¹²⁶ 35 Ill. Adm. Code 725.110.

4. EOR Violated Section 21(f)(2) of the Act

EOR violated Sections 703.121(a) and (b) and 703.150(a)(2). Because of this, EOR also violated Section 21(f)(2) of the Act by conducting a hazardous waste storage operation in violation of Board regulations.

D. Count IV: Hazardous Waste Management Violations

In order to prevail on Count IV, the State must prove that EOR violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004). Section 21(f)(2) states as follows:

No person shall:

* * *

- (f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

* * *

- (1) in violation of any regulations or standards adopted by the Board under this Act; or

* * *

In its Complaint, the State alleged numerous violations of the Board's Waste Disposal Regulations which included Sections 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a) and 725.274. Therefore, the Board must decide if EOR conducted a hazardous waste-storage operation in violation of any regulations or standards adopted by the Board under the Act. More specifically, the Board must determine if EOR:

- owned or operated a hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation;
- conducted a hazardous waste storage, hazardous waste treatment, or hazardous

waste disposal operation without a RCRA permit for the hazardous waste management facility;

- failed to apply to USEPA for a USEPA identification number in accordance with the USEPA notification procedures;
- failed to obtain a detailed chemical and physical analysis of a representative sample of any hazardous waste to be brought to its facility, prior to any treatment, storage, or disposal of the hazardous waste;
- failed to follow proper security procedures to prevent unauthorized entry, including use of a surveillance system, fencing, and signs at its facility;
- failed to conduct inspections according to a written schedule to identify and correct conditions that might lead to a release of hazardous waste constituents or a threat to human health;
- failed to follow procedures for training its personnel and documenting said training;
- failed to take all necessary precautions to prevent the ignition or reaction of ignitable or reactive wastes;
- failed to maintain and operate its facility to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment;
- failed to implement and maintain communications, alarms, spill controls and fire protection systems at its facility;
- failed to familiarize the local police, fire department and hospital concerning the type of hazardous waste stored at the site;
- failed to develop a contingency plan for its facility;

- failed to designate an employee of the facility as the emergency coordinator with the responsibility to coordinate all emergency response measures;
- failed to prepare Illinois EPA manifests and make sure the manifests accompany any hazardous waste during transport;
- failed to keep a written operating record at its facility, until closure, including: the quantity of each hazardous waste received; methods used for its treatment, storage or disposal; the location of each hazardous waste within the facility and the quantity at each location;
- failed to prepare and submit, using forms provided by the Illinois EPA, annual reports for the hazardous waste acid stored at the site;
- failed to develop and keep a written closure plan on site within six months after the effective date of the rule that first subjects a facility to provisions of Section 725;
- failed to prepare a detailed written estimate, in current dollars, of the cost of closing the storage unit for any hazardous waste;
- failed to establish financial assurance for closure of its facility;
- failed to have facility personnel inspect the building containing the hazardous waste acid containers at least weekly for leaks or deterioration;

The first two elements were already addressed above.

1. EOR Failed to Apply to USEPA for a USEPA Identification Number in Accordance with the USEPA Notification Procedures

Section 725.111 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.111, states as follows:

Every facility owner or operator must apply to USEPA Region 5 for a USEPA identification number using USEPA Form 8700-12. The facility owner or operator must obtain a copy of the form from the Agency, Bureau of Land (217-782-6762), and submit a completed copy of the form to the Bureau of Land, in addition to notification to USEPA.

As stated above, EOR operated a hazardous waste storage facility at the Kincaid P&P Site.

Johnson's review of Illinois EPA records found that EOR never applied for a USEPA identification number or submitted to the Illinois EPA a copy of USEPA Form 8700-12.

Therefore, EOR violated Section 725.111 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.111, by failing to apply for a USEPA identification number for its hazardous waste storage facility.

2. EOR Failed to Obtain a Detailed Chemical and Physical Analysis of a Representative Sample of Hazardous Waste Acid Prior to Bringing it to the Kincaid P&P Site

Section 725.113 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.113, requires that anyone who stores a hazardous waste shall first obtain a detailed chemical and physical analysis of such waste. Section 725.113 also requires that the party storing the hazardous waste develop and follow a written waste analysis plan that describes the procedures that the owner or operator will carry out to assure that all hazardous waste stored at the facility is properly analyzed. The owner or operator must keep this plan at the facility.

Johnson did not observe such a plan during any of his site inspections. Throughout the discovery process, EOR has provided no copies of any detailed chemical and physical analysis of the acid material conducted prior to its arrival at the Kincaid P&P Site. EOR has also failed to provide a copy of any plan created to comply with Section 725.113.

Therefore, it is more likely than not that EOR failed to obtain a detailed chemical and physical analysis of a representative sample of the hazardous waste acid prior to storing the material at the Kincaid P&P Site.

3. EOR Failed to Follow Proper Security Procedures to Prevent Unauthorized Entry, Including Use of a Surveillance System, Fencing, and Signs at its Facility

Section 725.114 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.114, requires that the operators of hazardous waste storage facilities must prevent the unknowing

entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of their facility. In order to prevent such entry, Section 725.114 requires that the operator control access to the active portion of the facility, install a 24-hour surveillance system and signage stating "Danger – Unauthorized Personnel Keep Out."

During his site inspections, Johnson observed no security measures at the Kincaid P&P Site which would have prevented access to the hazardous waste acid. The building in which EOR stored the totes of hazardous waste acid was unsecured. There was no fence surrounding the structure, no signs stating that the building contained hazardous waste acid and there was no surveillance system installed.

Therefore, it is clear that the Respondent violated Section 725.114 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.114, by failing to take measures to prevent unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock at the Kincaid P&P building used to house the hazardous waste acid.

4. EOR Failed to Conduct Inspections According to a Written Schedule to Identify and Correct Conditions that Might Lead to a Release of Hazardous Waste Constituents or a Threat to Human Health

Section 725.115(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.115, provides as follows:

- a) The owner or operator must inspect the facility for malfunctions and deterioration, operator errors and discharges that may be causing – or which may lead to – the conditions listed below. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.
 - 1) Release of hazardous waste constituents to the environment, or
 - 2) A threat to human health.

During his multiple site inspections, Johnson observed no records showing that EOR was inspecting the Kincaid P&P Site for conditions that could have lead to a release of the hazardous waste acid to the environment or a threat to human health. As stated earlier, EOR stored the

totes of hazardous waste acid next to torn and deteriorated bags of hydrated lime. Storing a strong base, such as hydrated lime, next to the hazardous waste acid with no barriers separating the two materials was a definite threat to human health. The fact that this threat continued, unabated, for years is a clear indication that EOR was not inspecting the Kincaid P&P Site.

By failing to conduct inspections of the Kincaid P&P Site, EOR violated Section 725.115(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.115.

5. EOR Failed to Follow Procedures for Training its Personnel and Documenting said Training

Section 725.116 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.116, provides procedures that the owner or operator must follow for training its personnel and documenting said training.

EOR paid Wake and Geary to oversee the hazardous waste acid while it was stored at the Kincaid P&P Site. They also paid Wake and Geary to discharge the hazardous waste acid into the EOR Wells. Wake admitted that EOR provided no training on how to properly store, handle, and discharge the acid. Hamilton's only instructions to Wake and Geary after telling them to discharge the acid into the EOR Wells were: that it was a "light grade acid," that they should "keep it out of their eyes" and that they make sure to wash it off if it got on their clothes. In support of Wake's assertion that EOR offered no training, Johnson observed no documentation at the Kincaid P&P Site related to any training provided to Wake and Geary by EOR.

Therefore it is clear that EOR violated Section 725.116 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.116, by failing to provide any training related to the hazardous waste acid to Wake and Geary.

6. EOR Failed to Take All Necessary Precautions to Prevent the Ignition or Reaction of Ignitable or Reactive Wastes

Section 35 Ill. Adm. Code 725.117 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.117, provides as follows:

- a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction, including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.
- b) Where specifically required by other Sections of this Part, the treatment, storage, or disposal of ignitable or reactive waste and the mixture or commingling of incompatible waste or incompatible wastes and materials, must be conducted so that it does not do any of the following:
 - 1) It does not generate extreme heat or pressure, fire or explosion, or violent reaction;
 - 2) It does not produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;
 - 3) It does not produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
 - 4) It does not damage the structural integrity of the device or facility containing the waste; or
 - 5) Through other like means, it does not threaten human health or the environment.

As stated earlier, the hazardous waste acid was tested and found to have a pH of less than 2 standard units. This makes it a very strong acid. The hazardous waste acid was the subject of an emergency response action in Grand Junction, Colorado. During the emergency response action, the acid was stored in an area of the Luxury Wheels facility which was not climate controlled. During a hot day, the acid began to react, reaching an unsafe temperature and off-gassing a red orange vapor. At the Kincaid P&P Site, EOR stored the hazardous waste acid in a shed which had no electricity, no climate control system and allowed exposure to the elements. Therefore EOR stored the acid in the similar conditions to the ones which caused it to generate extreme heat, pressure and uncontrolled fumes at the Luxury Wheels facility. Luckily none of these circumstances occurred while the acid was at the Kincaid P&P Site, but the

potential was there because of EOR's storage of the material.

The hazardous waste acid was also stored next to hydrated lime, creating a situation where a violent reaction could have occurred if any of the acid came in contact with the lime.

For these reasons, it is clear that EOR failed to take all precautions necessary to prevent the ignition or reaction of ignitable or reactive wastes and therefore violated Section 35 Ill. Adm. Code 725.117 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.117.

7. EOR Failed to Maintain and Operate the Kincaid P&P Site to Minimize the Possibility of a Fire, Explosion or any Unplanned Sudden or Non-Sudden Release of Hazardous Waste or Hazardous Waste Constituents to Air, Soil or Surface Water which could Threaten Human Health or the Environment

Section 725.131 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.131, provides as follows:

Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

For reasons already outlined in previous sections, the hazardous waste acid was not stored in a manner which minimized the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment. EOR stored it in an unsecured structure which was open to the elements, adjacent to hydrated lime, a strong base. EOR took no actions to protect the environment and the public from the hazardous waste acid.

Therefore it is clear that EOR violated Section 725.131 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.131.

8. EOR Failed to Implement and Maintain Communications, Alarms, Spill Controls and Fire Protection Systems at the Kincaid P&P Site

Section 725.132 of the Board's Waste Disposal Regulations 35 Ill. Adm. Code 725.132, provides as follows:

All facilities must be equipped with the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

- a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
- b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;
- c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and
- d) Water at adequate volume and pressure to supply water hose streams or foam producing equipment or automatic sprinklers or water spray systems.

As previously stated, Johnson observed that EOR stored the hazardous waste acid in a structure at the Kincaid P&P Site. The structure had no power and was open to the elements. There was no evidence of any communications or alarm system, no telephone or other device capable of summoning emergency assistance, no fire or spill control equipment, and no water supply or sprinkler system at the structure. EOR was aware of these conditions, having visited the Kincaid P&P Site multiple times and failed to install the equipment required by Section 725.132.

Therefore it is clear that EOR violated Section 725.132 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.132.

9. EOR Failed to Familiarize the Local Police, Fire Department and Hospital Concerning the Type of Hazardous Waste Stored at the Kincaid P&P Site

Section 725.137 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.137, provides as follows:

- a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of the following organizations:
 - 1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes;

- 2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority;
 - 3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and
 - 4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.
- b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

EOR has been non-responsive to the State's document production requests. EOR has thus far provided no documentation stating that it made arrangements to familiarize local police, fire, hospital and state emergency agencies with the hazardous waste acid stored at the Kincaid P&P Site. EOR has also failed to provide any documentation stating that local authorities declined to enter into such arrangements. Johnson observed no records at the Kincaid P&P site related to EOR's efforts to familiarize local authorities with the properties and handling requirements of the hazardous waste acid.

Therefore, it is more likely than not, that EOR failed to familiarize the local police, fire department and hospital concerning the type of hazardous waste stored at the Kincaid P&P Site and subsequently violated Section 725.137 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.137.

10. EOR Failed to Develop a Contingency Plan for the Kincaid P&P Site

Section 725.151(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.151(a), provides as follows:

- a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

* * *

EOR has been non-responsive to the State's document production requests. EOR has thus far provided no documentation stating that it created a contingency plan for the Kincaid P&P Site. Johnson observed no records at the Kincaid P&P site related to a contingency plan created by EOR.

Therefore, it is more likely than not, that EOR failed to create a contingency plan for the Kincaid P&P Site and subsequently violated Section 725.151(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.151(a).

11. EOR Failed to Designate an Employee of the Facility as the Emergency Coordinator with the Responsibility to Coordinate all Emergency Response Measures

Section 725.155 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.155, provides as follows:

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

EOR paid Wake and Geary to handle and manage the hazardous waste acid. At no time did EOR notify either employee that the acid was a hazardous waste. Therefore, EOR failed to make either employee aware of the characteristics of the waste they were handling. Also, as previously stated, there is no evidence that EOR created a contingency plan for the Kincaid P&P Site. Therefore EOR could give neither Wake nor Geary the authority to commit the resources needed to carry out a contingency plan. During his interactions with Wake and Geary, neither person informed Johnson that there were other EOR employees located at the Kincaid P&P facility. Wake and Geary were the only individuals paid by EOR to manage the hazardous waste acid at the Kincaid P&P Site.

For the foregoing reasons, it is more likely than not that EOR failed to designate an employee as the emergency coordinator and therefore violated Section 725.155 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.155.

12. EOR Failed to Prepare Illinois EPA Manifests and Make Sure the Manifests Accompanied the Hazardous Waste Acid During Transport

Section 725.171(c) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.171(c), provides as follows:

* * *

- c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 35 Ill. Adm. Code 722.

* * *

Wake and Geary transported the hazardous waste acid from the Kincaid P&P Site to the various EOR Well locations. At no time did EOR, Wake or Geary prepare hazardous waste manifests to accompany the hazardous waste acid. Therefore, it is clear that EOR violated Section 725.171(c) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.171(c).

13. EOR Failed to Keep a Written Operating Record the Kincaid P&P Site, Until Closure, Including: the Quantity of Each Hazardous Waste Received, Methods Used for its Storage or Disposal, the Location of Each Hazardous Waste Within the Facility and the Quantity at Each Location

Section 725.173 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.173, provides as follows:

- a) The owner or operator must keep a written operating record at the facility.
- b) The following information must be recorded as it becomes available and maintained in the operating record for three years unless otherwise provided...

* * *

During his site inspections, Johnson observed no evidence of a written operating record at the Kincaid P&P Site. EOR has been non-responsive to the State's document production requests. EOR has thus far provided no copies of a contingency plan for the Kincaid P&P Site.

Therefore, it is more likely than not that EOR failed to keep a written operating record at the Kincaid P&P Site and consequently violated Section 725.173 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.173.

14. Failed to Prepare and Submit, Using Forms Provided by the Illinois EPA, Annual Reports for the Hazardous Waste Acid Stored at the Site

Section 725.175 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.175, provides as follows:

The owner and operator must prepare and submit a single copy of an annual report to the Agency by March 1 of each year. The report form and instructions supplied by the Agency must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information...

EOR stored the hazardous waste acid at the Kincaid P&P Site from 2002 until 2005. Johnson searched Illinois EPA records and found no copies of any annual reports submitted by EOR for the Kincaid P&P Site. Therefore, it is more likely than not that EOR failed to submit annual reports to the Illinois EPA for the hazardous waste acid stored at the Kincaid P&P Site and consequently violated Section 725.175 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.175.

15. EOR Failed to Develop and Keep a Written Closure Plan at the Kincaid P&P Site

Section 725.212(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.212(a), provides as follows:

- a) Written plan. Within six months after the effective date of the rule that first subjects a facility to provisions of this Section, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215, a copy of the most current plan must be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the day of inspection to any officer, employee, or representative of the Agency.

During his site inspections, Johnson observed no evidence of a written closure plan at the Kincaid P&P Site. EOR has been non-responsive to the State's document production requests. EOR has thus far provided no copies of a written closure plan for the Kincaid P&P Site. Therefore,

it is more likely than not that EOR failed to keep a written closure plan at the Kincaid P&P Site and consequently violated Section 725.212(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.212(a).

16. EOR Failed to Prepare a Detailed Written Estimate, in Current Dollars, of the Cost of Closing the Storage Unit for the Hazardous Waste Acid

Section 725.242(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.242(a), provides, in pertinent part, as follows:

- a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.

* * *

During his site inspections, Johnson observed no evidence of a written estimate of closure costs at the Kincaid P&P Site. EOR has been non-responsive to the State's document production requests. EOR has thus far provided no copies of a written estimate of closure costs for the Kincaid P&P Site. Therefore, it is more likely than not that EOR failed prepare a written estimate of closure costs for the Kincaid P&P Site and consequently violated Section 725.242(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.242(a).

17. EOR Failed to Establish Financial Assurance for Closure of the Kincaid P&P Site

Section 725.243(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.243(a), provides, in pertinent part as follows:

An owner or operator of each facility must establish financial assurance for closure of the facility. The owner or operator must choose from the options specified in subsections (a) through (e) of this Section.

* * *

EOR stored the hazardous waste acid at the Kincaid P&P Site from 2002 until 2005. Johnson searched Illinois EPA records and found no copies of any records related to financial assurance submitted by EOR for the Kincaid P&P Site. EOR has been non-responsive to the

State's document production requests. EOR has thus far provided records related any financial assurance created for the closure of the Kincaid P&P Site. Therefore, it is more likely than not that EOR failed to create financial assurance for the closure of the Kincaid P&P Site and consequently violated Section 725.243(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.243(a).

18. EOR Failed to Inspect the Structure Containing the Hazardous Waste Acid Totes at Least Weekly for Leaks or Deterioration

Section 725.274 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.274, provides as follows:

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

Clark and Hamilton live in Colorado. The Kincaid P&P Site is located in Central Illinois. Therefore it would have been impossible for EOR to inspect the totes containing the hazardous waste acid and the area where they were stored. Furthermore, EOR never instructed Wake and Geary to make weekly inspection of the hazardous waste totes and the area where they were stored. EOR allowed the acid to be stored next to torn bags containing hydrated lime, a situation that should have been remedied if the area around the hazardous waste acid had been properly inspected. As such, it is clear that EOR violated Section 725.274 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 725.274 by failing to perform weekly inspections of the totes containing the hazardous waste acid and the area where they were stored.

19. EOR Violated Section 21(f)(2) of the Act

It is obvious that EOR violated Section 21(f)(2) of the Act. The State has already established that EOR operated a hazardous waste-storage operation at the Kincaid P&P Site. The record in this matter contains evidence of numerous violations of the Board's Waste Disposal Regulations. It is very clear that EOR did not treat the hazardous waste acid as a hazardous

waste and therefore did not follow any of the regulations created by the Board to safeguard people and the environment from improperly managed hazardous wastes. Therefore the Board should find that EOR violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004) and the numerous Board Waste Disposal Regulations outlined above.

E. Count V: Underground Injection Control Permit Program Violations

In order to prevail on Count V, the State must prove that it is more likely than not that the Respondent caused, threatened or allowed the underground injection of contaminants without a UIC permit issued by the Agency under Section 39(d) of the Act or in violation of any regulations or standards adopted by the Board or of any order adopted by the Board with respect to the UIC program.¹²⁷ Therefore the State must prove the following:

- The hazardous waste acid was a contaminant;
- Respondent caused, threatened or allowed the hazardous waste acid to be injected underground;
- No UIC permit was issued for the underground injection of the hazardous waste acid; or
- The underground injection of the hazardous waste acid was injected in violations of any regulations or standards adopted by the Board or any order adopted by the Board with respect to the UIC program.

1. The Hazardous Waste Acid Was A Contaminant

As discussed above, the Record is clear that the acid material was a hazardous waste as well as a contaminant.

2. Respondent Caused And Allowed The Underground Injection of the Hazardous Waste Acid

The Respondent paid Wake and Geary to inject the hazardous waste acid into the EOR Wells. The EOR wells were under the direct control of EOR. Under EOR's supervision, Wake

¹²⁷ 415 ILCS 5/12(g) (2004).

and Geary injected over 2000 gallons of hazardous waste acid into five of the EOR Wells. The majority of the acid material, approximately 1900 gallons, was placed in the Rink #1 salt water disposal well.

3. The Illinois EPA Did Not Issue A Permit To Inject The Hazardous Waste Acid

A review of Illinois EPA records conducted by Johnson produced no record of any permits issued by the agency to inject hazardous waste acid into any wells located on the Galloway or Rink/Truax Leases.

4. Respondent Caused Or Allowed The Underground Injection Of Hazardous Waste Acid In Violation Of Board Regulations

Section 704.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 704.121, prohibits underground injection, except into a well authorized by permit or rule.

Section 704.202 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 704.202, requires the owner or operator of any well that is used to inject hazardous wastes accompanied by a manifest or delivery document to apply for authorization to inject such hazardous waste into the well.

Section 704.203 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 704.121, requires that any owner or operator of a well, as described in 704.202, comply with certain requirements.

- a. Respondent was an owner operator of a well used to inject hazardous waste accompanied by a delivery document*

Respondent owned and operated five wells where hazardous waste acid was injected by Wake and Geary under Respondent's supervision and with Respondent's knowledge. The hazardous waste was not shipped to the Kincaid P&P Site accompanied by the required hazardous waste manifest, however it was shipped with a hazardous materials bill of lading. Therefore, Respondent was the owner and operator of wells used to inject hazardous waste

which was accompanied by a delivery document.

- b. Respondent failed to apply for a permit to inject hazardous waste into its wells*

As stated in Section D. above, a review of Illinois EPA records conducted by Johnson produced no record of any permits issued by the agency to inject hazardous waste acid into any wells located on the Galloway or Rink/Truax Leases.

Therefore, Respondent injected hazardous waste into the EOR Wells in violation of Sections 704.121 and 704.202. While operating a wells covered by Section 704.202, Respondent failed to comply with the requirements of Section 704.203.

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

After the Board finds a violation, the Board considers the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), to create an appropriate remedy. Those factors are:

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 Complainant states the following:

1. The acid material contained greater than 5.0 mg/L of chromium and had a pH lower than 2 standard units. As such it was hazardous waste which exhibited the characteristics of both toxicity and corrosivity. The hazardous waste acid had been involved in an emergency situation where it became unstable, reaching a high temperature and creating a cloud of hazardous gas. Due to the fact that the acid appeared to be in a reactive state and continued to

produce hazardous gasses, the acid was rejected by multiple hazardous waste disposal facilities located in Colorado. AET took the acid back to one of its facilities where it continued to emit hazardous gas until it was diluted by Clark and AET employees.

Despite these characteristics, EOR failed to make sure that AET shipped the hazardous waste acid in accordance to the Act and associated regulations. AET shipped the hazardous waste acid under a hazardous materials bill of lading as opposed to the required hazardous waste manifest. As a result, neither EOR nor AET notified the carrier that the material was a hazardous waste. Consequently, the hazardous waste acid was not marked as a hazardous waste and was not handled as such during its transport from Colorado to the State of Illinois. To further compound matters, EOR had the hazardous waste acid shipped to a facility which was not properly permitted to accept or store hazardous waste. EOR caused and allowed the hazardous waste acid to be improperly handled and stored while at the Kincaid P&P Site and illegally disposed of in the EOR Wells. EOR's actions showed a disregard for the environment of the State of Illinois as well as the health, general welfare and physical property of the people along the acid's route from Colorado to Illinois. These actions also put the health, general welfare, and physical property of all people within the area surrounding the Kincaid P&P Site in jeopardy by allowing the improper storage and disposal of a highly corrosive and toxic hazardous waste. As well as being a principal with EOR, Clark also works for AET. The AET website states that Clark is

"...a biochemist and a chemical engineer, with over 35 years of experience. AET's senior scientist and executive project manager for decontamination, site remediation projects, treatment technologies, and facility closures, he works with AET project managers to develop work plans and safe operating procedures, and ensures that these procedures are followed. He designs and manufactures oil, glycol, and methanol recycling plants and equipment. He has developed patented technologies for glycol and methanol recycling and enhanced energy systems for secondary oil recovery.." ¹²⁸

Even with years of experience, Clark allowed EOR and AET to improperly ship the hazardous

¹²⁸ <http://www.aetenvironmental.com/web/personnel/clark.htm>, Exhibit J.

waste acid to a site which was not designed to adequately store or handle it. Clark handed the acid over to Wake and Geary with no training and without telling them that it was a hazardous waste, putting both men at risk of bodily harm. In January of 2004, EOR attempted to destroy the evidence of its violations by requesting that Wake and Geary dispose of the remaining acid and clean out the totes. Clark and therefore EOR had training and knowledge regarding the proper handling of hazardous waste and still caused and allowed numerous violations of the Act and associated regulations. EOR's actions have a significant adverse effect on the implementation of the RCRA program.

EOR severely threatened human health and the environment by failing to comply with the Act and related regulatory requirements.

2. There was no social or economic value of the hazardous waste acid at issue in this matter. The acid was a spent industrial process waste and a hazardous waste. Luxury Wheels paid AET to dispose of the waste. The acid was rejected by multiple hazardous waste disposal sites. AET transferred the hazardous waste acid, for free, to EOR, showing that it had no value. This was not a valuable product. It was a hazardous waste which should have been properly disposed of at a licensed hazardous waste disposal facility.

3. The hazardous waste acid was unsuitable for shipping to a site which was not permitted or designed to accept or store hazardous waste. It was unsuitable to be disposed of in the EOR Wells by untrained individuals. This hazardous waste should have been disposed of at a proper hazardous waste disposal site permitted and designed to accept such waste. There is no justification for EOR's actions in this matter.

4. Disposing of the hazardous waste acid at a properly permitted hazardous waste disposal site was both economically and technically feasible. EOR's actions have no justification. The hazardous waste acid should not have been shipped to Illinois, stored at the Kincaid P&P Site, or disposed of in the EOR Wells.

5. EOR did not self report its violations to the State. By the time the State became involved, the damage was already done. Eight and one half 275 gallon totes of the acid were disposed of in the EOR Wells before the State was involved. This acid could not be recovered from the EOR Wells, so there was no way for EOR to come back into compliance. EOR attempted to destroy the evidence of its violations by requesting that Wake and Geary dispose of the remaining acid and clean out the totes. EOR did eventually dispose of the remaining three and one half totes of acid, but only after the State intervened and the hazardous waste had been at the Kincaid P&P Site for 31.5 months.

XI. CONSIDERATION OF SECTION 42(h) FACTORS

To impose a civil penalty, the Board must consider the factors contained within Section 42(h) of the Act, 415 ILCS 5/42(h) (2012). Those factors are:

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.

8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Complainant states as follows:

1. The acid material contained greater than 5.0 mg/L of chromium and had a pH lower than 2 standard units. As such it was hazardous waste which exhibited the characteristics of both toxicity and corrosivity. The hazardous waste acid had been involved in an emergency situation where it became unstable, reaching a high temperature and creating a cloud of hazardous gas. Due to the fact that the acid appeared to be in a reactive state and continued to produce hazardous gasses, the acid was rejected by multiple hazardous waste disposal facilities located in Colorado. AET took the acid back to one of its facilities where it continued to emit hazardous gas until it was diluted by Clark and AET employees.

Despite these characteristics, EOR failed to make sure that AET shipped the hazardous waste acid in accordance to the Act and associated regulations. AET shipped the hazardous waste acid under a hazardous materials bill of lading as opposed to the required hazardous waste manifest. As a result, neither EOR nor AET notified the carrier that the material was a hazardous waste. Consequently, the hazardous waste acid was not marked as a hazardous waste and was not handled as such during its transport from Colorado to the State of Illinois. To further compound matters, EOR had the hazardous waste acid shipped to a facility which was not properly permitted to accept or store hazardous waste. EOR caused and allowed the hazardous waste acid to be improperly handled and stored while at the Kincaid P&P Site and illegally disposed of in the EOR Wells. EOR's actions showed a disregard for the environment of the State of Illinois as well as the health, general welfare and physical property of the people along the acid's route from Colorado to Illinois. These actions also put the health, general welfare, and physical property of all people within the area surrounding the Kincaid P&P Site in jeopardy by allowing the improper storage and disposal of a highly corrosive and toxic hazardous waste.

As well as being a principal with EOR, Clark also works for AET. The AET website states that Clark is

"...a biochemist and a chemical engineer, with over 35 years of experience. AET's senior scientist and executive project manager for decontamination, site remediation projects, treatment technologies, and facility closures, he works with AET project managers to develop work plans and safe operating procedures, and ensures that these procedures are followed. He designs and manufactures oil, glycol, and methanol recycling plants and equipment. He has developed patented technologies for glycol and methanol recycling and enhanced energy systems for secondary oil recovery.."129

Even with years of experience, Clark allowed EOR and AET to improperly ship the hazardous waste acid to a site which was not designed to adequately store or handle it. Clark handed the acid over to Wake and Geary with no training and without telling them that it was a hazardous waste, putting both men at risk of bodily harm. In January of 2004, EOR attempted to destroy the evidence of its violations by requesting that Wake and Geary dispose of the remaining acid and clean out the totes. Clark and therefore EOR had training and knowledge regarding the proper handling of hazardous waste and still caused and allowed numerous violations of the Act and associated regulations. EOR's actions have a significant adverse effect on the implementation of the RCRA program.

EOR severely threatened human health and the environment by failing to comply with the Act and related regulatory requirements.

For all of these reasons, the gravity of the EOR's violations is extremely high.

The hazardous waste acid arrived at the Kincaid P&P Site on August 30, 2002. On April 12, 2005, the remaining totes of acid (3 full, 1 half full, and 8 containing residue) were shipped to Texas for proper disposal. Therefore, the duration of the violations was thirty one and one half (31.5) months.

2. EOR was not diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations. In January of 2004, EOR attempted to

¹²⁹ <http://www.aetenvironmental.com/web/personnel/clark.htm>, Exhibit J.

destroy the evidence of its violations by requesting that Wake and Geary dispose of the remaining acid and clean out the totes.

3. EOR has not responded to the State's discovery requests related to economic benefit. Therefore the record is silent as to EOR's economic benefit related to the disposal of the hazardous waste acid.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Two Hundred Thousand Dollars (\$200,000) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, EOR has no previously adjudicated violations of the Act.

6. EOR did self not report the alleged violations. In January of 2004, EOR attempted to destroy the evidence of its violations by requesting that Wake and Geary dispose of the remaining acid and clean out the totes.

7. The Respondent has not agreed to perform a supplemental environmental project.

8. The Respondent did not complete a Compliance Commitment Agreement related to the alleged violations.

XII. CONCLUSION

The record clearly shows that it is more likely than not that EOR caused the hazardous waste acid, an industrial process waste, to be transported from Colorado to the Kincaid P&P Site. EOR stored the hazardous waste acid at the Kincaid P&P Site and disposed of it in the EOR Wells, all sites which do not meet the requirements of the Act and of regulations and standards thereunder. EOR's lack of oversight led to numerous violations of the Act and Board regulations. In all of this, EOR showed great disregard for the Act, Board regulations, and for the people and environment of the State of Illinois, going as far as attempting to destroy evidence of its violations. Therefore the Board should find in favor of the State and against EOR for all of the violations

alleged in the Complaint and further outlined in this Motion.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter a final order:

- A) Granting Complainant's Motion for Summary Judgment Against E.O.R. Energy, LLC;
- B) Finding that the Respondent, EOR ENERGY, LLC., violated Sections 12(g), 21(e) and (f)(1) and (2) of the Act, 415 ILCS 12(g), 21(e) and (f)(1)(2) (2004) and Sections 703.121(a) and (b), 703.151(a)(2), 704.121, 704.203 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278 of the Board's Regulations, 35 Ill. Adm. Code 703.121(a) and (b), 703.151(a)(2), 704.121, 704.203, 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a) and 725.274
- C) Ordering the Respondent, EOR ENERGY, LLC., to cease and desist from any further violations of the Act and associated regulations;
- D) Awarding the Complainant a penalty of \$200,000 for the violations of the Act;

E) Granting such other relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
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Dated: 6/26/2012

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