

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--|---|---------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 2020-098 |
| |) | |
| AUX SABLE LIQUID PRODUCTS, INC., a |) | (Enforcement- Land) |
| Delaware corporation, AUX SABLE LIQUID |) | |
| PRODUCTS LP, a Delaware limited partnership, |) | |
| CLEAN HARBORS ENVIRONMENTAL |) | |
| SERVICES, INC., a Massachusetts corporation, |) | |
| and WASTE MANAGEMENT OF |) | |
| ILLINOIS, INC., a Delaware corporation, |) | |
| |) | |
| Respondents. |) | |
| |) | |
| |) | |

NOTICE OF FILING

PLEASE TAKE NOTICE that on Friday, August 28, 2020, Complainant, PEOPLE OF THE STATE OF ILLINOIS, through the undersigned, filed with the Clerk of the Illinois Pollution Control Board, a true and correct copy of the attached Motion for Relief from Hearing and Stipulation and Proposal for Settlement as to Respondents AUX SABLE LIQUID PRODUCTS, INC. and AUX SABLE LIQUID PRODUCTS LP and hereby is served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
BY KWAME RAOUL, Attorney General of
the State of Illinois,

/s/ Elizabeth Dubats
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-2069
edubats@atg.state.il.us

Service List

For the Respondents

AUX SABLE LIQUID PRODUCTS, INC.
AUX SABLE LIQUID PRODUCTS LP

Jennifer M. Martin
HeplerBroom LLC
4340 Acer Grove Drive,
Springfield, IL 62711
Jennifer.Martin@heplerbroom.com

CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.

Timmery Ann Fitzpatrick
Assistant General Counsel
Clean Harbors Environmental Services, Inc
P.O. Box 9149
42 Longwater Drive
Norwell, MA 02061-9149
fitzpatrick.timmery@cleanharbors.com

WASTE MANAGEMENT OF ILLINOIS

Molly Snittjer
Nijman Franzetti LLP
10 S. LaSalle Street
Suite 3600
Chicago, IL 60603
ms@nijmanfranzetti.com

CERTIFICATE OF SERVICE

I, Elizabeth Dubats, Assistant Attorney General, do certify that I caused to be served this 28th day of August, 2020, the Notice of Filing, Motion for Relief for Hearing and Stipulation and Proposal for Settlement in this matter upon the persons listed on the service list via email with return receipt.

/s/ Elizabeth Dubats
Elizabeth Dubats

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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2018), moves that the Illinois Pollution Control Board (“Board”) grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2018). In support of this motion, Complainant states as follows:

1. On June 30, 2020, Complainant filed a Complaint in the above captioned matter.
2. The Complaint in this matter alleges violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2018) and Section 722.120(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.120(a) as to Respondents Aux Sable Liquid Products, Inc. and Aux Sable Liquid Products LP.
3. Complainant and Respondents Aux Sable Liquid Products, Inc. and Aux Sable

Liquid Products LP have reached agreement on all outstanding issues with respect to the Counts I and III of the Complaint. On July 17, 2020, Complainant and Respondents Clean Harbors Environmental Services, Inc. and Waste Management of Illinois reached agreement on all outstanding issues with respect to the Counts II, IV, V and VI of the Complaint. There are no remaining outstanding issues.

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement as to Respondents Aux Sable Liquid Products, Inc. and Aux Sable Liquid Products LP filed this same date.

5. Complainant and Respondents Aux Sable Liquid Products, Inc. and Aux Sable Liquid Products LP agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2018).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General
State of Illinois

BY: /s Elizabeth Dubats
Elizabeth Dubats
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-2069
Primary e-mail address: edubats@atg.state.il.us
Secondary e-mail address: mcacaccio@atg.state.il.us

DATE: August 28, 2020

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| ILLINOIS, INC., a Delaware corporation, |) | |
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| Respondents. |) | |

STIPULATION AND PROPOSAL FOR SETTLEMENT AS TO RESPONDENTS AUX SABLE LIQUID PRODUCTS, INC. AND AUX SABLE LIQUID PRODUCTS LP

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and AUX SABLE LIQUID PRODUCTS, INC. and AUX SABLE LIQUID PRODUCTS LP (“Respondents” or “Aux Sable Respondents”), (collectively “Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1, *et seq.* (2018), and the Board’s regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On June 30, 2020, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018), against the Aux Sable Respondents, Clean Harbors Environmental Services, Inc. (“Clean Harbors”) and Waste Management of Illinois, Inc. (“Waste Management”). This Stipulation and Proposal for Settlement resolves Complainant’s allegations of violation against Aux Sable Respondents only.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2018).

3. At all times relevant to the Complaint, Respondent, Aux Sable Liquid Products LP, was and is a Delaware limited partnership that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Aux Sable Liquid Products LP owned and operated a natural gas liquids extraction and fractionation facility located at 6155 East State Route 6, Morris, Grundy County, Illinois 60436 (“Aux Sable Facility”).

5. At all times relevant to the Complaint, Respondent, Aux Sable Liquid Products, Inc., was and is a Delaware corporation that is authorized to transact business in the State of Illinois.

6. At all times relevant to the Complaint, Respondent Aux Sable Liquid Products, Inc. was the managing general partner of Aux Sable Liquid Products LP, and, in that capacity, managed, controlled, administered, and operated the business and affairs of Aux Sable Liquid Products LP.

7. On March 9, 2018, a roll-off box containing 4.38 tons of contaminated molecular sieve material generated by Aux Sable Respondents was present at the Aux Sable Facility. The material in the roll-off box had a benzene concentration of 1.06 milligrams per liter (“mg/l”) and was labeled as containing hazardous waste.

8. On March 9, 2018, Clean Harbors hauled the roll-off box containing the contaminated molecular sieve material to the Laraway Recycling and Disposal Facility, a facility that is owned and operated by Waste Management and not permitted to accept hazardous waste (“Laraway Facility”).

B. Allegations of Non-Compliance

Complainant contends that the Aux Sable Respondents have violated the following provisions of the Act and Board regulations (the remaining Counts of the Complaint not listed below pertain to the other Respondents):

| | |
|---|---|
| Count I (as to Aux Sable Liquid Products, Inc. and Aux Sable Liquid Products LP): | Improper disposal of hazardous waste in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2018). |
|---|---|

| | |
|--|---|
| Count III (as to Aux Sable Liquid Products, Inc. and Aux Sable Liquid Products LP) | Failure to prepare a hazardous waste manifest in violation of Section 722.120(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.120(a). |
|--|---|

C. Non-Admission of Violations

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not

affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On March 9, 2018, Aux Sable Respondents and Clean Harbors contacted the Illinois EPA to report and discuss the disposal of the contaminated molecular sieve material and the measures necessary to remediate the contamination.

2. On April 3, 2018, Aux Sable Respondents and Respondents Clean Harbors and Waste Management submitted to Illinois EPA, for review and approval, a work plan for the removal of the contaminated molecular sieve material from the Laraway Facility.

3. On April 18, 2018, Illinois EPA approved the work plan for removal of the contaminated molecular sieve material from the Laraway Facility.

4. On April 25 and 26, 2018, Clean Harbors excavated approximately 175 cubic yards of material mixed with the contaminated molecular sieve material from the Laraway Facility. The excavated material was then transported to a facility in Ontario, Canada that is authorized to receive hazardous waste.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39

and 42 of the Act, 415 ILCS 5/39 and 42 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), provides as follows:

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

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

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

1. Complainant alleges human health and the environment were threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondents' violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was and is suitable for the area in which it is located.
4. Compliance with the Act and Board regulations applicable to hazardous waste manifests and offering hazardous waste for disposal is both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and the Board regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), provides as follows:

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
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; and
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 Parties to the Stipulation state as follows:

1. Complainant alleges the Respondents allowed hazardous waste to be removed from the Aux Sable Facility and disposed of at a landfill that was not permitted to accept hazardous waste. The alleged violations began on or around March 9, 2018 and were

individually resolved by April 26, 2018.

2. Respondents were diligent regarding compliance with the Act and Board regulations once notified of the alleged violations.

3. The civil penalty takes into account any economic benefit realized by the Respondents as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirteen Thousand Dollars (\$13,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

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

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

8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

1. The Respondents shall pay a civil penalty in the sum of Thirteen Thousand Dollars (\$13,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. **Interest and Default**

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing

immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

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

C. Payment Procedures

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Elizabeth Dubats
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and

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

2. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of Respondents' payment of the \$13,000.00 penalty, their commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Aux Sable Respondents from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 30, 2020. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Aux Sable Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;

- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Aux Sable Respondents.

F. Enforcement of Stipulation

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

G. Execution of Stipulation

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

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

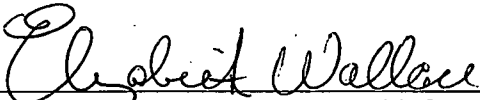
PEOPLE OF THE STATE OF ILLINOIS

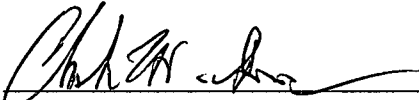
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

KWAME RAOUL
Attorney General
State of Illinois

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 8/25/20

DATE: 8/17/2020

Continued Signature Page to Stipulation in People v. Aux Sable Liquid Products, Inc., Aux Sable Liquid Products LP, Clean Harbors Environmental Services, Inc., and Waste Management of Illinois, Inc.

RESPONDENT

AUX SABLE LIQUID PRODUCTS,
INC.

by

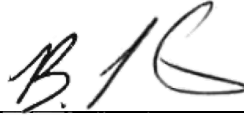


Its

Vice President

AUX SABLE LIQUID PRODUCTS,
INC.

by



Its

Brad Kohlsmith
Vice President

DATE: August 25, 2020

DATE: Aug 27, 2020

RESPONDENT

AUX SABLE LIQUID PRODUCTS LP
by its General Partner, Aux Sable Liquid
Products, Inc.

by



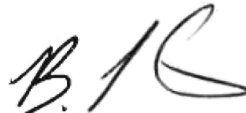
Its

Vice President

RESPONDENT

AUX SABLE LIQUID PRODUCTS LP
by its General Partner, Aux Sable Liquid
Products, Inc.

by



Its

Brad Kohlsmith
Vice President

DATE: August 25, 2020

DATE: Aug 27, 2020