

Service List

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Brad.Halloran@illinois.gov
(Via Email)

Respondents Counsel

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CERTIFICATE OF SERVICE

I, Molly Kordas, an Assistant Attorney General, do certify that on this 4th day of August 2023, I caused to be served a copies of the foregoing Notice of Filing and Complainant's Motion to Voluntarily Dismiss Without Prejudice Respondent David R. Heidner, Motion for Relief from Hearing Requirement and Stipulation and Proposed Settlement as to Respondents Rick E. Heidner, James Edward Sayre and Parkway Bank & Trust Company , upon the parties listed on the attached Service List via methods described.

/s/ Molly Kordas
Molly Kordas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(773) 590-7047
Molly.Kordas@ilag.gov

EPA”). The Complaint was filed after Respondent Rick E. Heidner failed to respond to the Violation Notice and the Notice of Intent to Pursue Legal Action Illinois EPA issued on March 29, 2021 and July 26, 2021, respectively.

2. The Complaint alleges that Respondents, as the owners and operators of gasoline dispensing pumps that emit volatile organic compounds at 659 West 31st Street, Chicago, Cook County, Illinois (“Facility”), failed to timely decommission its vapor collection and control system and timely submit a decommissioning checklist, certification, and test results for decommissioning Respondents’ vapor collection and control system to the Illinois EPA in violation of Section 9(a) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 35 Ill. Adm. Code 218.586(i)(2)(C).

3. Documentation obtained from Respondents shows that Respondent David Heidner assigned his beneficial interest in the property on January 14, 2008; and therefore, did not own any vapor collection and control systems at the Facility that required decommissioning prior to the deadline of December 31, 2016, set forth in Section 218.586(i)(1)(B) of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B).

4. Section 2-1009(a) of the Code, 735 ILCS 5/2-1009(a) (2022), provides as follows:

The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each party’s attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.

5. There are no pending motions for summary judgment regarding the Complaint, and the Board has not set a hearing date.

6. Accordingly, as this matter has not yet gone to hearing, pursuant to Section 2-1009(a) of the Code, 735 ILCS 5/2-1009(a) (2022), the Board may grant Complainant's Motion to Voluntarily Dismiss this action against Respondent David Heidner without prejudice.

7. Section 5-117 of the Code, 735 ILCS 5/5-117 (2022), provides, in relevant part, as follows:

In all actions commenced for and on behalf of the people of this state... if the action is dismissed voluntarily by the plaintiff... the defendant shall not recover any costs whatsoever.

8. As provided by the plain language of Sections 2-1009(a) and 5-117 of the Code, 735 ILCS 5/2-1009(a) and 5/5-117 (2022), the Complainant requests that the Board grant its Motion to Voluntarily Dismiss the Complaint as to Respondent David Heidner without prejudice with the parties to each bear their own costs.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board enter an order granting Complainant's Motion to Voluntarily Dismiss this action against David R. Heidner, without prejudice and without costs.

Respectfully Submitted,

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

BY: /s/ Molly Kordas

Molly Kordas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, 18th Floor
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4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2022).

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) (2022).

Respectfully submitted,

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

BY: /s/ Molly Kordas
Molly Kordas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
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DATE: August 4, 2023

5/1, et seq. (2022), 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 March 17, 2023, 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 (2022), against Respondents.

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 (2022).

3. At all times relevant to the Complaint, Respondent Rick E. Heidner was, and is, a beneficial owner of a gasoline dispensing facility located at 659 West 31st Street, Chicago, Illinois, also known as 3101 South Union Avenue, Chicago, Illinois (the "Site").

4. At all times relevant to the Complaint, Respondent James Edward Sayre was, and is, a beneficial owner of the Site.

5. At all times relevant to the Complaint, Respondent Parkway Bank & Trust Company has held legal title to the Site as Trustee under Trust Agreement dated May 28, 2002, and known as Trust No. 13296.

6. As of the date of filing of the Complaint, the Site is located in an area of Environmental Justice ("EJ") concern as identified using Illinois EPA EJ Start.

7. Respondents own and operate gasoline dispensing pumps at the Site that emit volatile organic compounds ("VOCs") into the environment.

B. Allegations of Non-Compliance

Complainant contends that Respondents have violated the following provisions of the Act and Board Air Pollution Regulations:

Count I: Failure to Timely Decommission Vapor Collection and Control System and Submit Reports, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

C. Non-Admission of Violations

Respondents represent that Respondents 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, 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

On May 31, 2022, Respondents submitted to the Illinois EPA the decommissioning checklist, certification, and test results for the Site.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 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 (2022).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), 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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities were hindered by 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. Timely decommissioning of Respondents' vapor collection and control system, and timely submission of a decommissioning checklist, certification, and test results to the Illinois EPA, are 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) (2022), 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. Respondents failed to timely submit a decommissioning checklist, certification, and test results to the Illinois EPA. The violations began on January 1, 2017, and were resolved by Respondents submitting a decommissioning checklist, certification, and test results on May 31, 2022.
2. Respondents were diligent in attempting to come back into compliance with the

Act and Board Regulations once the Illinois EPA notified them of their noncompliance.

3. The civil penalty takes into account any economic benefit realized by 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 Five Thousand Dollars (\$5,000.00) 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**

Respondents shall pay a civil penalty in the sum of Five Thousand Dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. **Interest and Default**

1. If Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, 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 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:

Molly Kordas
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 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 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. 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 \$5,000.00 penalty, their commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges 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 March 17, 2023. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against 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 Respondents' 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 (2022), or entity other than 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.

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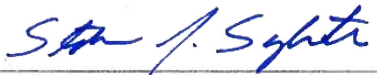
PEOPLE OF THE STATE OF ILLINOIS

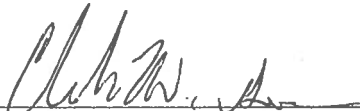
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

KWAME RAOUL
Attorney General
State of Illinois

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

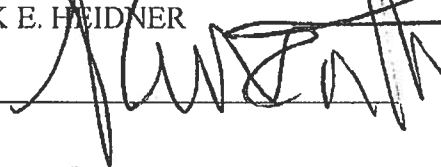
BY: 
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

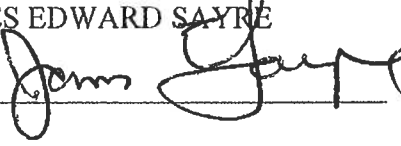
BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 8/1/23

DATE: 7/31/23

RESPONDENTS

RICK E. HEIDNER
BY: 

JAMES EDWARD SAYRE
BY: 

DATE: 7-7-23

DATE: 7-21-23

PARKWAY BANK & TRUST
COMPANY

BY: 

Name: Rick E. Heidner
Title: Authorized Beneficiary

DATE: 7-17-23