



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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JUN 11 2010
STATE OF ILLINOIS
Pollution Control Board

June 9, 2010

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Thermogas Company, Inc.***
PCB No. 10-10

Dear Clerk:

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 originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be "T. Davis", written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

PCB No. 10-10
(Enforcement)

THERMOGAS COMPANY, INC.,)

n/k/a WILLIAMS FERTILIZER, INC.,)

formerly d/b/a MCLEANSBORO)

THERMOGAS,)

a foreign corporation,)

Respondent.)

NOTICE OF FILING


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 MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are 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: 

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 9, 2010

CERTIFICATE OF SERVICE

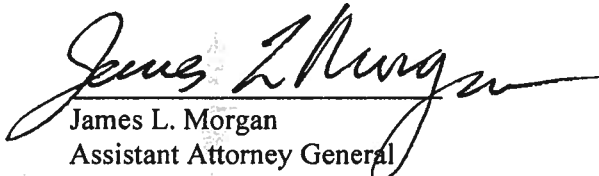
It is hereby certified that true copies of the foregoing Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement were mailed, first class mail, on June 9, 2010, to

Rajpreet Basi
The Williams Companies, Inc.
One Williams Center
MD 47
Tulsa, OK 74172

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

and the original and ten copies to

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601


James L. Morgan
Assistant Attorney General
Environmental Bureau

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

**THERMOGAS COMPANY, INC., now known as
Williams Fertilizer, Inc., formerly d/b/a McLeansboro
Thermogas, a foreign corporation,**

Respondent.

**PCB NO. 10-10
(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) (2008), 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) (2008). In support of this motion, Complainant states as follows:

1. Complainant previously filed a Complaint with the Board, alleging violations by the Respondent.
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) (2008).

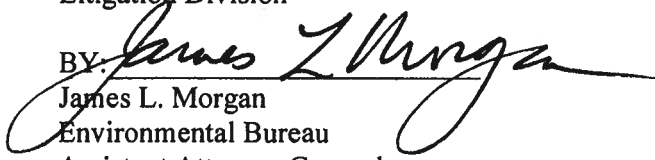
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby request that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act,

415 ILCS 5/31(c)(1) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
James L. Morgan
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/524-7506
Dated: June 8, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No. 10-10
)	(Enforcement)
THERMOGAS COMPANY, INC., now known)	
as Williams Fertilizer, Inc., formerly d/b/a)	
McLeansboro Thermogas, a foreign corporation,)	
)	
Williams.)	

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 WILLIAMS FERTILIZER, INC. ("Williams") and FERRELLGAS, L.P. ("Ferrellgas"), 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On July 30, 2009, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2008), against Williams.

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 (2008).

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

B. The Site

1. Until the spring of 1996 when it ceased operations, Williams, doing business as McLeansboro, owned and/or operated a liquid agricultural-chemical facility (“facility”) near McLeansboro, Hamilton County, Illinois.

2. The facility is located approximately two miles south of McLeansboro adjacent to Illinois Route 42.

3. Materials handled at the facility included Alachlor and ammonium-nitrate.

4. Complainant alleges that, as a result of activities and/or actions conducted by Williams, Alachlor and ammonium-nitrate was discharged, spilled, leaked, or dumped onto the ground at the facility where it then infiltrated into the groundwater below and around the facility property.

C. Alleged Violations

1. For a period of time better known only to Williams and continuing for several years the concentrations of nitrate as N and Alachlor in the groundwater at and adjacent to the facility have exceeded 100 mg/l and 0.10 mg/l, respectively.

2. In April of 1997, Williams had removed some soil contaminated with nitrates and Alachlor from the facility but extensive contamination remained.

3. By failing to control the agrichemicals handled at the facility, Williams has caused or threatened water pollution in violation of Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2008).

4. By failing to control the agrichemicals handled at the facility, Williams has caused or allowed violations of 35 Ill. Adm. Code 620.420 (2008) and Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

D. No Admission of Violations

Williams denies the violations alleged in the Complaint.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and Williams, and any officer, director, agent, or employee of Williams, and any successors or assigns of Williams, and Ferrellgas. Neither Williams nor Ferrellgas shall 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. This Stipulation may be used against Williams in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and Board Regulations for all violations alleged in the Complaint in this matter for purposes of Section 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2006), 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. Complainant contends that human health and the environment were threatened by Williams' violations.
2. Complainant contends that the social and economic benefits attributable to the facility were reduced by Williams' failure to fulfill its responsibilities under the Act and Board Regulations.
3. The facility was suitable for the area in which it was located.
4. Complainant alleges that compliance with the terms of the Act and regulations was technically practicable and economically reasonable.

5. Williams has undertaken a program to remedy the impacts of the groundwater contamination prior to and after its cessation of operations. In October of 2008, the Illinois EPA notified Williams it could discontinue groundwater monitoring.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 violator 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 Section 42 of the Act, 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 respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The Complainant contends that the violations extended until Williams' cessation of operations.
2. Williams was diligent in attempting to come back into compliance with the Act and Board Regulations, once the Illinois EPA notified it of its noncompliance.
3. The Complainant contends that Williams realized a minor economic benefit from its noncompliance.
4. Complainant and the Illinois EPA have determined that, based upon the specific facts of this matter, a payment of Fifteen Thousand Dollars will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. Williams 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.

V. TERMS OF SETTLEMENT

A. Payment

1. Williams shall pay the sum of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money

order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”). Payments shall be sent by first class mail and delivered to:

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

The name, case number and Williams’ federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

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

C. Future Compliance

1. Since 1999, the facility has been the property of Ferrellgas and any future matters related to this Settlement Agreement or the Property shall be served upon Ferrellgas.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

3. This Stipulation in no way affects the responsibilities of Williams to comply with

any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

4. Williams shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

5. Within thirty (30) days from the date the Board adopts and accepts this Stipulation, Ferrellgas shall obtain a deed restriction on the former facility property prohibiting withdrawal of the groundwater for potable use within the area where concentrations of agrichemicals exceed the Class I Groundwater Standards.

D. Release from Liability

In consideration of Williams' payment of Fifteen Thousand Dollars, Williams' commitment to cease and desist as contained in Section V.C.4 above, , and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Williams from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. Upon completion of the deed restriction required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Ferrellgas from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The releases set forth above do not extend to any matters other than those specified in Complainant's Complaint filed on July 29, 2009. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Williams and Ferrellgas 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 or from releases or threatened releases of hazardous substances at or from the facility; and
- d. liability or claims based on Williams' or Ferrellgas' 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 3.26 of the Act, 415 ILCS 5/3.26, or entity other than Williams or Ferrellgas.

E. Enforcement and Modification of Stipulation

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

2. The Complainant, in consultation with the Illinois EPA, Williams and Ferrellgas, may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the undersigned persons representing each party to this Stipulation. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

F. Execution of Stipulation

The undersigned representatives for each party to this Stipulation 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.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

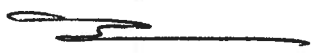
PEOPLE OF THE STATE OF ILLINOIS,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN,
Attorney General
State of Illinois,

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

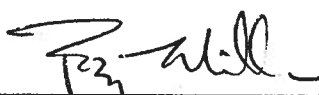
BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 6/08/10

DATE: 6/2/10

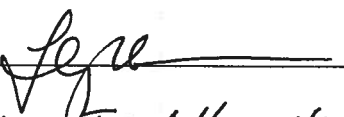
WILLIAMS FERTILIZER, INC.

BY: 
Name: Rory L. Miller
Vice President

DATE: May 11, 2010

Title: _____

FERRELLGAS, L.P.

BY: 
Name: Trent Hampton

DATE: May 10, 2010

Title: VP - legal