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OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

July 5, 2005

PCB06-05

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. GKN Aerospace North America, Inc.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINT and STIPULATION AND PROPOSAL FOR SETTLEMENT in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

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

KL/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
GKN AEROSPACE NORTH AMERICA,)
INC., a Delaware corporation,)
)
Respondent.)

JUL 07 2005

STATE OF ILLINOIS
Pollution Control Board

PCB No. 06-05

NOTICE OF FILING

To: Robert F. Wilkinson
Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105-3441

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 COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, 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: 
KRISTEN LAUGHRIDGE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 5, 2005

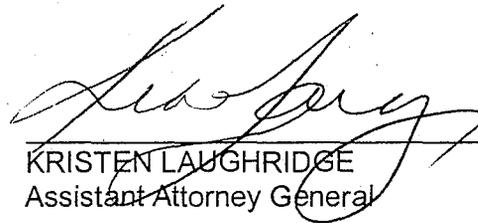
CERTIFICATE OF SERVICE

I hereby certify that I did on July 5, 2005, 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 following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Robert F. Wilkinson
Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105-3441

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
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


KRISTEN LAUGHRIDGE
Assistant Attorney General

This filing is submitted on recycled paper.

RECEIVED
CLERK'S OFFICE

JUL 07 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 GKN AEROSPACE NORTH AMERICA, INC.)
 a Delaware corporation,)
)
 Respondent.)

PCB NO. 06-05

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:

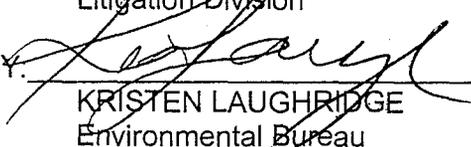
1. A Complaint is being filed with the Board, alleging violations by the Respondent of the Illinois Environmental Protection Act and Board Regulations.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
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 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) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

KRISTEN LAUGHRIDGE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 5, 2005

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 vs.)
)
 GKN AEROSPACE NORTH AMERICA, INC.,)
 a Delaware corporation,)
)
 Respondent.)

~~NO. 05-PCB-~~ 06-05
 (Enforcement - Land)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, GKN AEROSPACE NORTH AMERICA, INC., a Delaware corporation, as follows:

COUNT I

HAZARDOUS WASTE VIOLATIONS

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. The Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), after providing the Respondent with notice and opportunity for a meeting with the Illinois EPA.

4. The Respondent, GKN AEROSPACE NORTH AMERICA, INC. ("GKN"), is a Delaware corporation, which owns and operates GKN Aerospace Services - St. Louis located at 142 JS McDonnell Boulevard, Hazelwood, St. Louis County, Missouri. GKN is an aerospace company. The Hazelwood facility's Illinois EPA identification number is 9290019999.

5. The Respondent is a one-time generator of both non-hazardous contaminated soil and rock and hazardous sump sludge. The non-hazardous contaminated soil and rock was generated during construction activities on Respondent's property. The hazardous sump sludge resulted from the clean out of a sump on Respondent's property.

6. Respondent had a special waste approval from Milam Recycling and Disposal Facility ("Milam RDF") for the receipt of contaminated soil and rock as non-hazardous waste. On the special waste approval, Respondent was to send a one-time disposal of 60 cubic yards of contaminated soil and rock to Milam RDF between October 6, 2003 and October 4, 2004.

7. Milam RDF is a solid waste permitted landfill located in St. Clair County, Illinois and is not permitted to accept hazardous waste.

8. On September 16, 2003, Respondent took samples of the contents of a 20 cubic yard roll-off container containing the sump sludge, and sent the samples to Teklab of Collinsville, Illinois. On September 19, 2003, Respondent received the lab results, which showed that the sump sludge had a Toxicity Characteristic Leaching Procedure Trichloroethylene (TCLP TCE) content of 59.6 mg/l.

9. On October 16, 2003, three 20 cubic yard roll-off containers were staged for removal from the Respondent's property in Hazelwood. Two of the containers contained soil

and rock to be hauled by Midwest Sanitary Service to Milam RDF. The third roll-off container contained the TCLP TCE contaminated sump sludge. The roll-off boxes did not have placards on them.

10. The roll-off container that contained the TCLP TCE contaminated sump sludge was numbered #SD15213.

11. Midwest Sanitary Service was scheduled to arrive and haul away two 20 cubic yard roll-off containers containing the contaminated soil and rock to Milam RDF on October 16, 2003. Midwest Sanitary Service arrived on October 17, 2003 and removed one roll-off container of non-hazardous contaminated soil and rock and one roll-off box of the TCLP TCE contaminated sump sludge.

12. On October 17, 2003, both roll-off containers were dumped at Milam RDF.

13. Respondent shipped the roll-off container that contained the TCLP TCE to Milam RDF on manifest number IL10749954. Respondent did not indicate on the manifest that the material was a hazardous waste. Respondent did not placard the roll-off container for transporting hazardous waste.

14. On October 20, 2003, Respondent notified Milam RDF that the contents of one of the roll-off containers may have been hazardous for TCE.

15. On October 23, 2003, Illinois EPA received a letter from Waste Management Company stating that sump sludge from Respondent was disposed of at Milam RDF that had a TCLP TCE content of 59.6 mg/l. The sump sludge was in a 20 cubic yard roll-off container and hauled to and disposed of by Midwest Sanitary Services at Milam RDF on October 17, 2003.

16. On November 10, 2003, Illinois EPA conducted a Non-financial Record Review Inspection of files for Milam RDF, Midwest Sanitary Services and Respondent in response to the letter received on October 23, 2003. Illinois EPA determined that a 20 cubic yard container

of hazardous waste was disposed of at the landfill pursuant to a manifest that stated the container contained a special non-hazardous waste consisting of contaminated soil and rock.

17. Waste containing TCE in excess of 0.5 mg/l pursuant to TCLP is a characteristic hazardous waste due to its toxicity pursuant to Section 721.124(b) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 721.124(b), and is designated as a D040 Hazardous Waste.

18. Section 21 of the Act, 415 ILCS 5/21 (2002), provides, in pertinent part, 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.

* * *

19. Section 3.535 of the Act, 415 ILCS 5/3.535 (2004), provides as follows:

"Waste" means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities,

* * *

20. Section 3.220 of the Act, 415 ILCS 5/3.220 (2004), provides as follows:

"Hazardous waste" means 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 of 1976, P.L. 94-580, or pursuant to Board regulations.

* * *

21. Section 3.185 of the Act, 415 ILCS 5/3.185 (2004), provides as follows:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking 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.

22. Sections 722.120(a) and (b) of the Board's Hazardous Waste Regulations, 35 Ill.

Adm. Code 722.120(a), (b), provides as follows:

- a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal must prepare a manifest before transporting the waste off-site.
- b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

* * *

23. Section 722.133 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code

722.133, provides as follows:

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F.

24. Section 728.107(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm.

Code 728.107(a), provides, in pertinent part, as follows:

- a) Requirements for generators
 - 1) A generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in Section 728.140, 728.145, or 728.149. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing determines the total concentration of hazardous constituents or the concentration of hazardous constituents in an extract of the waste obtained using SW-846 Method 1311 (the Toxicity Characteristic Leaching Procedure), incorporated by reference in 35 Ill. Adm. Code 720.111, depending on whether the treatment standard for the waste is expressed as a total

concentration or concentration of hazardous constituent in the waste extract....

- 2) If the waste or contaminated soil does not meet the treatment standard, the generator must send a one-time written notice to each treatment or storage facility receiving the waste with the initial shipment of waste to each treatment or storage facility, and the generator must place a copy of the one-time notice in the file. The notice must include the information in column "728.107(a)(2)" of the Generator Paperwork Requirements Table in Table I of this Part. No further notification is necessary until such time that the waste or facility changes, in which case a new notification must be sent and a copy placed in the generator's file.

* * *

25. Section 728.109(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm.

Code 728.109(a), provides as follows:

- a) The initial generator of a solid waste must determine each USEPA hazardous waste number (waste code) applicable to the waste in order to determine the applicable treatment standards under Subpart D of this Part. * * * If the generator determines that its waste displays a characteristic of hazardous waste * * * the generator must determine the underlying hazardous constituents (as defined at Section 728.102(i)) in the characteristic waste.

* * *

26. Section 728.138(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm.

Code 728.138(a), provides as follows:

- a) * * * The following wastes that are specified in the table at 35 Ill. Adm. Code 721.124(b) as USEPA hazardous waste numbers D012, D013, D014, D015, D016, D017, D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, and D043 that are not radioactive, that are managed in systems other than those whose discharge is regulated under the federal Clean Water Act (CWA; 33 U.S.C. 1251 et seq.), that are zero dischargers that do not engage in CWA-equivalent treatment before ultimate land disposal, or that are injected in Class I deep wells regulated under the Safe Drinking Water Act (SDWA) are prohibited from land disposal.

* * *

27. Section 728.140 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code

728.140, provides, in pertinent part, as follows:

- a. A prohibited waste identified in Table T of this Part, "Treatment Standards for Hazardous Wastes," may be land disposed only if it meets the requirements found in that Table. For each waste, Table T of this Part identifies one of three types of treatment standard requirements:
 - 1) All hazardous constituents in the waste or in the treatment residue must be at or below the values found in Table T of this Part for that waste (total waste standards);

28. Section 728. Table T of the Board's Hazardous Waste Regulations, 35 Ill. Adm.

Code 728. Table T, provides, in pertinent part, as follows:

Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
Common Name	CAS Number	Concentration in mg/l...	Concentration in mg/kg...

D040

Wastes that are TC for Trichloroethylene based on the toxicity characteristic leaching procedure (TCLP) in SW-846 Method 1311.

Trichloroethylene	79-01-6	0.054 and meet Section 728.148 standards	6.0 and meet Section 728.148 standards
-------------------	---------	--	--

29. Respondent disposed of a waste at the Milam RDF landfill a solid waste landfill, which does not meet the requirements of the Act and Board Regulations as a hazardous waste landfill.

30. By disposing of a waste at a facility that does not meet the requirements of the Act or the Board Regulations, Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2002).

31. Respondent did not prepare a Uniform Hazardous Waste manifest for the 20 cubic yard roll off container of TCE contaminated sump sludge (D040), nor designate on the waste manifest a facility that was permitted to handle the waste.

32. By not preparing a Uniform Hazardous Waste manifest for the contaminated sump sludge, Respondent violated Section 722.120(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.120(b).

33. By not designating a facility that was permitted to handle the waste on the waste manifest, Respondent violated Section 722.120(b) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.120(b).

34. By not placarding the roll-off container for hazardous materials, Respondent violated Section 722.133 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.133.

35. Respondent did not send a written notice to Milam RDF for the shipment of TCE contaminated sump sludge (D040) that the shipment did not meet the treatment standard, in violation of Section 728.107(a)(2) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.107(a)(2).

36. Respondent did not determine if the TCE contaminated sump sludge needed to be treated prior to landfill disposal, in violation of Section 728.107(a)(1) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.107(a)(1).

37. Respondent did not determine the USEPA hazardous waste number applicable to the TCE contaminated sump sludge prior to shipping the sump sludge to Milam RDF, in violation of Section 728.109(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.109(a).

38. Respondent disposed of the TCE contaminated sump sludge, a USEPA hazardous waste number D040, in a landfill in violation of Section 728.138(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.138(a).

39. Respondent disposed of TCE contaminated sump sludge, a USEPA hazardous waste number D040, in a landfill without treating the sludge so that it met or was below the standards in Table T of Section 728, in violation of Section 728.140 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.140.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Court grant the following relief:

A. Find that the Respondent, GKN AEROSPACE NORTH AMERICA, INC., has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2002) and Sections 722.120, 722.133, 728.107, 728.109, 728.138 and 728.140, 35 Ill. Adm. Code 722.120, 722.133, 728.107, 728.109, 728.138, 728.140, and thereby created circumstances of substantial danger to the environment or to the public health;

B. Permanently enjoin the Respondent, GKN AEROSPACE NORTH AMERICA, INC., from further violations of the Act and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2002);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondent, GKN AEROSPACE NORTH AMERICA, INC., a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

E. Grant such other and further relief as the Court deems appropriate..

Respectfully submitted,

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

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

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ASSIGNED ATTORNEY

Kristen Laughridge
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/524-7506
Dated: July 5, 2005

BEFORE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
)
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v.) No. 05-PCB -
) (Enforcement - Land)
GKN AEROSPACE NORTH AMERICA,)
INC., a Delaware corporation,)
)
Respondent.)
)

STIPULATION AND PROPOSAL FOR SETTLEMENT

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BEFORE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. LISA MADIGAN, Attorney)
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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, GKN AEROSPACE NORTH AMERICA, INC. ("GKN Aerospace"), 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. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated

herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If this Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2002).

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. STATEMENT OF FACTS

A. Parties

1. On the same date of entry of this Stipulation, a Complaint was filed with the Board on behalf of the People of the

State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondent.

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.

3. At all times relevant to the Complaint, Respondent GKN Aerospace was and is a Delaware corporation.

B. Site Description and History

1. At all times relevant to the Complaint, Respondent owned and operated GKN Aerospace Services-St. Louis, an aerospace facility located in St. Louis County, Missouri (the "Facility").

2. On October 17, 2003, one 20 cubic-yard roll-off container of non-hazardous contaminated soil and rock, and one 20 cubic-yard roll-off container of sump sludge contaminated with trichloroethylene ("TCE") were transported and disposed at Milam Recycling and Disposal Facility ("Milam RDF").

3. Respondent shipped the 20 cubic-yard roll-off container that contained the sump sludge to Milam RDF on manifest number IL 10749954. Respondent did not indicate on the manifest that the

material was a hazardous waste. Respondent did not placard the roll-off container for transporting hazardous waste.

8. On October 20, 2003, Respondent notified Milam RDF that the contents of one of the roll-off containers may have been a hazardous waste.

9. On October 23, 2003, Illinois EPA received a Notification from Waste Management Company stating that sump sludge from Respondent was disposed of at Milam RDF that had a TCE content of 59.6 mg/l as measured by the Toxicity Characteristic Leaching Procedure ("TCLP").

10. Waste containing TCE in excess of 0.5 mg/l pursuant to the TCLP is a characteristic hazardous waste exhibiting the toxicity characteristic pursuant to Section 721.124(b) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 721.124(b), and is designated as a D040 Hazardous Waste.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations:

Count I: Section 21(e) of the Act, 415 ILCS 5/21(e) (2002)
Section 722.120(a) & (b) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.120 (a) & (b).

Section 722.133 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.133.

Section 728.107(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.107(a)(2).

Section 728.109(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.109(a)

Section 728.138(a) of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.138(a)

Section 728.140 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 728.140.

Section 728.Table T of the Board's Hazardous Waster Regulations, 35 Ill. Adm. Code 728.Table T.

D. Non-Admission of Violations

The Respondent represents that it has 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 Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C. herein, and this Stipulation shall not be interpreted as including such admission.

E. Compliance Activities to Date

GKN has implemented the following changes to its waste handling procedures:

1. No waste trucker is allowed to enter the plant property without express contemporaneous authorization of the Environmental Services Supervisor, his designee or the GKN Environmental Engineer.

2. The Environmental Services Supervisor, or his designee, will direct the truck and assure that the correct material is delivered or removed.

3. Where any kind of waste manifest is required, the serial number of the container to be removed will be clearly noted on the manifest before it is delivered to the truck driver at the facility.

4. If any non-routine waste is generated, it will only be held in the non-hazardous waste area if GKN knows that it is not hazardous. Any other non-routinely generated waste will be handled in the hazardous waste area unless and until GKN knows that it is not hazardous.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a

defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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, Complainant states the following:

1. Human health and the environment were threatened by the Respondent's violations.

2. There are social and economic benefits as to an aerospace facility and its production, a consequence of which is its waste.

3. The aerospace facility is suitable for the area in which it is located.

4. Complying with the Act and Illinois EPA standards for hazardous waste disposal are both technically practicable and economically reasonable.

5. The Respondent has subsequently been in compliance.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), 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; 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, Complainant states as follows:

1. Respondent improperly disposed of hazardous waste one time at a non-hazardous waste landfill, thereby not complying with the Act and Illinois EPA standards. The violations are of a serious nature, for disposing of hazardous waste at a non-hazardous waste landfill poses a risk to public health and the environment.

2. After recognition of the improper disposal, Respondent has implemented new practices for the disposal of non-hazardous and hazardous waste.

3. An economic benefit was accrued because it costs approximately \$5,000 more to dispose of the hazardous waste properly as opposed to disposal at the non-hazardous waste landfill.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of twenty-two thousand dollars (\$22,000) will serve to deter further violations, aid in future voluntary compliance with the Act and Board regulations, and recover any benefits from the violation.

5. Respondent has no prior adjudicated violations of the Act and Board regulations.

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

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty of Twenty-Two Thousand Dollars (\$22,000) within thirty (30) days of Respondent's receipt of notice of entry of the Stipulation. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

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

The name, case number and the Respondent's Federal Employer Identification Number ("FEIN"), 36-4399771, shall appear on the face of the certified check or money order. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Kristen Laughridge
Assistant Attorney General
Environmental Bureau
500 South Second Street

Springfield, Illinois 62706

Melanie Jarvis
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s)-are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondent may be reached at the following address:

GKN Aerospace - St. Louis, Mail Code S070
142 JS McDonnell Blvd.
St. Louis, Missouri 63042

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.E., below, Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h). Further, Respondent agrees to waive, in any subsequent enforcement action, any right to contest whether these alleged violations were adjudicated.

C. Cease and Desist

The Respondent shall cease and desist from future violations

of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. ("Allegations of Non-Compliance") of this Stipulation.

D. Release from Liability

In consideration of the Respondent's payment of a \$22,000 penalty and any specified costs and accrued interest, completion of all activities required hereunder, and to Cease and Desist as contained in Section VIII.D. above, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 the same date as entry of this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

E. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, the Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve

and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

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
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 

DATE: 5/02/05

THOMAS DAVIS, Chief
Environmental Bureau

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 

DATE: May 26, 2005

WILLIAM INGERSOLL
Acting Chief Legal Counsel

GKN AEROSPACE NORTH AMERICA,
INC., a Delaware corporation

BY: 

DATE: JUNE 22, 2005

MICHAEL A. BECK
Chief Operating Officer &
Site Executive