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CLERK'S OFFICE

OCT 03 2003

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

PCB 04-46

October 2, 2003

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

Re: ***People v. Marathon Ashland Pipeline, LLC***

Dear Clerk Gunn:

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

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Sally A. Carter".

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

SAC/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

RECEIVED

OCT 03 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
MARATHON ASHLAND PIPELINE)
L.L.C., a Delaware limited liability)
company,)
)
Respondent.)

No. PCB 04-46

NOTICE OF FILING

To: Mr. Robert W. Everett
Marathon Ashland Petroleum, L.L.C.
539 South Main Street
Findlay, OH 45840-3295

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, APPEARANCE, 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: Sally A. Carter
SALLY A. CARTER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 2, 2003

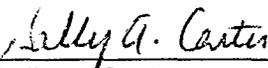
CERTIFICATE OF SERVICE

I hereby certify that I did on October 2, 2003, 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, APPEARANCE, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Mr. Robert W. Everett
Marathon Ashland Petroleum, L.L.C.
539 South Main Street
Findlay, OH 45840-3295

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



Sally A. Carter
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 03 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 MARATHON ASHLAND PIPELINE, L.L.C.,)
 a Delaware limited liability company,)
)
 Respondent.)

PCB NO. 04-46
(Enforcement)

APPEARANCE

I, SALLY A. CARTER, Assistant Attorney General of the State of Illinois, hereby file my appearance in the proceeding on behalf of the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: Sally A. Carter
SALLY A. CARTER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 10/2/03

WHEREFORE, Complainant, People of the State of Illinois, hereby respectfully requests that the Board grant this Motion for Relief from the Hearing Requirement between Marathon Ashland Pipeline L.L.C. and the People of the State of Illinois, as set forth in subsection 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY: Sally A. Carter
SALLY A. CARTER
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 10/2/03

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 MARATHON ASHLAND PIPELINE, L.L.C.,)
 a Delaware limited liability company,)
)
 Respondent.)

PCB NO. 04-46
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, MARATHON ASHLAND PIPELINE, L.L.C., as follows:

COUNT I

AIR POLLUTION

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. Respondent, Marathon Ashland Pipeline, L.L.C. ("MAPL"), is a Delaware corporation authorized to do business in Illinois. Its registered agent is C.T. Corporation Systems, 208 South LaSalle Street, Chicago, Illinois.

5. At all times relevant to this Complaint, MAPL has owned and operated a pipeline at 5825 East Cumberland Road, Martinsville, Clark County, Illinois ("facility").

6. MAPL's Martinsville facility includes storage tank #19 in its tank farm. Tank #19 has a capacity of 260,000 barrels. During the time period that is the subject of this Complaint, tank #19 was equipped with an external floating roof constructed of 3/8" steel. Tank #19 was being used to store gasoline, a volatile organic liquid. At all times prior to the incident that is the subject of this Complaint, the roof and roof drain on tank #19 were operating properly.

7. On July 9, 2001, unusually heavy rain fell at MAPL's Martinsville facility. At the time the rain began falling, the roof drains on all the storage tanks were closed.

8. At roughly 5:30 a.m. on July 9, 2001, MAPL personnel responded to a lightning strike at the tank farm. Originally, MAPL informed the Illinois EPA that MAPL personnel began to open the roof drains on the tanks. When the drain was opened on tank #19, the MAPL operator noticed the smell of gasoline and immediately shut the drain. However, MAPL stated in a subsequent letter that when an employee opened the roof drains on the tanks, he noted the smell of gasoline. At that time, the operator climbed the tank #19 and saw that the roof had folded and that gasoline was accumulating on the roof. After inspecting tank #19 and noting product on the roof, the operator decided not to open the roof drain.

9. MAPL allowed the roof to sink for about 15 hours. After the roof sank, MAPL transferred the gasoline to two (2) other tanks. The transfer was completed approximately 3 1/2 days later.

10. Over the course of 3 ½ days, MAPL lost 3,998 barrels of gasoline and emitted over 470 tons of volatile organic material ("VOM").

11. On July 9, 2001, at approximately 10:30 a.m., MAPL notified the Illinois EPA by phone of the roof's failure. The telephone call was followed by a letter explaining the circumstances of the incident.

12. In a subsequent letter on July 19, 2001, MAPL clarified the circumstances causing the roof failure. Specifically, the letter addressed MAPL's failure to open the roof drain prior to or during the rainfall, which was the proximate cause of the release.

13. In its July 19, 2001, letter, MAPL further stated that it was MAPL's standard operating procedure to keep all roof drain valves closed unless they are monitored to prevent the release of hydrocarbons or have fail-safe devices installed. Further, MAPL's standard operating procedure includes the draining of the roof after every rain resulting in reasonable accumulation.

14. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides:

No person shall:

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

* * *

15. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), defines "air pollution" as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

16. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines "contaminant" as

follows:

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

17. Section 215.121(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code

215.121(b)(1), provides:

No person shall cause or allow the storage of any volatile organic liquid with a vapor pressure of 17.24 kPa (2.5 psia) or greater at 293.3 k (70° F) or any gaseous organic material in a station tank, reservoir or other container of more than 151 cubic meters (40,000 gal) capacity unless such tank, reservoir or other container:

(b) Is designed and equipped with one of the following vapor loss control devices:

(1) A floating roof which rests on the surface of the volatile organic liquid and is equipped with a closure seal or seals between the roof edge and tank wall. Such floating roof shall not be permitted if the volatile organic liquid has a vapor pressure of 86.19 kPa (12.5 psia) or greater at 294.3 k (70° F). No person shall cause or allow the emission of air contaminants into the atmosphere from any gauging or sampling devices attached to such tanks, except during sampling or maintenance operations.

18. Section 215.123(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code

215.123(b)(1), provides:

Subject to subsection (a) above no owner or operator of a stationary storage tank shall cause or allow the storage of any volatile petroleum liquid in the tank unless:

(1) The tank is equipped with one of the vapor loss control devices specified in Section 215.121(b) of this Part;

19. Respondent caused or allowed emissions from tank #19 to be uncontrolled for a period of 3 ½ days, resulting in the loss of 3,998 barrels of gasoline and the emission into the atmosphere of over 470 tons of VOM.

20. The loss of 3,998 barrels of gasoline and the emission into the atmosphere of over 470 tons of VOM has caused or tended to cause air pollution in the State.

21. By allowing the loss of 3,998 barrels of gasoline and by emitting VOM in excess of 470 tons, the Respondent is in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, Marathon Ashland Pipeline, L.L.C.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT II

FLOATING ROOF VIOLATIONS

1-19. The Complainant reallages and incorporates by reference paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of this Count II.

20. Respondent caused or allowed the storage of gasoline, a volatile organic liquid, with a vapor pressure of 17.24 kPa (2.5 psia) or greater at 293.3 k (70° F) in a container with a capacity of more than 151 cubic meters (40,000 gallons) without a floating roof resting on the

surface of the volatile organic liquid and a closure seal or seals between the roof edge and tank wall.

21. By causing or allowing the storage of gasoline, a volatile organic liquid, with a vapor pressure of 17.24 kPa (2.5 psia) or greater at 293.3 K (70° F) in a container with a capacity of more than 151 cubic meters (40,000 gallons) without a floating roof resting on the surface of the volatile organic liquid and a closure seal or seals between the roof edge and tank wall, the Respondent has violated 35 Ill. Adm. Code 215.121(b)(1).

22. By violating Section 215.121(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 215.121(b)(1), the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, Marathon Ashland Pipeline, L.L.C.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III

VAPOR CONTROL DEVICE VIOLATIONS

1-19. The Complainant realleges and incorporates by reference paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of this Count III.

20. Respondent caused or allowed the storage of gasoline, a volatile organic liquid, in a stationary storage tank without a vapor control device specified in 35 Ill. Adm. Code 215.121(b)(1).

21. By causing or allowing the storage of gasoline, a volatile organic liquid, in a stationary storage tank without a vapor control device specified in 35 Ill. Adm. Code 215.121(b)(1), the Respondent has violated 35 Ill. Adm. Code 215.123(b)(1).

22. By violating Section 215.123(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 215.123(b)(1), the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, Marathon Ashland Pipeline, L.L.C.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and

F. Granting such other relief as the Board may deem appropriate.

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, Chief
Assistant Attorney General
Environmental Bureau

Of Counsel

SALLY A. CARTER

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: 12/02/03

marathonashland/common

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 03 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
)
 MARATHON ASHLAND PIPELINE, L.L.C.,)
 a Delaware limited liability company,)
)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB NO. 04-46
(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, MARATHON ASHLAND PIPELINE, L.L.C., and hereby submit this Stipulation and Proposal for Settlement. 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 were held. The parties agree that this Settlement is a compromise of a disputed claim. The parties further stipulate that this statement of facts 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 agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future enforcement action as evidence of a past adjudication of violation, as provided in Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2002). 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. (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 Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement 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 Settlement 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 Settlement.

IV.

STATEMENT OF FACTS

1. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, inter alia, with the duty of enforcing the Act.

2. Respondent, Marathon Ashland Pipeline, L.L.C. ("MAPL"), is a Delaware corporation authorized to do business in Illinois. Its registered agent is C.T. Corporation Systems, 208 South LaSalle Street, Chicago, Illinois.

3. At all times relevant to this Complaint, MAPL has owned and operated a pipeline at 5825 East Cumberland Road, Martinsville, Clark County, Illinois ("facility").

4. MAPL's Martinsville facility includes storage tank #19 in its tank farm. Tank #19 has a capacity of 260,000 barrels. During the time period that is the subject of this Complaint, tank #19 was equipped with an external floating roof constructed of 3/8" steel. Tank #19 was being used to store gasoline, a volatile organic liquid. At all times prior to the incident that is the subject of this Complaint, the roof and roof drain on tank #19 were operating properly.

5. On July 9, 2001, heavy rain fell at MAPL's Martinsville facility. At the time the rain began falling, the roof drains on tank #19 were closed.

6. At roughly 5:30 a.m. on July 9, 2001, MAPL personnel responded to a lightning strike at the tank farm. Originally, MAPL informed the Illinois EPA that MAPL personnel began to open the roof drains on the tanks. When the drain was opened on tank #19, the MAPL operator noticed the smell of gasoline and immediately shut the drain. However, MAPL stated in a subsequent letter that when an employee opened the roof drains on the tanks, he noted the smell of gasoline. At that time, the operator climbed the tank #19 and saw that the roof had folded and that gasoline was accumulating on the roof. After inspecting tank #19 and noting product on the roof, the operator decided not to open the roof drain.

7. MAPL allowed the roof to sink for about 15 hours. After the roof sank, MAPL transferred the gasoline to two (2) other tanks. The transfer was completed approximately 3 ½ days later.

8. Over the course of 3 ½ days, MAPL lost and emitted over 470 tons of volatile organic material ("VOM").

9. On July 9, 2001, at approximately 10:30 a.m., MAPL notified the Illinois EPA by phone of the roof's failure. The telephone call was followed by a letter explaining the circumstances of the incident.

10. In a subsequent letter on July 19, 2001, MAPL clarified the circumstances causing the roof failure. Specifically, the letter addressed MAPL's failure to open the roof drain prior to or during the rainfall, which was the proximate cause of the release.

11. In its July 19, 2001, letter, MAPL further stated that it was MAPL's standard operating procedure to keep all roof drain valves closed unless they are monitored to prevent the release of hydrocarbons or have fail-safe devices installed. Further, MAPL's standard operating procedure includes the draining of the roof after every rain resulting in reasonable accumulation.

12. Respondent caused or allowed emissions from tank #19 to be uncontrolled for a period of 3 ½ days, resulting in the loss of 3,998 barrels of gasoline and the emission into the atmosphere of over 470 tons of VOM.

13. The loss of 3,998 barrels of gasoline and the emission into the atmosphere of over 470 tons of VOM has caused or tended to cause air pollution in the State.

14. By allowing the loss of 3,998 barrels of gasoline and by emitting VOM in excess of 470 tons, the Respondent is in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

15. Respondent caused or allowed the storage of gasoline, a volatile organic liquid, with a vapor pressure of 17.24 kPa (2.5 psia) or greater at 293.3 k (70° F) in a container with a capacity of more than 151 cubic meters (40,000 gallons) without a floating roof resting on the

surface of the volatile organic liquid and a closure seal or seals between the roof edge and tank wall.

16. By causing or allowing the storage of gasoline, a volatile organic liquid, with a vapor pressure of 17.24 kPa (2.5 psia) or greater at 293.3 k (70° F) in a container with a capacity of more than 151 cubic meters (40,000 gallons) without a floating roof resting on the surface of the volatile organic liquid and a closure seal or seals between the roof edge and tank wall, the Respondent has violated 35 Ill. Adm. Code 215.121(b)(1).

17. By violating Section 215.121(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 215.121(b)(1), the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

18. Respondent caused or allowed the storage of gasoline, a volatile organic liquid, in a stationary storage tank without a vapor control device specified in 35 Ill. Adm. Code 215.121(b)(1).

19. By causing or allowing the storage of gasoline, a volatile organic liquid, in a stationary storage tank without a vapor control device specified in 35 Ill. Adm. Code 215.121(b)(1), the Respondent has violated 35 Ill. Adm. Code 215.123(b)(1).

20. By violating Section 215.123(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 215.123(b)(1), the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

V.

FUTURE PLANS OF COMPLIANCE

Respondent shall continue to diligently conform to the Act, 415 ILCS 5/1 et seq. (2002), and the Board's Air Pollution Regulations, 35 Ill. Adm. Code Subtitle B.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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 the injury to, or interference with, the protection of the health, general welfare, and physical property of the People would be characterized as air pollution and the degree of injury would be dependent upon the extent of the pollution and the degree of exposure to that pollution;
2. The parties agree that Respondent's facility is of social and economic benefit;
3. Respondent's facility is located at 5825 East Cumberland Road, Martinsville, Clark County, Illinois. The facility is located in a rural area approximately 1 mile from Martinsville.

4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable; and

5. Respondent implemented measures subsequent to the alleged violations that are the subject of the Complaint in this matter in order to operate in compliance with the Act and the Board's Air Pollution Regulations.

VII.

CONSIDERATION OF SECTION 42(H) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1998), 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 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 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
 - 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. The alleged violations, specifically the Respondent's release of 470 tons of VOM, occurred over 3 ½ days in July 2001.

2. In advance of as well as in response to notices of noncompliance issued by the Illinois EPA, the Respondent worked with the Illinois EPA to resolve its violations in order to comply with the Act. After the roof sank, MAPL transferred the gasoline to two (2) other tanks. The transfer was completed approximately 3 ½ days later. Thereafter, MAPL equipped tank #19 with a new roof containing decking to API 650 design criteria, a new primary and secondary seal and a geodome. In addition, MAPL revised its operating procedures to require that external floating roofs be drained and/or cleared of rain/ice/ snow during periods in which precipitation amounts are greater than 1 inch in a 24 hour period, as required to prevent the accumulation of more than 2 inches of water or ice (16 inches of snow). In addition, the operating procedures require MAPL employees to drain from external floating roofs rainfall amounts of up to 1 inch in 24 hours of said event

3. The economic benefit of Respondent's noncompliance is the savings realized by not timely having reinstalled the hydrocarbon sensing valve on tank #19.

4. Complainant has determined, in this instance, that a penalty of fifty-five thousand dollars (\$55,000.00) will serve to deter further violations and aid in future voluntary enforcement of the Act and applicable regulations.

5. Complainant is unaware of any previously adjudicated violations of the Act by the Respondent.

VIII.

TERMS OF SETTLEMENT

A. MONETARY PAYMENT

The Respondent shall pay a penalty of fifty-five thousand dollars (\$55,000.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal for

Settlement. 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: 31-1551440

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

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

B. FUTURE COMPLIANCE

Respondent shall comply with Sections 9(a) of the Act, 415 ILCS 5/9 (a) (2002), 35 Ill. Adm. Code 215.121(b)(1) and 215.123(b)(1), and shall cease and desist from future violations of any other federal, state, or local environmental statutes and regulations, including the Act and the Board Rules and Regulations.

C. ADMISSION OF VIOLATIONS

The Respondent represents that it has entered into this Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

IX.

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. (2002), and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
State of Illinois,

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

Dated: 10/02/03

BY: _____
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Dated: 9/16/03

BY: _____
JOSEPH E. SVOBODA
General Counsel
Division of Legal Counsel

MARATHON ASHLAND PIPELINE, L.L.C
a Delaware limited liability company,
Respondent

Dated: 9/30/03

BY: _____
DONALD P. BOZELL, President

