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JUN 30 2004

STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

June 25, 2004

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Elysium Energy***  
**PCB No. 03-223**

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, 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, appearing to read "Jane E. McBride".

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

JEM/pp  
Enclosures

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CLERK'S OFFICE

JUN 30 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
 ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 ELYSIUM ENERGY, an Illinois )  
 limited liability corporation, )  
 )  
 Respondent. )

PCB No. 03-223  
(Enforcement)

NOTICE OF FILING

To: Charlie Northrup  
 Sorling, Northrup, Hanna, Cullen & Cochran, Ltd.  
 Attorneys for Elysium Energy  
 Suite 800, Illinois Building  
 607 East Adams  
 P.O. Box 5131  
 Springfield, IL 62705



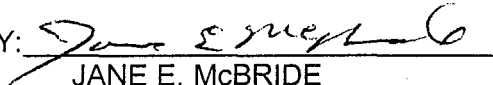
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a ~~COMPLAINT~~, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is attached hereto and herewith served upon you.

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:   
 JANE E. McBRIDE  
 Assistant Attorney General  
 Environmental Bureau

500 South Second Street  
 Springfield, Illinois 62706  
 217/782-9031  
 Dated: June 25, 2004

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CLERK'S OFFICE

JUN 30 2004

CERTIFICATE OF SERVICE

STATE OF ILLINOIS  
Pollution Control Board

I hereby certify that I did on June 25, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT

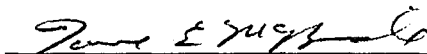
To: Charlie Northrup  
Sorling, Northrup, Hanna, Cullen & Cochran, Ltd.  
Attorneys for Elysium Energy  
Suite 800, Illinois Building  
607 East Adams  
P.O. Box 5131  
Springfield, IL 62705

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

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

To: Carol Sudman  
Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Avenue East  
Springfield, IL 62794

  
\_\_\_\_\_  
Jane E. McBride  
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 30 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
 ILLINOIS, )  
 )  
                                   Complainant, )  
 )  
                                   vs. )  
 )  
 ELYSIUM ENERGY, an Illinois )  
 limited liability corporation, )  
 )  
                                   Respondent. )

PCB No. 03-223  
(Enforcement)

**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. On June 9, 2003, Complainant filed a Complaint with the Board, alleging violations by the Respondent of the 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:   
JANE E. McBRIDE  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: June 25, 2004

JUN 30 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
 ILLINOIS, )  
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 Complainant, )  
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 v. )  
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 ELYSIUM ENERGY, an Illinois )  
 limited liability corporation )  
 )  
 Respondent. )

PCB No. 03-223  
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

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 ("Illinois EPA"), and the Respondent ELYSIUM ENERGY, LLC, do hereby submit this Stipulation and Proposal for Settlement. The parties stipulate that the Statement of Facts contained herein represents a summary of the evidence and testimony which would be introduced by the parties if a full hearing were held on those issues for which a settlement is proposed. The parties agree that the purpose of this Stipulation and Proposal for Settlement is to resolve Complainant's claims against Respondents as set forth in the pending Complaint. 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 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 Board ("Board") Order accepting same may be used in any future enforcement action as evidence of a past adjudication of violations, as provided in Sections 39(i) and 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39(i) and 42(h) (2002). This 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 Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2002). The Complaint states a cause of action upon which relief may be granted.

II.

**AUTHORIZATION**

The authorized representatives for each signatory to this Stipulation and Proposal for Settlement 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 that party to it.

III.

**APPLICABILITY**

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent, as well as the successors and assigns of Respondent and any of its officers, directors, agents, employees or servants. Respondent shall not raise as a defense to any action undertaken to enforce the terms and conditions of this Stipulation and Proposal for Settlement or the Board Order approving it, the failure of their officers, directors, agents, employees or servants to take such action as shall be required to comply with the provisions of this Stipulation and Proposal for Settlement.

IV.

**STATEMENT OF FACTS**

Pursuant to the requirements of 35 Ill. Adm. Code 103.302 (2001), the parties submit

the following stipulation of facts pertaining to the nature, extent, and causes of the violations and the nature of Respondent's operations and control equipment.

1. The Complaint and this Stipulation and Proposal for Settlement are brought pursuant to the statutory authority of the Attorney General to prosecute civil actions to obtain civil penalties for violations of the Act, 415 ILCS 5/1 et seq. (2002), and at the request of the Illinois Environmental Protection Agency.

2. Respondent Elysium Energy is a limited liability corporation, registered in Illinois. The registered agent is Don Butler, C.T. Corporation, 208 South LaSalle Street, Chicago, IL 60604.

3. Respondent Elysium Energy owns and operates an operating oil field maintenance facility located on rural property near West Liberty, Jasper County, Illinois (the "facility"). The facility is located .4 miles west of the intersection of Route 130 and 25, about three-fourths mile west of West Liberty and 9.5 miles south of Newton, Illinois. The facility was used as a storage facility for oil field equipment and supplies. Elysium acquired the facility from the bankruptcy estate of Equinox Oil Company in November 2000. It is Respondent Elysium's contention that at the time of the acquisition, the facility was in a state of neglect. It is the Respondent's contention that Elysium recognized the condition of the facility and began operations to restore the facility in August 2001 and that this work included hiring outside contractors to perform removal and restoration work. It is Respondent Elysium's contention that this restoration project resulted, in part, in certain conditions observed by Illinois EPA inspectors which formed the basis of this lawsuit.

4. On August 27 and 28, 2001, the Illinois EPA conducted an inspection of the facility. At the time of the inspection, on August 27, 2001, the inspector observed an area of approximately 20 drums that had been crushed and were leaking a dark, amber-colored substance onto the ground. One of the drums had "scale remover" still legible on a label, but



the rest of the drums were either unmarked or unreadable. The inspector observed that the substance leaking from the drums appeared and felt oily, and it emitted a heavy, oily, organic odor. A subsequent pH test of samples of the leaking substance did not register because of the organic nature of the spilled material.

5. At the time of the inspection on August 27, 2001, the inspector observed an area east of the drum site that consisted of a large burn pile with burned and charred wood, metal and the remains of at least two tires.

6. At the time of the inspection on August 27, 2001, a roll-off container was located outside a building on the west side of the property. The inspector observed that the container was filled with mostly old office furniture, but also contained one five-gallon bucket that was observed to be leaking an amber-colored liquid. The inspector observed that the liquid leaking from the five-gallon bucket was flowing out of the corner of the roll-off box onto the ground.

7. At the time of the inspection on August 27, 2001, the inspector observed several drums inside buildings or just outside the doors of several buildings that appeared to be in good shape and carried labels indicating the contents consisted of crankcase oil for heavy machinery.

8. On August 28, 2001, the Illinois EPA conducted another inspection of the facility. Two representatives of Respondent Elysium Energy accompanied the inspector at the time of the inspection. At the time of the inspection, the Respondent's representatives provided the inspector with copies of MSDS sheets for the four types of chemicals handled at the plant. The four chemicals identified by the Respondent's representatives were scale remover, corrosion inhibitors, paraffin inhibitor and emulsion breakers. All of these chemicals contain a large percentage of petroleum naphtha, possibly making them a hazardous waste. The results of sampling indicated that the substances on the property at the spill site at the time of the inspection indicated the wastes were not regulated hazardous wastes and did not have

hazardous characteristics. However, the wastes were of a nature considered special wastes.

9. Complainant alleges that by causing or allowing the consolidation and crushing of approximately 20 drums of special waste; the consolidation and burning of wood, metal and tires; the placement of a roll-off container containing waste and a bucket leaking a liquid substance onto the ground, and the existence and accumulation of drums containing crankcase oil at its facility, Respondent Elysium Energy has caused or allowed the open dumping of waste at its facility in a manner that has resulted in litter, opening burning and standing or flowing liquid discharge from the dump site and has thereby violated Sections 21(a), (e) and (p)(1), (3) and (6) of the Act, 415 ILCS 21(a), (e), (p)(1),(3) and (6)(2002).

10. Complainant alleges that by failing to determine if liquids contain in drums at the facility were hazardous wastes before the drums were disposed of by open dumping, Respondent Elysium Energy has violated 35 Ill. Adm. Code 722.111.

11. Complainant alleges that by failing to determine if liquids contained in drums at the facility were special wastes before the drums were disposed of by open dumping, Respondent Elysium has violated 35 Ill. Adm. Code 808.121(a).

12. Complainant alleges that by causing or allowing the combustion of wood, metal and tires in the open and in an open dump and, thereby, causing, threatening or allowing the discharge or emission of contaminants into the environment so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, and so as to violate regulations or standards adopted by the Board under this Act, Respondent Elysium Energy has violated Section 9(a) and (c) and Section 21(o)(4) of the Act, 415 ILCS 5/9(a), (c), and 21(o)(4) (2002).

13. Complainant alleges that by causing or allowing the open dumping and open burning of used or waste tires at its facility, Respondent Elysium Energy has violated Section 55(a)(1) and (2) of the Act, 415 ILCS 5/55(a)(1),(2) (2002).

V.

**FUTURE PLANS OF COMPLIANCE**

The Respondent ELYSIUM ENERGY, LLC shall diligently conform to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's regulations, 35 Ill. Adm. Code, Subtitles A through H (2001).

VI.

**IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE**

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:
- 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 incorporate by reference the Statement of Facts and also state as follows:

1. The injury to or interference with the health, general welfare and physical property of the people caused by an unpermitted storage and disposal site where special wastes have been open dumped and allowed to leak and flow onto the ground would be characterized as having the potential for contaminating the land and any water that such wastes

may come in contact with. The degree of injury could be potentially severe.

2. A site of open dumping of special wastes that, as such, exists as an unpermitted storage and disposal site, has no social and economic value. An oil field maintenance facility that is properly maintained and operated, in compliance with all applicable environmental laws and regulations, does have social and economic value.

3. The site is not suitable as a waste storage and disposal site, in that its primary use is an oil field maintenance facility and it is not permitted as a storage and disposal site for special wastes.

4. Compliance with the Act and Board regulations is technically practicable and economically reasonable.

5. Respondent remediated the property immediately. All wastes were removed from the property and layers of exposed soil removed from the immediate site of dumping and leaks. The wastes and impacted soil were properly disposed within a matter of weeks of the August 27 and 28, 2001 inspection. Respondent incurred costs of \$15,526.77 to perform these tasks. Respondent remained in contact with and cooperated with the Illinois EPA throughout the remediation. Since the completion of the remediation, additional funds have been spent and 23 Elysium employees have completed the 40 hour HAZWOPER training and eight are in progress of completing it. An additional 19 employees are in the progress of completing the 8-hour HAZWOPER training.

## VII.

### **COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondents to comply with any federal, state, or local laws or regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's rules and regulations, 35 Ill.

VIII.

**DETERMINATION OF APPROPRIATE CIVIL PENALTY**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), 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 incorporate by reference the Statement of Facts and also state as follows:

1. After acquiring the site, Respondent began site restoration activities in August, 2001. It is unknown how long the open dumping and leaking of wastes existed at the site prior to the Illinois EPA's August 27 and 28, 2001 inspection. All wastes and impacted soil were removed from the site within approximately three weeks of the August 27 and 28, 2001

inspection.

2. All wastes and impacted soil was removed from the site within approximately three weeks of the August 27 and 28, 2001 inspection. A final determination as to the nature of the waste was made in December of 2001, at which time the contained impacted soil and any remaining contained wastes were properly disposed of.

3. Complainant contends that Respondent would have realized economic benefit if it had been allowed to continue with its improper disposal of special waste. In that Respondent was required to remediate the site, it realized no economic benefit from noncompliance. Respondent contends that in that it promptly remediated the site and that the conditions observed by the Illinois EPA were not the result of any systematic or planned storage or disposal practices, it realized no economic benefit from noncompliance.

4. Complainant has determined, in this instance, that a penalty of twenty-five thousand dollars (\$25,000.00), will serve to deter future violations and aid in future voluntary enforcement of the Act and applicable Board rules and regulations.

5. Respondent has no known history of prior adjudicated violations.

## IX.

### **NONADMISSION OF LIABILITY**

This Stipulation and Proposal for Settlement is entered into for the purpose of settling and compromising disputed claims without the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, Elysium Energy, LLC 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.

X.

**PROPOSAL FOR SETTLEMENT**

1. Respondent Elysium Energy, LLC shall pay a civil penalty of twenty-five thousand dollars (\$25,000.00), within thirty (30) days of the Board's Order approving this Stipulation and Proposal for Settlement. Payment shall be by certified check made payable to, "Illinois Environmental Protection Agency, for deposit into the Environmental Protection Trust Fund," and shall be submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

The name, number of the case, and the Respondent's Federal Employer Identification Number ("FEIN") shall appear on the check. Respondent Elysium Energy's FEIN is 14-1824050. A copy of the check and payment transmittal shall be simultaneously submitted to:

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

2. In the event the penalty is not paid in a timely fashion, interest shall accrue and be paid by Respondent at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2000), pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002).

3. Respondent shall cease and desist from future violations of any federal, state, or local environmental statutes and 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 (2001).

XI.

**ABATEMENT OF VIOLATIONS**

This Stipulation and Proposal for Settlement, upon its adoption by the Board, constitutes an order to abate violations of the Act and regulations thereunder.

XII.

**RELEASE FROM LIABILITY**

The Complainant shall release, waive and discharge Respondent ELYSIUM ENERGY, LLC, from any further liability or penalties for violations of the Act and Board regulations which were specifically the subject matter of the Complaint herein, upon receipt by Complainant of the payment required in Section X.1., and upon compliance with the terms of this Stipulation and Proposal for Settlement. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto, nor shall anything contained herein constitute a waiver by Respondent to contest and defend any and all alleged future violations or penalties.




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

**AGREED:  
FOR THE COMPLAINANT:**

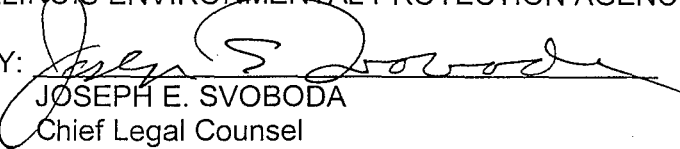
LISA MADIGAN  
Attorney General of the State of Illinois

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

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

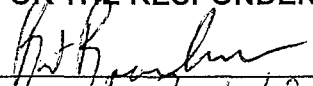

DATED: 5/07/04

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY:   
JOSEPH E. SVOBODA  
Chief Legal Counsel

DATED: 5-4-04

**FOR THE RESPONDENT:**

  
\_\_\_\_\_  
Michael S. Sponberg  
ELYSIUM ENERGY, LLC 

DATED: 6/2/04