

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)

Complainant,)

vs.)

No. PCB No. 04-192
(Enforcement – Land & Water)

SMITHFIELD PROPERTIES, L.L.C.,)
an Illinois Limited Liability company,)
WOOTON CONSTRUCTION, LTD.,)
an Illinois corporation, and CHICAGO)
SUN-TIMES, INC., a Delaware)
corporation)

Respondents.)

NOTICE OF FILING

TO: See attached service list

Please take notice that I have today, December 13, 2010, have filed with the Office of the Clerk of the Illinois Pollution Control Board via electronic filing the Parties' Stipulation of Fact, along with Notice of Filing and Certificate of Service, a copy of which is attached hereto and served upon you.

Respectfully submitted,

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

BY: 
STEPHEN J. SYLVESTER

Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Ste. 1800
Chicago, Illinois 60602
Tel: (312) 814-2087
ssylvester@atg.state.il.us

SERVICE LIST

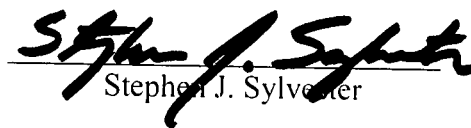
John Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street - Suite 11-500
Chicago, Illinois 60601

Kevin B. Hynes
O'Keefe Lyons & Hynes, LLC
30 North LaSalle Street, Suite 4100
Chicago, Illinois 60602

Bradley P. Halloran
Hearing Officer
James R. Thompson Center
100 W. Randolph Street - Suite 11-500
Chicago, Illinois 60601

CERTIFICATE OF SERVICE

I, Stephen J. Sylvester, do hereby certify that I served the Parties' Stipulation of Fact, on the persons on the service list by depositing the same in the U.S. Mail, postage prepaid, on December 13, 2010 at 100 W. Randolph, Chicago, Illinois.


Stephen J. Sylvester

Stephen J. Sylvester
Assistant Attorney General
Environmental Bureau
Office of the Attorney General
69 W. Washington Street, 18th Fl.
Chicago, IL 60602
312-814-2087
ssylvester@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)

Complainant,)

vs.)

No. PCB No. 04-192
(Enforcement – Land & Water)

SMITHFIELD PROPERTIES, L.L.C.,)
an Illinois Limited Liability company,)
WOOTON CONSTRUCTION, LTD.,)
an Illinois corporation, and CHICAGO)
SUN-TIMES, INC., a Delaware)
corporation)

Respondents.)

STIPULATION OF FACT

The Complainant and the Respondents, Smithfield Properties, LLC and Wooton Construction, Ltd., stipulate to the following facts for purposes of expediting these proceeding and narrowing the issues that will be presented at hearing in this matter.

SITE OWNERSHIP

1. The Site is located at 222 South Racine, Chicago, Illinois.
2. From 1917 until December 1998, the Chicago Sun-Times, Inc. or its predecessor(s) in interest owned the Site.
3. In December 1998, the Sun-Times entered into an agreement with Kenard Investments, Inc. for the purchase of the Site.
4. In January 1999, Kenard assigned its interest in the Site to The Clare Group, Ltd.
5. In October 1999, The Clare Group, Ltd. assigned its interest in the Site to Smithfield Properties, LLC (“Smithfield”).

6. Smithfield acquired the Site and contracted with Wooton for purposes of building residential townhomes and condominiums.

SITE OPERATIONS

7. Until the Site was sold in 1998, the Sun-Times utilized the Site for its fleet maintenance garage.

8. As a result of its operations, the Sun-Times left-in place soil contaminated with gasoline and/or diesel fuel from either leaking underground storage tanks, piping and/or surface spills.

9. During the time the Sun-Times operated the Site, the Sun-Times owned and operated 12 underground storage tanks identified in documents produced in discovery by Smithfield as Tanks 1-12. There are OSFM registration records only for tanks 1-8. Tanks 9-12 are too old to have been registered. Tanks 9-12 appear on Old Sanborne Fire Insurance Maps.

10. Based on information produced in discovery, by Smithfield, at the time of the sale to Kenard in 1998, the tanks were described as follows in the following chart:

Tank	Year Installed	Capacity (gal)	Product Stored	Tank Status
1	1968	1,000	motor oil	abandoned in place 1994
2	1968	1,000	motor oil	abandoned in place 1994
3	1968	1,000	used oil	abandoned in place 1994
4	1968	2,000	ethylene glycol	abandoned in place 1992
5	1986	10,000	diesel	in use
6	1980	10,000	gasoline	in use
7	1966	8,000	gasoline	abandoned in place 1988
8	1968	10,000	gasoline	abandoned in place 1988
9	before 1917	250	gasoline	unknown
10	before 1917	1,000	gasoline	unknown
11	before 1950	unknown	gasoline	unknown
12	before 1950	unknown	gasoline	unknown

11. According to OSFM registration records, tanks 6, 7, and 8 were registered as gasoline tanks. Tank 5 is the only tank registered as diesel tank.

1999 TANK REMOVALS

12. In 1999, Tanks 5 and 6 were removed from the Site.

13. In April 1999, the Sun-Times removed Tank 6, a 10,000-gallon gasoline UST.

14. The removal of Tank 6 was done pursuant to removal permit 104558 issued by the City of Chicago.

15. During the tank removal, which was conducted under the direction and supervision of City of Chicago Department of the Environment and pursuant to 41 Illinois Administrative Code, Part 170, the Sun-Times confirmed a release of gasoline from Tank 6 and reported the release to the Illinois Emergency Management Agency ("IEMA"). IEMA assigned the release Incident No. 99-1013.

16. Sun-Times excavated 30 cubic yards of impacted soil from the tank excavation and manifested it for disposal. Soil samples taken by the Sun-Times confirmed the presence of benzene, toluene, ethyl benzene, and total xylene ("BTEX") in the soil surrounding Tank 6.

17. The Sun-Times was not required by law to and did not analyze the soil for any other constituents.

18. The Sun-Times did not analyze groundwater at the Site or confirm the presence of groundwater at the Site.

19. The Sun-Times removed the soil immediately surrounding Tank 6 and was issued a No Further Remediation Letter for the gasoline release that was reported to IEMA in 1999.

20. In approximately November 1999, Wooton contracted with Speedway Wrecking Co. to remove Tank 5, a 10,000-gallon diesel fuel tank.

21. Tank 5 was located adjacent to Tank 6 at the Site.
22. Speedway subcontracted the tank removal to Omega Environmental Services, Inc. ("Omega").
23. On November 29, 1999, Omega removed Tank 5 and disposed of the tank off-site.
24. Omega prepared a report of the tank removal and submitted the report to Speedway.
25. If called to testify, the City of Chicago would testify that a permit to remove Tank 5 was not applied for nor issued and there were no representatives from the City of Chicago present for the removal of Tank 5.
26. If called to testify, the Illinois State Fire Marshal would testify that Omega did not receive the Fire Marshal's approval to remove Tank 5.
27. Sometime after the removal of Tank 5, Smithfield and Wooton constructed the townhomes and condominiums at the Site.

2001 RELEASE REPORT

28. On or about March 12, 2001, a resident of one of the townhomes within the Site noticed an odor in his drinking water. If called to testify, the resident would testify consistent with this statement.
29. Drinking water samples were taken on April 3, 2001. Sample results indicated that the water was fit for human consumption with the exception of sample number SLI #06B, which was noted in the Project Specific comments as, "PNAs test not run due to contamination."
30. On March 30, 2001, Smithfield and Wooton's consultant, Patrick Engineering, Inc., reported to the Site and found that:
 - a. a plumbing contractor may have ruptured a water line at the Site;

- b. in order to uncover the water main and service line, the contractor excavated the area surrounding the line to a depth of 5 feet;
- c. the plumbing contractor noticed what he believed was a diesel odor in the excavation;
- d. perched water filled the excavation;
- e. a petroleum sheen was observed on the water;
- f. the contractor dewatered the excavation and pumped the water into a nearby storm sewer; and
- g. a City of Chicago inspector on-site to inspect the repairs observed the sheen and instructed the contractor to report a release to IEMA.

31. On March 30, 2001, Wooton reported a 5-gallon release of diesel fuel to IEMA, which issued Incident No. H2001-0544. The incident report states that the incident occurred at an unknown time on March 28, 2001.

32. Prior to March 30, 2001, Smithfield and Wooton did not report any release(s) to IEMA or Illinois EPA at the Site.

33. On April 16, 2001, Patrick Engineering submitted to the Illinois EPA Patrick's *Report of Environmental Investigation*, which detailed Patrick's April 5, 2001 on-site sampling activities.

34. On May 18, 2001, Patrick Engineering submitted to Illinois EPA various documents and information requested by Illinois EPA.

35. On May 24, 2001, Patrick Engineering submitted to the Illinois EPA its *Remedial Action Completion Report* ("RACR") for the Site.

36. The RACR stated, among other things, that Patrick removed 425 tons of soil from the Site between what are known as Units 23-42.

37. On July 27, 2001, the Illinois EPA rejected the RACR.

38. On July 13, 2001, Patrick Engineering submitted to the Illinois EPA Patrick's *Report of Additional Environmental Investigations*.

39. On September 11, 2001, Patrick Engineering submitted to the Illinois EPA an *Addendum to Remedial Action Completion Report*, in response to the Illinois EPA's July 27, 2001 rejection of the RACR.

40. The *Addendum to Remedial Action Completion Report* states, among other things, that Wooton intends to utilize the clean soil barrier, the building foundations, and the concrete pavements as engineered barriers.

41. The *Addendum to Remedial Action Completion Report* contains an Illinois EPA Property Owner Summary form signed by Joe Oshinski as agent for Smithfield Properties, dated September 11, 2001.

42. In January 2002, Patrick submitted to the Illinois EPA a *Groundwater Classification Study and Tier 2 Evaluation*.

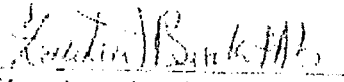
43. On March 20, 2002, the Illinois EPA rejected the *Groundwater Classification Study and Tier 2 Evaluation*.

44. On August 2, 2006, Patrick prepared a report for Smithfield documenting additional soil sampling conducted in the former location of the Sun-Times Section B building on July 12, 2006.

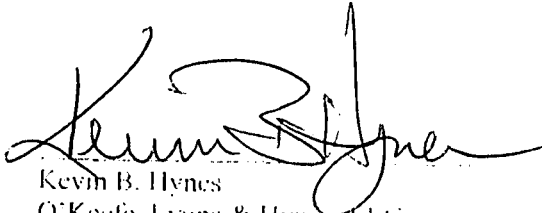
45. Petroleum-related constituents remain in the soil at the Site, including under the residences.

46. Groundwater has been identified at the Site.

For the Complainant:


Zeneheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-3816

For the Respondents:


Kevin B. Hynes
O'Keefe, Lyons & Hynes, LLC
30 N. LaSalle Street, Suite 4100
Chicago, Illinois 60602
(312) 621-0400