

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 25 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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)
Complainant,)
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)
v.) PCB 01-115
) (Enforcement)
)
)
VALLEY PETROLEUM, INC. an)
Illinois corporation,)
)
Respondent.

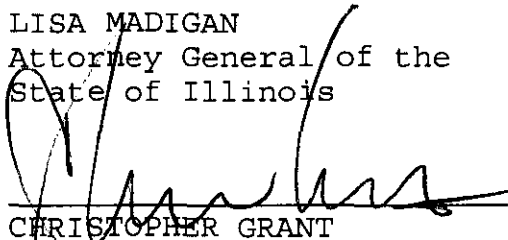
NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, July 25, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine of the Stipulation and Proposal for Settlement, and Motion to Waive the Requirement of a Hearing, copies of which are attached herewith.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

JUL 25 2005

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 Respondent.)

PCB 01-115

(Enforcement)

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General of the State of Illinois,
and requests relief from the requirement of a hearing in this
matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a
Stipulation and Proposal for Settlement executed between
Complainant and Respondent, VALLEY PETROLEUM, INC.

2. Section 31 of the Act, 415 ILCS 5/31 (2002), provides, in
pertinent part, as follows:

* * *

(c) (2) Notwithstanding the provisions of subdivision (1)
of this subsection (c), whenever a complaint has
been filed on behalf of the Agency or by the
People of the State of Illinois, the parties may
file with the Board a stipulation and proposal for
settlement accompanied by a request for relief
from the requirement of a hearing pursuant to
subdivision (1). Unless the Board, in its

discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

* * *

3. No hearing is now scheduled in this matter.

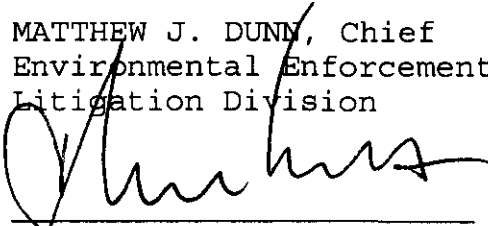
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., #2001
Chicago, Illinois 60601
(312) 814-5388

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,)
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(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and VALLEY PETROLEUM, INC. ("Respondent"), 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 the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their 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 February 15, 2001, a Complaint was filed on behalf of the People of the State of Illinois by the 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 (2002).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a service station facility located at 260 Schmale Road, Carol Stream, DuPage County, Illinois ("site"). At the Site, Respondent operates several underground petroleum product storage tanks.

2. On March 14, 2000, the Respondent reported the release of diesel fuel from the Site.

3. On March 15, 2000, at the request of the Carol Stream Fire Department, Illinois EPA inspectors investigated a report of petroleum vapors in an office building adjacent to the Site. The Illinois EPA inspectors also found that the Respondent had recently removed more than 500 gallons of free petroleum product from the sump around its underground storage tanks.

C. Allegations of Non-Compliance

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

- Count I: AIR POLLUTION, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002);
- Count II: WATER POLLUTION, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002);
- Count III: CREATING A WATER POLLUTION HAZARD, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002);
- Count IV: VIOLATION OF UST RELEASE 20-DAY AND 45-DAY REPORTING REQUIREMENTS, in violation of Section 57.6 of the Act, 415 ILCS 5/57.6 (2002), and 35 Ill. Adm. Code 732.202;
- Count V: VIOLATION OF UST RESPONSE REQUIREMENTS, in violation of Section 57.6 of the Act, 415 ILCS 5/57.6 (2002), and 35 Ill. Adm. Code 732.300;
- Count VI: FAILURE TO FILE FREE PRODUCT REPORT, in violation of Section 57.6 of the Act, 415 ILCS 5/57.6 (2002), and 35 Ill. Adm. Code 732.302(d).

D. Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

E. Compliance Activities to Date

The Respondent has identified and eliminated a previously unknown petroleum migration pathway, performed free product

removal, and obtained a "No Further Action" ("NFA") letter from Illinois EPA.

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, the parties state the following:

1. Petroleum and vapors migrated through a previously-unknown abandoned sewer line to an adjacent building, creating a nuisance and creating a threat to human health.

2. The parties agree that operation of Respondent's business at the Site is of social and economic benefit.

3. Operation of the facility is suitable for the area in which it occurred, provided releases of petroleum are quickly and effectively remediated.

4. Operation of Respondent's facility in compliance with applicable UST regulations is both technically practicable and economically reasonable.

5. Respondent has addressed the petroleum release, and has obtained an NFR letter from Illinois EPA.

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, the parties state as follows:

1. Complainant has alleged that Respondent violated the Act and pertinent regulations on at least March 14 and March 15, 2000. Complainant believes the off-site migration of petroleum represents a high degree of gravity.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the release of petroleum was discovered. In addition, Complainant notes that although the release of petroleum from Respondent's tanks is not disputed, the migration pathway which likely created vapor problems off site was unknown to Respondent, Illinois EPA, and municipal authorities until November, 2003, when it was discovered during an unrelated excavation.

3. At the time of the March 14, 2000 release report, the Respondent was already enrolled in the LUST program, and had expended approximately Two Hundred Thousand Dollars

(\$200,000.00) in reimbursable remediation expenses. Complainant does not believe that Respondent realized any significant economic benefit from the alleged violations.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$ 10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, the Respondent has no previously adjudicated violations of the Act.

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 in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed

below. 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 Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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

CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

MARK GURNIK
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:

C/O Mr. Michael Lacey
122 West 22d Street, Site 30
Oak Brook, Illinois 60523

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.

D. 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.F, below, the 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) (2002). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

E. 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.

F. Release from Liability

In consideration of the Respondent's payment of the \$10,000.00 penalty and any specified costs and accrued interest, commitment to Cease and Desist as contained in Section VIII.E, and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, 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 February 15, 2001. 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 (2002), or entity other than the Respondent.

G. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that 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,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: _____
WILLIAM INGERSOLL
Acting Chief Legal Counsel

DATE: _____

FOR RESPONDENT VALLEY PETROLEUM,
INC.

BY: _____

DATE: _____

Name: _____

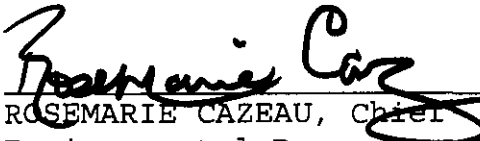
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PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:  DATE: 6/16/05
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY:  DATE: June 14, 2005
WILLIAM INGERSOLL
Acting Chief Legal Counsel

FOR RESPONDENT VALLEY PETROLEUM,
INC.

BY: _____

DATE: 7-7-05

Name: Peter J. Jura

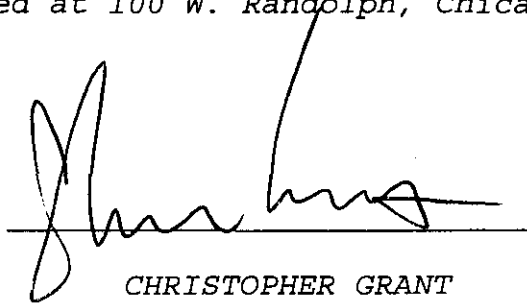
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Respondent.)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 25th day of July, 2005, a Stipulation and Proposal for Settlement and Motion to Waive the Requirement of Hearing, upon the persons listed below, by first class mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois and addressed to:



CHRISTOPHER GRANT

Service List:

Mr. Michael Lacey
Lacey & Associates
1301 West 22d Street
Oak Brook IL 60523

Hearing Officer Bradley P. Halloran
Illinois Pollution Control Board [hand delivery]