

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB 19 - 85
v.)	(Enforcement – Water)
)	
WILLIAMSON ENERGY, LLC, a Delaware)	
limited liability company,)	
)	
Respondent.)	

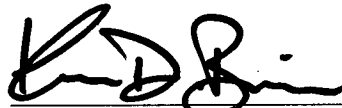
NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing the following Notice of Filing, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL, Attorney General
of the State of Illinois

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

BY: 

KEVIN D. BONIN, #6294877
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Ph: (217) 782-5055
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kbonin@atg.state.il.us
ebs@atg.state.il.us

Dated: March 28, 2019

Service List

For the Respondent

Nicholas S. Johnson
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1054 31st Street NW, Suite 230
Washington, DC 20007
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Via E-Mail

For the Illinois Pollution Control Board

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB 19-85
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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and WILLIAMSON ENERGY, LLC, (“Respondent”), (collectively “Parties to the Stipulation”), have agreed to enter into 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.* (2016), and the Board’s Regulations alleged in the Complaint, except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On February 4, 2019, a Complaint was filed against the Respondent on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on

his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2016).

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 (2016).

3. At all times relevant to the Complaint, Respondent was and is a Delaware limited liability company that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a coal mine and coal preparation facility located at 18000 Dean Road, Williamson County, Illinois ("Facility" or "Site").

5. Respondent operates the Facility subject to NPDES Coal Mine Permit No. IL0077666 ("NPDES Permit"). The NPDES Permit was most recently reissued to Respondent on February 7, 2013.

6. On April 21, 2016, Illinois EPA inspected the Facility in response to a complaint received by the Illinois EPA Emergency Response Unit ("Inspection").

7. During the Inspection, Illinois EPA observed light gray-colored, turbid liquid in an unnamed tributary of Pond Creek ("Unnamed Tributary") downstream from the Facility. Illinois EPA also observed dark staining on the stream bank and stream bed of the Unnamed Tributary downstream from the Facility.

8. As part of the Facility's stormwater management and water recycling operations, Respondent maintained a diesel pump at Pond 007/008 ("007/008 Pump"). The 007/008 Pump's suction intake was supported by a float in order to pump supernatant water from the surface of Pond 007/008 and reroute it within the Facility. The 007/008 Pump's discharging outlet is not permitted to discharge into waters of the State, either directly or through any permitted outfall.

9. During the Inspection, Illinois EPA observed that the 007/008 Pump's discharging outlet was discharging waters from Pond 007/008 onto and through Outfall 002.
10. Outfall 002 is only permitted to discharge alkaline mine drainage from Pond 002.
11. Discharges from Pond 007/008 are only permitted through Outfall 007 or Outfall 008.
12. The discharge of waters and/or contaminants from Pond 007/008 through Outfall 002 into waters of the State is a bypass under the NPDES Permit.
13. During the Inspection, representatives of the Respondent informed Illinois EPA that the float supporting the 007/008 Pump's suction intake had failed, causing the suction intake to fall into slurry solids at the bottom of Pond 007/008.
14. As a result of the bypass, acid mine drainage was discharged onto and through Outfall 002 and into the Unnamed Tributary.
15. As a result of the bypass and the failure of the float supporting the 007/008 Pump's suction intake, slurry solids and acid mine drainage were discharged onto and through Outfall 002 and into the Unnamed Tributary.
16. As a result of the bypass and the failure of the float supporting the 007/008 Pump's suction intake, Respondent violated the Act, the Board's Regulations, and the NPDES Permit, as alleged in the Complaint.

B. Allegations of Non-Compliance

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

Count I: Water Pollution
Section 12(a) of the Act, 415 ILCS 5/12(a) (2016)

- Count II: Water Pollution Hazard
Section 12(d) of the Act, 415 ILCS 5/12(d) (2016)
- Count III: Violation of Water Quality Standards
Section 12(a), (f) of the Act, 415 ILCS 5/12(a), (f) (2016)
Sections 302.208(d) and 309.102(a) of the Board's Regulations, 35 Ill. Adm. Code 302.208(d) and 309.102(a)
Special Condition 1 of NPDES Permit No. IL0077666
- Count IV: Offensive Conditions
Section 12(a), (f) of the Act, 415 ILCS 5/12(a), (f) (2016)
Sections 309.102(a) and 406.202 of the Board's Regulations, 35 Ill. Adm. Code 309.102(a) and 406.202
Special Condition 1 of NPDES Permit No. IL0077666
- Count V: Offensive Discharges
Section 12(a) of the Act, 415 ILCS 5/12(a) (2016)
Section 406.107 of the Board's Regulations, 35 Ill. Adm. Code 406.107
- Count VI: NPDES Permit Violations
Section 12(f) of the Act, 415 ILCS 5/12(f) (2016)
Sections 309.102(a) of the Board's Regulations, 35 Ill. Adm. Code 309.102(a)
Standard Condition 5 and the Alkaline Mine Drainage Effluent Limitations of NPDES Permit No. IL0077666
- Count VII: NPDES Bypass Violations
Section 12(f) of the Act, 415 ILCS 5/12(f) (2016)
Sections 305.102(a), (b) and 309.102(a) of the Board's Regulations, 35 Ill. Adm. Code 305.102(a), (b) and 309.102(a)
Standard Conditions 12(b) and 13(c)(1), (d) of NPDES Permit No. IL0077666
- Count VIII: Failure to Comply with Good Mining Practices
Section 12(f) of the Act, 415 ILCS 5/12(f) (2016)
Section 309.102(a) of the Board's Regulations, 35 Ill. Adm. Code 309.102(a)
Standard Condition 27 of NPDES Permit No. IL0077666

C. Non-Admission of Violations

Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation.

Respondent does not admit to the violations alleged in the Complaint filed in this matter and

referenced within Section I.B herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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. 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 for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2016).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2016), 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 to the Stipulation state the following:

1. Human health and the environment were threatened, and the Illinois EPA's information gathering responsibilities hindered by the Respondent's alleged violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was and is suitable for the area in which it is located, if the facility is operated in compliance with the Respondent's NPDES permit.
4. Complainant contends that reducing or eliminating discharges from the pollution source and complying with the terms of the Respondent's NPDES permit is both technically practicable and economically reasonable.
5. Subsequent to the inspection of April 21, 2016 that resulted in the violations alleged in the Complaint, Respondent ended the bypass that caused the violations alleged in the Complaint and referenced within Section I.B herein.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2016), 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;
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; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Complainant alleges that Illinois EPA observed the violations listed in the Complaint on April 21, 2016, and the alleged violations existed for an undetermined period of time prior to the April 21, 2016 inspection. The alleged violations were individually resolved soon thereafter. Complainant assesses the gravity of the alleged violations—caused by the bypass and compounded by the discharge of slurry solids associated with the 007/008 Pump float failure—to be significant.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board Regulations, and applicable Federal Regulations, once the Illinois EPA notified it of its alleged non-compliance.
3. Complainant asserts that the civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of eighty-thousand Dollars (\$80,000.00) will serve to deter violations and aid in future voluntary compliance with the Act and the Board's Regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated

violations of the Act.

6. Respondents did not notify Complainant of the alleged non-compliance in accordance with Section 42(i) of the Act, 415 ILCS 5/42(i) (2016). The Illinois EPA became aware of the alleged violations during an inspection of the facility on April 21, 2016.

7. The settlement of this matter does not include a supplemental environmental project.

8. A Compliance Commitment Agreement was proposed by Respondent but rejected by Illinois EPA.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of eighty-thousand dollars (\$80,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

1. 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, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kevin D. Bonin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondent's 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, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. 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.

3. Respondent shall comply with the terms of the facility's NPDES Permit, including but not limited to proper sampling, documentation, reporting of any discharges that occur from permitted outfalls, and discharging from any outfall only the types of contaminants specifically designated by the facility's NPDES Permit to be discharged from that outfall.

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

E. Release from Liability

In consideration of the Respondent's payment of the \$80,000.00 penalty, its commitment to cease and desist as contained in Section V.D.4 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives, and discharges the Respondent from any further liability or penalties for the alleged 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 4, 2019. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2016), or entity other than the Respondent.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Kevin D. Bonin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

Jacob Smith
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Brian Rodely
Bureau of Water, Division of Water Pollution Control
Field Operations Section
Illinois Environmental Protection Agency
Marion Regional Office
2309 West Main Street
Marion, Illinois 62959

As to the Respondent

Nicholas S. Johnson
Bailey & Glasser LLP
1054 31st Street NW, Suite 230
Washington, DC 20007

Cody Nett
Secretary
Williamson Energy, LLC
211 N. Broadway
Suite 2600
St. Louis, MO 63102

G. Enforcement and Modification of Stipulation

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.

H. Execution of Stipulation

The undersigned representatives for the Parties to the 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Parties to the 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

KWAME RAOUL
Attorney General
State of Illinois

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

JOHN J. KIM, Acting Director
Illinois Environmental Protection Agency

BY: _____
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
JOHN J. KIM

DATE: _____

DATE: _____

WILLIAMSON ENERGY, LLC

BY:  _____
ROBERT D. MOORE
President and Chief Executive Officer

DATE: 2/26/19

WHEREFORE, the Parties to the 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

KWAME RAOUL
Attorney General
State of Illinois

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

JOHN J. KIM, Acting Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

BY: 
DANA VETTERHOFFER,
Acting Chief Legal Counsel

DATE: 03/18/2019

DATE: 3-12-19

WILLIAMSON ENERGY, LLC

BY: _____
ROBERT D. MOORE
President and Chief Executive Officer

DATE: _____

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB 19 - 85
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WILLIAMSON ENERGY, LLC, a Delaware)	
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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, 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. On February 4, 2019, Complainant filed the initial Complaint in this matter.
2. Along with this Motion, Complainant filed on March 28, 2019 a Stipulation and Proposal for Settlement executed between Complainant and the Respondent, Williamson Energy, LLC.

3. Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2016), provides 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).

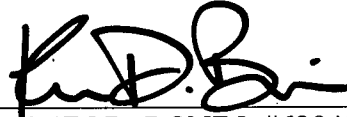
4. No hearing is scheduled in this matter.
5. A telephonic status conference is scheduled for April 8, 2019, at 10:30 a.m.
6. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2016).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

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

BY:


KEVIN D. BONIN, #6294877
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Ph: (217) 782-5055
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kbonin@atg.state.il.us
ebs@atg.state.il.us

Dated: March 28, 2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

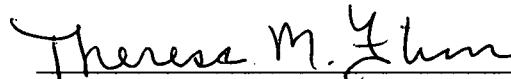
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CERTIFICATE OF SERVICE

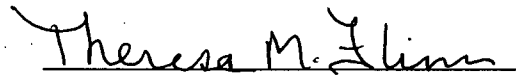
I hereby certify that I did on March 28, 2019, send by electronic mail a true and correct copy of the document entitled Notice of Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to:

Nicholas S. Johnson
Bailey & Glasser LLP
1054 31st Street NW, Suite 230
Washington, DC 20007
NJohnson@baileyglasser.com

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


Theresa M. Flinn
Administrative Secretary
Environmental Bureau

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Theresa M. Flinn
Administrative Secretary
Environmental Bureau