

MAR 01 2000

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MADISON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

CLARK REFINING & MARKETING, INC.,

Respondent,

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PCB No. 95-163

FINAL STIPULATION AND PROPOSAL FOR SETTLEMENT

Pursuant to 35 Ill. Adm. Code 103.180 (1992), the following Final Stipulation and Proposal for Settlement entered into between the Complainant, People of the State of Illinois, by JAMES E. RYAN, Attorney General of the State of Illinois, on behalf of the Illinois Environmental Protection Agency ("Illinois EPA"), and the Respondent, Clark Refining & Marketing, Inc. ("Clark"), is tendered for approval by the Illinois Pollution Control Board ("Board"). It is expressly understood and agreed to by and between Clark, James E. Ryan, Attorney General of the State of Illinois ("Attorney General"), and the Illinois EPA that the agreements, stipulations and statements herein contained shall not be binding on the parties, and shall be deemed null and void, if not approved by the Board, or if additional terms or conditions are imposed by the Board. This Final Stipulation and Proposal for Settlement is made solely for the purpose of settling and putting an end to the litigation of the matters addressed herein, and neither the fact that a party has entered into this Final Stipulation and Proposal for Settlement, nor any of the facts stipulated herein, shall be introduced into evidence or construed as an admission in any other proceedings conducted before the Board or outside the jurisdiction of the Board except to

enforce the terms hereof by the parties to this agreement. Subject to the foregoing understanding and agreement, it is further agreed as follows:

I. STIPULATION OF FACTS

1. Clark is a Delaware corporation.
2. Clark operates a refinery in Hartford, Madison County, Illinois.
3. At its refinery, Clark converts crude oil into gasoline and other petroleum distillates.

A. COUNT V

1. Clark operates a wastewater treatment facility at the refinery. The wastewater treatment facility emits volatile organic material subject to air pollution control operating permit No. 72110683.
2. In its September 17, 1998 decision in this case, the Board determined that Clark was issued an air pollution control operating permit for the wastewater treatment facility by default on February 8, 1994, but that Clark operated its wastewater treatment facility without a valid permit from July 15, 1993 to February 8, 1994. The Board ordered that this matter be sent to hearing to address the appropriate penalty for operation of the wastewater treatment facility without an air pollution control operating permit during that period.
3. Prior to November 8, 1993, Clark installed a carbon canister on its DAF device, one of the components of the wastewater treatment facility.
4. In its September 17, 1998 decision in this case, the Board determined that Clark performed this construction without obtaining a construction permit from the Illinois EPA and ordered that this matter be sent to hearing to address the appropriate penalty for the construction without a permit.

B. ADDITIONAL MATTERS

1. Clark utilizes Tank T-144 to store a spent caustic liquid which contains a small percentage of entrained volatile petroleum liquid ("VPL"). The capacity of the tank is 43,168 gallons. Because this tank is a caustic storage tank rather than a VPL storage tank, this tank is not required to be equipped with a floating roof with closure seals or a vapor recovery system. Normally, separated VPL levels are kept to a minimum by skimming VPL from the tank 2 to 3 times per week. In June of 1995, operator error resulted in an accumulation of approximately 5,000 gallons of separated VPL in the tank.

2. Shortly after this accumulation occurred, it was discovered during an Illinois EPA inspection of the refinery. Clark then skimmed the VPL from the tank and revised its procedures for transferring caustic into the tank.

3. Clark utilizes a continuous opacity monitor to monitor emissions from its Fluid Catalytic Cracking Unit ("FCCU"). The monitor was out of service from 9:00 a.m. on October 22, 1995 to 10:30 a.m. October 31, 1995, after it was damaged by lightning. The FCCU was not continuously monitored during this period. Clark has since obtained a spare opacity monitor.

4. During October and November of 1995, the emissions from Clark's new flare unit included droplets of "Prussian Blue" (ferric ferro cyanide) which stained the outside of the flare and some siding on some homes in the vicinity of the refinery.

5. The Prussian Blue droplets formed as a result of a reaction between off-gases from the sour water stripper and corrosion byproducts in the line from the stripper to the flare.

6. Since that time, Clark has cleaned and/or replaced all stained siding at the affected residences. Clark has also eliminated the formation of the Prussian Blue droplets by removing the expansion loops in sour water off-gas piping in the flare system pipe rack and installing a knockout drum at the base of the flare to collect any condensed water or Prussian Blue droplets (any liquid collected is recycled through the crude unit and sour water stripper).

II. SECTION 33(C) FACTORS

Section 33(c) of the Act, 415 ILCS 5/33(c) (1996), provides:

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 state as follows:

A. COUNT V.

1. The operation of the wastewater treatment system without an air pollution control permit during the period at issue was related to the dispute over the applicability of Subpart TT to that system. The installation of the carbon canister ultimately proved ineffective in controlling emissions. Neither caused injury to or interfered with protection of public health or the environment.

2. Clark's refinery is a major manufacturing facility which has been located in Hartford for more than 40 years. It employs more than 300 people and produces a substantial portion of the gasoline and petroleum distillates manufactured in the State of Illinois. The wastewater treatment system is an essential and environmentally beneficial part of refinery operations.

3. The refinery is located in an industrial area adjacent to residential areas. The refinery existed at this location before the existing residential areas were developed.

4. It was technically practicable and economically reasonable for Clark to submit a construction permit application prior to the installation of the carbon canister.

5. Clark is now in compliance on these matters.

B. ADDITIONAL MATTERS

1. a. Tank T-144: The State contends that Tank T-144 temporarily contained an accumulation of VPL with a vapor pressure of 1.5 psia or greater. However, Clark maintains that the VPL accumulated in Tank T-144 only temporarily and inadvertently, that this condition was promptly corrected upon discovery, and the temporary accumulation of excessive levels of separated VPL did not convert this caustic storage tank into a VPL storage tank.

b. Opacity monitor: The State contends the FCCU was not continuously monitored while the opacity monitor was out of service. The outage, however, was due to a lightning strike and the monitor was promptly repaired when replacement parts became available. In addition, Clark has purchased a back-up opacity monitor in response to this incident.

c. The State contends the Prussian Blue emissions from the flare stained residential property. Prussian Blue is not a hazardous air pollutant and no emission limits were exceeded. The Prussian Blue staining, while unaesthetic, did not create a public health or environmental hazard but did interfere with the use and enjoyment of adjacent residential property.

2. As noted above, the refinery has social and economic value through the employment it provides and the products it produces.

3. As noted above, the refinery is located in an industrial area and pre-dates the existing residential areas.

4. Although it was technically practicable and economically reasonable to prevent each of these occurrences, each was short in duration, each was promptly

remedied upon discovery, and resulted in only minor injury or interference with protection of the public health or the environment.

5. Clark is now in compliance as to these matters.

III. DETERMINATION OF APPROPRIATE CIVIL PENALTY

Section 42(h) of the Act, 415 ILCS 5/42(h) (1994), provides:

- h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) of (b)(3) 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 violator 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 violator because of delay in compliance with requirements;
 4. the amount in monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
 5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

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

1. a. Count V: Clark operated the wastewater treatment facility without an pollution control permit from July 15, 1993 to February 8, 1994. Clark constructed the DAF carbon canister without a construction permit prior to November 8, 1993. The unit was described in the November 8, 1993 air pollution control operating permit application which was granted by default.
 - b. Tank T-144: Clark accumulated separated VPL in Tank T-144 for approximately one month.
 - c. Opacity Monitor: The opacity monitor was out of service for 10 days.

d. Prussian Blue: The Prussian Blue was emitted for approximately one month.

2. a. Count V: The operation of the wastewater treatment system without an air pollution control permit during the period at issue was related to the dispute over the applicability of Subpart TT to that system.

b. Tank T-144: The accumulation of separated VPL resulted from operator error.

c. Opacity monitor: The opacity monitor was incapacitated by a lightning strike and was repaired as expeditiously as possible.

d. Prussian Blue: The Prussian Blue emissions occurred as a result of an unprecedented and unanticipated chemical reaction in the flare.

3. There appears to be no economic benefit to Clark as a result of these incidents.

4. a. Count V: A civil penalty of \$5,000.00 for each incident will serve to deter Clark from further violations of this type and will otherwise aid in the enforcement of the Act.

b. Tank T-144, opacity monitor, and Prussian Blue incidents: A civil penalty of \$27,500.00 for these incidents will serve to deter Clark from further violations of this type and will otherwise aid in the enforcement of the Act.

5. The State and Clark have previously entered into a Consent Order addressing alleged air pollution violations at Clark's Blue Island refinery in the case of People v. Clark Refining and Marketing, Inc., 94-CH-7229 (Cook County). That Consent Order reflects the fact that Clark denied any violation in that case but agreed to entry of the Consent Order to avoid litigation. The Order was approved by the Circuit Court on August 11, 1994.

IV. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Final Stipulation and Proposal for Settlement in no way affects the responsibility of Clark to comply with any other federal, state or local laws or regulations, including, but not limited to, the Act, 415 ILCS 1, et seq. (1996), and the Illinois Pollution Control Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

V. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the Parties consenting hereto pursuant to the Act.

VI. APPLICABILITY

This Final Stipulation and Proposal for Settlement shall apply to and be binding upon the Attorney General, the Illinois EPA, and Clark, and its officers, agents, employees, servants, successors and assigns thereof. Clark shall not raise as a defense to any action to enforce this Stipulation and Proposal for Settlement the failure of its officers, agents, employees, servants, successors and assigns to take such action as shall be required to comply with the provisions of this Final Stipulation and Proposal for Settlement.

VII. PROPOSAL FOR SETTLEMENT

1. Clark shall pay a civil penalty of Thirty-Seven Thousand and Five Hundred Dollars (\$37,500.00).
2. The penalty shall be paid by corporate or certified check, within thirty (30) days of the issuance of the Board order approving this Final Stipulation and Proposal for Settlement, made payable to the Treasurer of the State of Illinois, for deposit in the Environmental Protection Trust Fund and submitted to:

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

The name, number of the case, and Clark's Federal Employer Identification Number (43-1491230) shall be noted on the check. A copy of the check and transmittal letter shall be sent to:

Donna Lutes
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

For the purpose of payment and collection, Clark may be reached at the following addresses:

Mr. Richard Keffer, Esq.
Senior Attorney
Clark Refining and Marketing, Inc.,
8182 Maryland Avenue
St. Louis, Missouri 63105

3. In the event that the penalty is not paid in a timely fashion, interest shall accrue and be paid by Clark at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1996), pursuant to Section 42 (g) of the Act, 415 ILCS 5/42(g) (1996).

B. Compliance Measures

Clark shall cease and desist from any violations of Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b) (1996), and 35 Ill. Adm. Code 201.141, 201.142, 201.143, 201.144, 201.401(a), 219.121, 219.123 and 219.124(a)(1) as alleged herein.

C. Covenant Not to Sue

1. In consideration of Clark's payment of the civil penalty specified above and Clark's compliance with the terms and conditions of this Final Stipulation and Proposal for Settlement, and effective upon approval thereof in its entirety by the Board, the Attorney General and Illinois EPA covenant not to sue Clark and not to seek attorneys fees pursuant to section 42(f) of the Act, 415 ILCS 5/42(f) (1996), for any violation 1) alleged in Count V of the Amended Complaint, 2) alleged as an "Additional Matter" in this Final Stipulation and Proposal for Settlement, or 3) premised upon circumstances or conduct which formed the basis for the

allegations in 1 or 2 above. Nothing in this paragraph shall limit the State's authority to enforce the terms of this Final Stipulation and Proposal for Settlement.

2. This covenant not to sue does not extend to:
 - a. Claims based upon Clark's failure to meet the requirements of the Final Stipulation and Proposal for Settlement;
 - b. Claims based on conduct or circumstances which did not form the basis for any allegations herein;
 - c. Claims based upon liability other than civil liability; and
 - d. Liability for future violation of state, federal, local and commons laws and/or regulations.

3. Nothing in this Final Stipulation and Proposal for Settlement 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, firm, corporation or entity other than Clark Refining and Marketing, Inc., its parent, subsidiary and affiliate companies and their employees, directors, officers, agents, successors and assigns.

4. This covenant not to sue is premised and contingent upon Clark's compliance with the terms of the Final Stipulation and Proposal for Settlement. In the event that Clark refuses or otherwise fails to comply, the State, in addition to any other remedies, may seek injunctive or other relief to compel compliance.

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

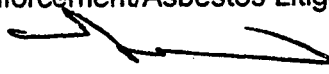
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

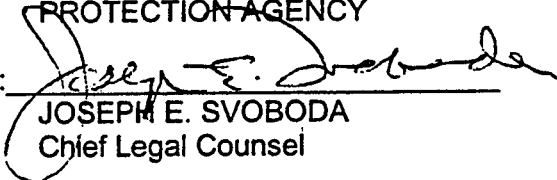
JAMES E. RYAN
Attorney General, State of Illinois

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

DATED: 10/26/99

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATED: 10.20.99

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATED: 12-30-99

CLARK REFINING AND MARKETING, INC.
BY: 