

ILLINOIS POLLUTION CONTROL BOARD
February 15, 1996

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 96-153
)	(Enforcement -Water and UST)
MP MELROSE PARK ASSOCIATES, LTD,)	
an Illinois Limited Partnership,)	
)	
Respondent.)	

ORDER OF THE BOARD

This matter comes before the Board upon a four-count complaint filed January 8, 1996 by the Attorney General of the State of Illinois, on behalf of the Illinois Environmental Protection Agency and the People of the State of Illinois, against MP Melrose Park Associates, Ltd., an Illinois Limited Partnership located at 150 North 25th Avenue, Melrose Park, Cook County Illinois. The complaint alleges that MP Melrose Park Associates, Ltd. has violated Sections 12(a) and 12(d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), 5/12(d)), and 35 Ill. Adm. Code 731.160, 731.162(b) and 731.163(a) and (b) by causing or allowing water pollution, creating a water pollution hazard and violation of UST 20-day and 45-day reporting requirements.

Pursuant to 415 ILCS 5/31(a)(2), the parties filed a joint motion requesting relief from the Act's hearing requirement on January 8, 1996. The Board published a notice of the waiver on January 17, 1996; no objection to the granting of the waiver was received. Waiver of hearing is hereby granted.

The parties filed a stipulation and settlement agreement on January 8, 1996. The stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. MP Melrose Park Associates, Ltd. admits the alleged violations and agrees to pay a civil penalty of twenty thousand dollars (\$20,000.00).

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. This settlement agreement in no way affects respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and the Board's pollution control regulations.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1) The Board hereby accepts the stipulation and settlement agreement executed by the People of the State of Illinois and MP Melrose Park Associates, Ltd., an Illinois Limited Partnership located at 150 North 25th Avenue, Melrose Park, Cook County Illinois. The stipulation and settlement agreement are incorporated by reference as though fully set forth herein.
- 2) MP Melrose Park Associates, Ltd. shall pay the sum of twenty thousand dollars (\$20,000.00) within 30 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

The certified check or money order shall clearly indicate on its face, MP Melrose Park Associates, Ltd. 's federal employer identification number 36-3638662 and that payment is directed to the Environmental Protection Trust Fund.

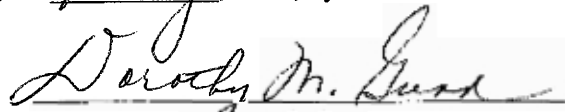
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

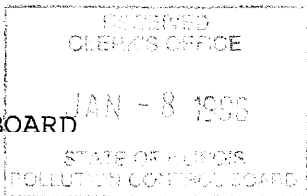
- 3) MP Melrose Park Associates, Ltd. shall cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41 of the Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration.")

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15th day of February, 1996, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 96-153
)
) (Enforcement)
 MP MELROSE PARK ASSOCIATES, LTD.,)
 an Illinois Limited Partnership,)
)
)
 Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, MP MELROSE PARK ASSOCIATES, LTD., an Illinois Limited Partnership, ("Melrose Park") do hereby agree to this Stipulation and Proposal for Settlement (this "Agreement"). 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 full hearing was 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 Agreement, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms of this Agreement. Notwithstanding the previous sentence, this Agreement

and any Illinois Pollution Control Board ("Board") order accepting this Agreement may be used in any future enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Section 42(h) of the Act, 415 ILCS 5/42(h) (1994). The Agreement 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 settlement 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.* (1994).

II.
AUTHORIZATION

The undersigned representative for each party certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms of this Agreement and to legally bind them to it.

III.
APPLICABILITY

This Agreement shall apply to and be binding upon the

Complainant and Respondent, and any officer, partner, agent and employee or servant of Respondent, as well as Respondent's successors and assigns. Respondent shall not raise as a defense to any enforcement action taken pursuant to this Agreement the failure of its officers, partners, agents, servants or employees to take such action as shall be required to comply with the provisions of this Agreement.

IV.
STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brings this action on his own motion and at the request of the Illinois Environmental Protection Agency ("Agency"), and pursuant to the statutory authority vested in him under Section 31 of the Act, 415 ILCS 5/31 (1994).

2. The Agency is an administrative agency in the executive branch of the State government of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1994), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Agreement, Respondent was an Illinois limited partnership.

4. Respondent owned and/or operated two (2) underground storage tanks ("USTs") located at 150 North 25th Avenue, Melrose

Park, Cook County, Illinois ("Site"), which were removed on January 8, 1992.

B. Facility Description

1. At the Site, Respondent had two (2) ten thousand (10,000) gallon diesel fuel USTs.
2. At least ten percent (10%) of the volume and associated piping of each of the USTs was located beneath the ground.

C. Alleged Violations

Water Pollution

1. Section 12(a) of the Act, 415 ILCS 5/12(a) (1994), provides:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act.

2. On January 8, 1992, the Respondent's consultant, Environmental Construction Company, notified the Illinois Emergency Services and Disaster Agency that diesel fuel had leaked from the USTs. On the same day, the USTs were removed.

3. On or before January 8, 1992, diesel fuel was released from the USTs into the soil and may have entered the underlying groundwater at or in the vicinity of the USTs.

4. Section 3.56 of the Act, 415 ILCS 5/3.56 (1994), contains the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

5. Diesel fuel is a "contaminant" as that term is defined in Section 3.56 of the Act.

6. Section 3.56 of the Act, 415 ILCS 5/3.56 (1994), contains the following definition:

"WATERS" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

7. The groundwater at and in the vicinity of the USTs is a "water" of the State of Illinois, as that term is defined in Section 3.56 of the Act.

8. The discharge of diesel fuel from the USTs into the soil and possibly the groundwater at or in the vicinity of the USTs constituted a discharge of a contaminant into the environment so as to cause or tend to cause water pollution in Illinois.

9. Respondent discharged contaminants into the environment so as to cause or tend to cause water pollution in Illinois in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1994).

1. Section 12(d) of the Act, 415 ILCS 5/12(d) (1994), provides:

No person shall:

d. Deposit any contaminants upon the land in such a place and manner so as to create a water pollution hazard.

2. The discharge of diesel fuel from the USTs into the soils and possibly the groundwater at or in the vicinity of the USTs constituted a deposit of a contaminant upon the land in such a place and manner so as to create a water pollution hazard.

3. Respondent deposited contaminants upon the land in such a place and manner so as to create a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (1994).

Violation of UST Release 20-day Reporting Requirements

1. On January 8, 1992, the release of diesel fuel from the USTs was confirmed.

2. Section 731.162 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.162, which were in effect at the time of the release, provides:

a. Owners and operators shall perform the following abatement measures:

- (1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- (2) Visually inspect any aboveground releases or exposed below ground releases and prevent

further migration of the released substance into surrounding soils and groundwater;

- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into substance structures (such as sewers or basements);
- (4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815.
- (5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check or the closure site assessment. In selecting sample types, sample locations and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and
- (6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 731.164.

- b. Within 20 days after release confirmation, owners and operators shall submit a report to the Agency, summarizing the initial abatement steps taken under subsection (a), above, and any resulting information or data.

3. The Agency received the Respondent's 20-day initial abatement report on May 26, 1992, more than 100 days after

confirmation of the release.

4. Respondent failed to submit a report summarizing the initial steps taken and any resulting information or data collected within the time frame prescribed in Section 731.162(b) of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.162(b), in violation of that regulation.

5. Section 731.160 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.160, which were in effect at the time of the release, provides:

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this Subpart except for USTs excluded under Section 731.110(b) and UST systems subject to RCRA corrective action requirements under 35 Ill. Adm. Code 724.200, 724.296, 725.296 or 725.Subpart G.

6. Respondent violated Section 731.160 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.160, due to its failure to comply with Section 731.162(b) of the Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.162(b).

Violation of UST Release 45-Day Reporting Requirements

1. Section 731.163 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.163, which were in effect at the time of the release, provides:

a. Owners and operators shall assemble information

about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Section 731.160 and Section 731.161. This information must include, but is not necessarily limited to the following:

- (1) Data on the nature and estimated quantity of release;
- (2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
- (3) Results of the site check required under Section 731.162(a)(5); and
- (4) Results of the free product investigations required under Section 731.162(a)(6), to be used by owners and operators to determine whether free product must be recovered under Section 731.164.

b. Within 45 days after confirmation of the release, owners and operators shall submit the information collected in compliance with subsection (a) to the Agency, in a manner that demonstrates its applicability and technical adequacy.

2. The Agency received the Respondent's 45-day report on May 26, 1992, more than 100 days after confirmation of the release.

3. On June 15, 1992, the Agency notified the Respondent that the 45-day report was deficient.

4. On November 10, 1992, January 20, 1993, and August 31, 1993, the Respondent submitted the additional information

requested by the Agency.

5. Respondent failed to submit to the Agency information collected in compliance with subsection (a) of 35 Ill. Adm. Code 731.163 within the time frame prescribed in subsection (b) of 35 Ill. Adm. Code 731.163, in violation of that regulation. By violating 35 Ill. Adm. Code 731.163(b), Respondent also violated Section 731.160 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.160.

v.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1994), 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:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance.

In response to these factors, the parties state the following:

1. Impact to the public resulting from Respondent's noncompliance was that the Agency and the public were not timely provided with information that is important to the control of water and land pollution in the State of Illinois. The Respondent removed the USTs in the presence of the Office of the Illinois State Fire Marshal and timely reported the release of petroleum; however, the 20- and 45-day reporting requirements were not timely satisfied. Such reports are an important method available for the State to identify and control possible pollution from leaking underground storage tanks.

2. The Site is of social and economic benefit.

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

4. Respondent maintains that it could not control the fact that its UST experienced a release of petroleum in 1992; however, complying with the reporting requirements of the Act and the Board Regulations after the release is both technically practicable and economically reasonable.

5. Respondent did subsequently comply with the Act and the Board Regulations by filing all necessary reports. Respondent also engaged a registered Professional Engineer of the State of Illinois to conduct a health-based risk assessment for the Site. The assessment demonstrated that the USTs were closed in a manner that is protective of human health and the environment and that Site

conditions do not present an unacceptable risk.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

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

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:

- (i) the duration and gravity of the violation;
- (ii) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (iii) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (iv) the amount of 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
- (v) 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:

1. The duration of the 20-day reporting violation was 119 days. The duration of the 45-day reporting violation was 95 days.
2. Respondent had requested the assistance of its environmental consultant to respond to the Agency's requests for

additional information on the UST removal; however, the information provided to the Agency was nonresponsive. Respondent ultimately responded to Agency requests for the complete 20-day and 45-day reports. Respondent also engaged a registered Professional Engineer of the State of Illinois to conduct a health-based risk assessment at the Site. The assessment demonstrated that the USTs were closed in a manner that is protective of human health and the environment and that Site conditions do not present an unacceptable risk.

3. Respondent maintains that it did not realize an economic benefit from its noncompliance. Complainant agrees that any economic benefit realized would be nominal.

4. Complainant has determined that a penalty of Twenty Thousand Dollars (\$20,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent has no previously adjudicated violations of the Act.

VII.
TERMS OF SETTLEMENT

1. The Respondent shall pay a penalty in the sum of twenty thousand dollars (\$20,000.00) within thirty (30) days of the date of entry of this Agreement. The penalty described in this Agreement shall be paid by certified check to the Treasurer of the State of

Illinois, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Respondents' Federal Employer Identification Number (FEIN), #36-3638662, shall appear on the check.

2. Respondents shall cease and desist from violations of the Act, any and all of the regulations found in 35 Ill. Adm. Code, Subtitles A through H.

VIII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Agreement in no way affects the responsibility of the Respondent to comply with any federal, state or local regulations, including but not limited to the Act, 415 ILCS 5/1 (1994) *et seq.*, and the Board regulations, 35 Ill. Adm. Code Subtitles A through H.

IX.

RIGHT OF ENTRY

In addition to any other authority, the Agency, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have right of entry to the

Site at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of the Site, the Agency, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples as they deem necessary in order to conduct their inspection.

X.
RELEASE FROM LIABILITY

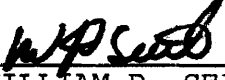
In consideration of Respondent's payment of the penalty specified herein, and commitment to refrain from future violation of the Act, the Agency releases, waives and discharges Respondent from any further liability or penalties for violations of the Act which are the subject matter of the Complaint. Nothing in this Agreement shall be construed as a waiver by the Attorney General or the Agency of the right to redress future violations, if any, or obtain penalties with respect thereto.

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,

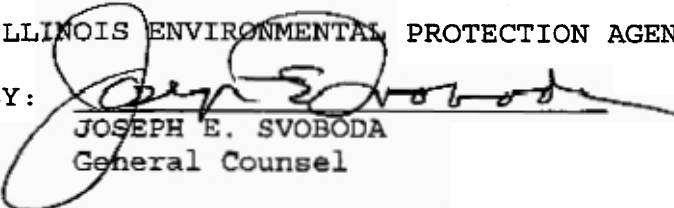
JAMES E. RYAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY: 
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

DATE: 12/20/95

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
General Counsel

DATE: 12/14/95

MP MELROSE PARK ASSOCIATES, LTD.

BY: 
MP MELROSE PARK ASSOCIATES, LTD.

DATE: 12-29-95

ENTERED: _____

JUDGE

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