

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 02 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
WOOD RIVER REFINING COMPANY,)
a Division of EQUILON ENTERPRISES, LLC,)
)
Respondent.)

PCB NO. 99-120
(Enforcement)

NOTICE OF FILING

To: Mr. Joseph A. Girardi
Henderson & Lyman
175 West Jackson Blvd.
Chicago, IL 60604

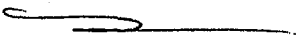
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and a STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

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

BY: 
THOMAS DAVIS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 29, 2004

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CLERK'S OFFICE

AUG 02 2004

People vs. Wood River Refining Co., PCB No. 99-120

CERTIFICATE OF SERVICE

STATE OF ILLINOIS
Pollution Control Board

I hereby certify that I did on July 29, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing instrument entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon:

Mr. Joseph A. Girardi
Henderson & Lyman
175 West Jackson Blvd.
Chicago, IL 60604

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Ms. Carol Sudman
Hearing Officer
Pollution Control Board
600 South Second Street, Suite 402
Springfield, IL 62704



Thomas Davis
Assistant Attorney General

Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 99-120
)	(Enforcement)
WOOD RIVER REINING COMPANY,)	
a Division of EQUILON)	
ENTERPRISES, L.L.C.,)	
)	
Respondents.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002). In support of this motion, Complainant states as follows:

1. Complainant has filed a Complaint with the Board, alleging air pollution and waste storage/disposal violations by the Respondents.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion. This document has been corrected on pages 1, 3, 11, and 15 to accurately indicate that Wood River was a division of Equilon, rather than a separately incorporated entity; these corrections have been initialed by the parties.

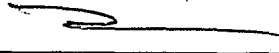
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2002).

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-7968
Dated: 7/28/04

AUG 02 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
)
)
)
v.)
)
WOOD RIVER REFINING COMPANY, ~~a~~)
~~Delaware corporation, and~~)
~~formerly~~ a Division of EQUILON)
ENTERPRISES, LLC.,)
)
Respondent.)

PCB NO. 99-120
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, WOOD RIVER REFINING COMPANY, and hereby submit this Stipulation and Proposal for Settlement ("Stipulation"). The parties agree that this Stipulation is a compromise of a disputed claim. The parties further agree that the statement of facts contained in this Stipulation is made and agreed upon for the purposes of settlement only and that neither the fact that a party has entered into the Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this Stipulation. This Stipulation shall be null and

void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the Stipulation set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (1998).

II.

AUTHORIZATION

The undersigned representatives for each party 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.

III.

APPLICABILITY

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

IV.

STATEMENT OF FACTS

The Parties

1. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency established in the executive branch of State government by Section 4 of the Act, 415 ILCS 5/4 (1998) and is charged, *inter alia*, with the duty of enforcing the Act. This action was instituted on the Attorney General's own motion.

2. Respondent, Wood River Refining Company, ("Wood River"), ~~formerly~~ a Division of Equilon Enterprises LLC, is a ~~Delaware corporation~~ ^{TD} authorized to do business in Illinois. Its registered agent is C.T. Corporation, 208 South LaSalle Street, Chicago, Illinois 60604-1136.

The Facility

3. At all time periods relevant to the Complaint, the Respondent owned or operated a petroleum refinery and associated tank farms, the Wood River refinery ("Facility"), located at 900 South Central Avenue, Roxana, Illinois 62084. From and after June 1, 2000 Respondent has not owned or operated the Facility.

The Complaint

4. On July 5, 2000, Complainant filed a Supplemental Complaint ("Complaint") against Respondent.

5. On September 22, 1995, the Illinois EPA issued

Respondent Operating Permit No. 72110637 for the distillate hydrotreater.

6. On July 22, 1992, the Illinois EPA issued Respondent Operating Permit No. 72110618 for the Rectified Absorber Unit ("RAU"). On August 12, 1994, the Illinois EPA issued Defendant Operating Permit No. 72110626 for Tank L-174.

7. In summary, the Complaint alleges the following:

- Count I: Complainant alleges Respondent caused or tended to cause air pollution in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 (1996), as a result of a release of hydrodesulfurized middle distillate from the distillate hydrotreater unit at the Facility on July 2, 1998
- Count II: Complainant alleges that, as a result of a release of hydrodesulfurized middle distillate from the distillate hydrotreater unit at the Facility on July 2, 1998, Respondent failed to properly maintain the distillate hydrotreater so as not to cause air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (1998) and 35 Ill. Adm. Code 201.141 (1996), thus, the Respondent violated Section 9(b) of the Act and Special Condition No. 7 of Operating Permit No. 72110637;
- Count III: Complainant alleges Respondent violated regulations adopted by the Board in violation of Section 9(a) of the Act, in respect to certain above-ground storage tanks in volatile organic service, by failing to conduct visual inspections of the floating roof seals at least once every six months in violation of 35 Ill. Adm. Code 219.123(b)(4) (1996); by failing to maintain records of the visual inspections of the floating roof seals in violation of 35 Ill. Adm. Code 219.123(b)(6) (1996); by failing to maintain the secondary seals, intact and uniformly in place around the circumferences of floating roofs, in violation of 35 Ill. Adm. Code 219.124(a)(2)(A) (1996); by allowing the secondary seals to have gaps in excess of the limit of 1.0 square inch per foot of tank diameter, in violation of 35 Ill. Adm. Code

219.124(a)(2)(B) (1996); and by allowing the gauge hatches to be open on external floating roof tanks, in violation of 35 Ill. Adm. Code 219.123(b)(3)(A) (1996);

Count IV: Complainant alleges Respondent caused or tended to cause air pollution in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 (1996) as a result of a release of sulfur dioxide and nitrogen oxide from Catalytic Cracking Unit #1 through the Facility's north flare on June 25, 1999;

Count V: Complainant alleges Respondent caused or tended to cause air pollution in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 (1996) as a result of a release of hydrogen sulfide from the pressure relief valve on the Rectified Absorber Unit on July 1, 1999;

Count VI: Complainant alleges that Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (1998) and Standard Condition No. 7 of Operating Permit No. 72110618 by failing to properly maintain the Rectified Absorber Unit so as not to cause air pollution in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 (1996);

Count VII: Complainant alleges Respondent caused or tended to cause air pollution in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 (1996) as a result of an explosion in an asphalt storage tank L-174 at the Facility that released mineral or rock wool and asbestos on January 25, 2000;

Count VIII: Complainant alleges Respondent violated Section 9(b) of the Act and Standard Condition No. 7 of Operating Permit No. 72110637 by failing to properly maintain the floating roof on asphalt storage tank L-174 so as not to cause air pollution in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 (1996);

Count IX: Complainant alleges that on July 14, 1998 Respondent violated Section 21(e) of the Act and 35 Ill. Adm. Code 722.112(c) (1996) by shipping hazardous waste to the Roxana Landfill, which is not permitted to receive or dispose of hazardous waste and has not received a USEPA identification number

Count X: Complainant alleges that on July 14, 1998 Respondent violated Section 21(e) of the Act and 35 Ill. Adm. Code 722.120(a) and (b) (1996) by failing to properly prepare manifests for transportation of hazardous waste, and by failing to designate a facility which is permitted to accept and dispose of hazardous waste;

Count XI: Complainant alleges that on July 14, 1998 Respondent violated Section 21(e) of the Act and 35 Ill. Adm. Code 722.133 (1996) by failing to properly placard or offer the initial transporter the appropriate placards for transportation of hazardous waste pursuant to Department of Transportation regulations;

Count XII: Complainant alleges that on July 14, 1998 Respondent violated Section 21(e) of the Act and 35 Ill. Adm. Code 728.107(a)(1) (1996) by failing to notify the Roxana Landfill in writing of the appropriate treatment standard and any applicable prohibition levels for hazardous waste; and

Count XIII: Complainant alleges that on July 14, 1998, as a result of the disposal of hazardous waste, Respondent violated Section 21(e) of the Act, and 35 Ill. Adm. Code 728.138(a) (1993).

The Answer and Affirmative Defenses

Respondent filed an answer to the Complaint and Affirmative Defenses to the Complaint. On August 8, 2002, the Board, following Complainant's Motion to Strike Affirmative Defenses, granted the Motion to Strike in part and denied the Motion to Strike in part.

V.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1998), provides;

c. 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 or 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 state as follows:

1. Complainant contends that injury to, and interference with, the protection of the health, general welfare, and physical property of the People occurred as the result of air and land pollution attributable to the facility and the degree of injury was dependent upon the degree of exposure to that pollution. The Complainant further states that Respondent's shipment of hazardous waste to the Roxana Landfill, which is not permitted to receive or dispose of hazardous waste, interfered with the protection of the health, general welfare and physical property

of the People. Respondent contends that no violations of the Act, the Illinois Administrative Code or any operating permits occurred, and that any occurrences were of a minor duration and gravity which did not injure or interfere with the protection of the health, general welfare and physical properties of the People.

2. The Parties agree that Respondent's former Facility is of social and economic benefit;

3. The Parties agree that the Facility is located in an industrial area adjacent to residential areas, but that the Facility existed at this location before the residential areas were developed;

4. Complainant contends that complying with the Act and regulations is technically, practicable and economically reasonable, which Respondent, in respect to certain specific areas, denies, and;

5. The Parties agree that Respondent implemented measures subsequent to the occurrences in order to minimize the risk of similar future occurrences.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (P.A.93-0575, eff. 01/01/2004), provides:

- h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1),

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

In response to these factors, the parties state as follows:

1. Complainant contends the alleged violations occurred on specific dates intermittently between July 2, 1998, and January 25, 2000, but contends that Respondent's failure to maintain the equipment was continuous in nature. In addition, Complainant contends that the violations were aggravated by the Respondent's shipment of hazardous waste to the Roxana landfill, failure to properly prepare manifests for the transportation of hazardous waste, failure to placard the hazardous material, and the inappropriate disposal of hazardous waste. Respondent denies it failed to maintain the equipment and denies that any violation of the Act, the Illinois Administrative Code or any operating permits occurred. Respondent further contends that if any violation occurred it was minimal in duration and gravity, and any impact on public or private property was minimal and immediately responded to and resolved by Respondent.

2. The Parties agree that Respondent is paying for part of the cost of an eight-year program being conducted by the current owner of the Facility to inspect and repair storage tanks.

3. Complainant contends the economic benefit of Respondent's noncompliance is the savings realized by not having in place an adequate inspection and preventative maintenance program to ensure proper operations and maintenance of the

affected equipment. In addition, the economic benefit of Respondent's noncompliance is the savings realized by not incurring disposal costs at a hazardous waste disposal facility.

Respondent denies it derived any economic benefit as Complainant contends. Nonetheless, the Parties stipulate that any economic benefit realized by Respondent is less than the amount of the penalty agreed upon herein.

4. The Complainant has determined that a penalty of one hundred and twenty-six thousand dollars (\$126,000.00) is reasonable and will serve to deter further violations and to otherwise aid in enhancing voluntary compliance with the Act and Board regulations by Respondent and other persons similarly subject to the Act;

5. Complainant is unaware of any previously adjudicated violations of the Act by the Respondent, Wood River Refining Company, ~~formerly~~ a division of Equilon Enterprises; TD

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

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

VII.

TERMS OF SETTLEMENT

A. The Respondent shall pay a penalty of one hundred twenty-six thousand dollars (\$126,000.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from

the date on which the Board adopts a final order approving this Stipulation. Payment shall be made by certified check or money order payable to the Illinois EPA, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

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

Respondent's Federal Employer Identification Number ("FEIN") shall be written upon the certified check or money order.

Respondent's FEIN is: 52-2074528.

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

A copy of the payment transmittal and check shall be simultaneously submitted to:

Kyle Davis
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

- C. i. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate

allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a).

- ii. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.
- iii. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. Respondent's Federal Employer Identification Number ("FEIN") shall be written upon the certified check or money order.

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

VIII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondent to comply with any federal, state, or local regulations, including but not limited to the Act, 415 ILCS 5/1 et seq. and the Board's Regulations, 35 Ill. Adm. Code, Subtitles A through H.

IX.

DISCHARGE OF LIABILITY

In consideration of and following Complainant's receipt of Respondent's payment of the civil penalty set forth in Section VII hereof, Complainant releases, waives and forever discharges Respondent and its parent, related and affiliated entities from any liability or penalties for violations of the Act, the Illinois Administrative Code and any operating permits which were the subject matter of the Complaint herein. However, covered matters do not include:

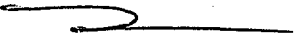
- i) Criminal liability;
- ii) Claims based on Respondent's failure to meet the requirements of this Stipulation and Proposal for Settlement;
- iii) Liability for future violation of state, local, federal, and common laws and/or regulations; and
- iv) Any future liability for natural resource damage or for removal, cleanup, or remedial action as a result of a release of hazardous substances or the liability of Respondent under Section 22.2(f) of the Act, 415 ILCS 5/22.2(f) (1996), or under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601-9675).

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

PEOPLE OF THE STATE OF ILLINOIS,

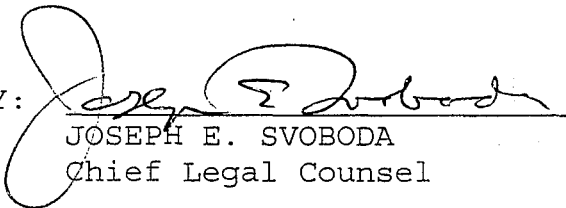
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 7/28/04

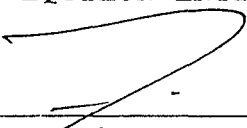
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 4/30/04

WOOD RIVER REFINING COMPANY, ~~a~~
~~Delaware corporation, and formerly a~~
Division of EQUILON ENTERPRISES, LLC

TD

BY: 
Name: R.C. GOETZ
Title: VP Manufacturing

DATE: 7/15/04