

CERTIFICATE OF SERVICE

I, ARLENE R. HAAS, an Assistant Attorney General, do certify that I caused to be mailed this 27th day of April, 2020, the foregoing Complaint, Motion for Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing with Respondent, BSREP II West Jackson, LLC, by electronic mail with receipt notification requested to the person listed on the Notice of Filing on April 27, 2020.

/s/ Arlene R. Haas
ARLENE R. HAAS
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-3153

4. Respondent owns and operates an office building located at 175 West Jackson Boulevard, Chicago, Cook County, Illinois (“Facility”).

5. On or about April 12, 2018, or on a date best known to Respondent, Respondent purchased the Facility from 175 Jackson LLC.

6. At the Facility, Respondent operates one 2,168 horsepower diesel-fired emergency generator (“Emergency Generator”). The Facility’s Emergency Generator releases carbon monoxide (“CO”), sulfur dioxide (“SO₂”), nitrogen oxides (“NO_x”), particulate matter (“PM”), and volatile organic matter (“VOM”) to the atmosphere.

7. On July 25, 2005, the Illinois Environmental Protection Agency (“Illinois EPA”) issued a Lifetime Operating Permit (“Air Permit”) for operations at the Facility. The Air Permit authorized the operation of emissions units and/or air pollution control equipment consisting of one 2,168 horsepower diesel-fired emergency generator.

8. Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), provides as follows:

No person shall:

- a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

10. Respondent is a “person” as that term is defined in Section 3.315 the Act, 415 ILCS 5/3.315 (2018).

11. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

12. CO, SO₂, NO_x, PM, and VOM are “contaminants” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

13. Section 201.302(a) of the Illinois Pollution Control Board (“Board”) Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), provides as follows:

The owner or operator of any emission unit or air pollution control equipment meeting the applicability criteria contained in 35 Ill. Adm. Code 254.102 shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions; provided, however, that the Agency may require more frequent reports when necessary to accomplish the purposes of the Act and this Chapter.

14. Section 254.102(b) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.102(b), provides as follows:

Subpart C of this Part applies to the owner or operator of any source of regulated air pollutants required to have an operating permit in accordance with 35 Ill. Adm. Code 201 that is not subject to subsection (a) of this Section.

15. Respondent is required to have an operating permit in accordance with 35 Ill. Adm. Code 201, and therefore meets the applicability criteria contained in Section 254.102(b) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.102(b).

16. Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides as follows:

Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this Subpart shall be a violation of this Part and 35 Ill. Adm. Code 201.302(a).

17. Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm.

Code 254.137(a), provides, in relevant part, as follows:

All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

18. Section 211.4370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

211.4370, provides the following definition:

“Owner or operator” means any person who owns, operates, leases, controls, or supervises a source, an emission unit or air pollution control equipment.

19. Respondent is an “owner or operator” as that term is defined by Section 211.4370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.4370.

20. Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

211.1950, provides the following definition:

“Emission unit” means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

21. Section 211.6370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

211.6370, provides the following definition:

“Stationary source” means any building, structure, facility or installation that emits or may emit any air pollutant.

22. Section 211.370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

211.370, provides the following definition:

“Air pollutant” means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the atmosphere. Such term includes any precursors to the formation of any air pollutant, to the extent that the relevant statute or rule has identified such precursor or precursors for particular purpose for which the term “air pollutant” is used.

23. The Facility is a “stationary source” comprised of “emission units” that emit “air

pollutants” as those terms are defined in Sections 211.6370, 211.1950, and 211.370, respectively, of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.6370, 211.1950, and 211.370.

24. Respondent, as the owner or operator of emissions units, was required pursuant to Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Sections 254.132(a) and 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a) and 254.137(a), to submit by May 1, 2019, an Annual Emissions Report (“AER”) to the Illinois EPA for its operations during calendar year 2018.

25. As of February 14, 2020, Respondent failed to submit an AER to Illinois EPA covering the calendar year 2018.

26. By failing to submit an AER for calendar year 2018, Respondent violated Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Sections 254.132(a) and 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a) and 254.137(a). Respondent thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against Respondent, BSREP II WEST JACKSON LLC, with respect to Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that the Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Sections 254.132(a) and 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a) and 254.137(a);

3. Ordering the Respondent to cease and desist from any future violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Sections 254.132(a) and 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a) and 254.137(a);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees against Respondent; and

6. Granting other such relief as the Board deems appropriate and just.

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: /s/ Elizabeth Wallace
ELIZABETH WALLACE, Chief
Environmental Bureau

Of Counsel:
Arlene R. Haas
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
Primary: ahaas@atg.state.il.us
Secondary: mcacaccio@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. _____
)	(Enforcement – Air)
BSREP II WEST JACKSON LLC,)	
a Delaware corporation,)	
)	
Respondent.)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT
AND NOTICE OF ELECTRONIC SERVICE**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, 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)(2018), moves that the Illinois Pollution Control Board (“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) (2018). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Sections 254.132(a) and 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a) and 254.137(a).

2. Complainant is filing the Complaint with the Board simultaneous with this Motion and a Stipulation and Proposal for Settlement.

3. Due to the challenges presented by the COVID-19 pandemic and Executive Order 2020-18 issued by Governor JB Pritzker on April 1, 2020, the Respondent has agreed to accept

service of the Complaint via electronic mail. A true and correct copy of the agreement to accept service via electronic mail is attached hereto as Exhibit 1.

4. The parties have reached agreement on all outstanding issues in this matter.

5. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

6. 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) (2018).

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) (2018).

Respectfully submitted,

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

BY: /s/ Arlene R. Haas
Arlene R. Haas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-3153
Primary: ahaas@atg.state.il.us
Secondary: mcacaccio@atg.state.il.us

DATE: April 27, 2020

4/13/2020

Exhibit I - Haas, Arlene

Electronic Filing: Received, Clerk's Office 04/27/2020 **PCB 2020-073**

Exhibit I

Haas, Arlene

Mon 4/13/2020 4:46 PM

To: Haas, Arlene <AHaas@atg.state.il.us>;

From: Nasrallah, Amelia <Amelia.Nasrallah@brookfieldproperties.com>

Sent: Monday, April 13, 2020 4:33 PM

To: Haas, Arlene

Subject: Re: One more request - 165 Jackson

175 West Jackson blvd.

Amelia Nasrallah

Vice President, Legal | Canadian Office Division

Brookfield Properties

Brookfield Place

181 Bay Street Suite 700, Toronto, Ontario, M5J 2T3

T +1.416.359.8568

Amelia.Nasrallah@brookfieldproperties.com

www.brookfieldproperties.com

Brookfield
Properties

View important disclosures and information about our e-mail policies [here](#)

On Apr 13, 2020, at 5:16 PM, Haas, Arlene <AHaas@atg.state.il.us> wrote:

[External Email]

Thank you. I noticed a typo in the subject line. This is for 175 Jackson. Arlene

Arlene R. Haas

Assistant Attorney General

Environmental Bureau

Office of the Attorney General

69 West Washington Street, Suite 1800

Chicago, Illinois 60602

4/13/2020

Exhibit I - Haas, Arlene

Electronic Filing: Received, Clerk's Office 04/27/2020 **PCB 2020-073**

(312) 814-3153

ahaas@atg.state.il.us

From: Nasrallah, Amelia <Amelia.Nasrallah@brookfieldproperties.com>

Sent: Monday, April 13, 2020 3:58 PM

To: Haas, Arlene

Subject: Re: One more request - 165 Jackson

Ok we confirm that is acceptable.

Amelia Nasrallah

Vice President, Legal | Canadian Office Division

Brookfield Properties

Brookfield Place

181 Bay Street Suite 700, Toronto, Ontario, M5J 2T3

T +1.416.359.8568

Amelia.Nasrallah@brookfieldproperties.com

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Brookfield
Properties

View important disclosures and information about our e-mail policies [here](#)

On Apr 13, 2020, at 4:53 PM, Haas, Arlene <AHaas@atg.state.il.us> wrote:

[External Email]

Amelia:

I was asking for a sentence granting permission to use electronic service in People of the State of Illinois vs. BSREP II West Jackson LLC. Thank you, Arlene

Arlene R. Haas

Assistant Attorney General

Environmental Bureau

Office of the Attorney General

69 West Washington Street, Suite 1800

Chicago, Illinois 60602

(312) 814-3153

ahaas@atg.state.il.us

From: Nasrallah, Amelia <Amelia.Nasrallah@brookfieldproperties.com>

Sent: Monday, April 13, 2020 3:44 PM

To: Haas, Arlene

Subject: Re: One more request

4/13/2020

Exhibit I - Haas, Arlene

Electronic Filing: Received, Clerk's Office 04/27/2020 **PCB 2020-073**

Yes the landlord provides its permission to electronic service during this covid related delay.

Amelia Nasrallah

Vice President, Legal | Canadian Office Division

Brookfield Properties

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Brookfield
Properties

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On Apr 13, 2020, at 4:30 PM, Haas, Arlene <AHaas@atg.state.il.us> wrote:

[External Email]

Amelia:

Given we don't normally serve the documents electronically, I am filing a Notice of Electronic Service with the Board and want to attach as an exhibit an email that says BSREP II West Jackson LLC is agreeing to electronic service. I was looking through our email exchanges and I believe your permission is mixed in with other information. I think it is better to just have one email simply stating that BSREP II West Jackson LLC is agreeing to electronic service in this matter.

I appreciate your help with this. Thank you, Arlene

Arlene R. Haas

Assistant Attorney General

Environmental Bureau

Office of the Attorney General

69 West Washington Street, Suite 1800

Chicago, Illinois 60602

(312) 814-3153

ahaas@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement - Air)
BSREP II WEST JACKSON LLC,)	
a Delaware corporation,)	
)	
Respondent.)	

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 BSREP II WEST JACKSON LLC (“Respondent”), (collectively “Parties to the Stipulation”), 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. (2018), 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 April 27, 2020, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018), 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 (2018).

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 an office building located at 175 W. Jackson Boulevard, Chicago, Cook County, Illinois (“Facility”).

5. Respondent is required to operate pursuant to a permit for the 2,168 horsepower diesel-fired emergency generator at the Facility and to submit an Annual Emissions Report (“AER”) for each year of operation.

6. Respondent was required to submit an AER for calendar year 2018 to the Illinois EPA no later than May 1, 2019.

7. Respondent did not submit its 2018 AER to the Illinois EPA by May 1, 2019.

B. Allegations of Non-Compliance

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

Count I: Failure to submit a complete and accurate 2018 Annual Emissions Report in violation of Section 9(a) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a) (2018), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Sections 254.132(a) and

254.137(a) of the Illinois EPA Air Pollution Regulations 35 Ill. Admin. Code 254.132(a) and 254.137(a).

C. Non-Admission of Violations

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

D. Compliance Activities to Date

Respondent submitted its calendar year 2018 AER and its calendar year 2019 AER to Illinois EPA on March 6, 2020, after the Complainant invited Respondent to a meeting to discuss the alleged violations prior to the filing of a complaint.

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 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), 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. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment.
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.
4. Timely submitting Annual Emission Reports is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board and Illinois EPA regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), 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. The Respondent failed to submit its AER for calendar year 2018.
2. Respondent was diligent in attempting to come back into compliance with the Act, and the Board and Illinois EPA regulations, once Complainant notified Respondent of its noncompliance.
3. Respondent gained no economic benefit as a result of its untimely AER submittal.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Thousand dollars (\$5,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board and Illinois EPA regulations.

5. To Complainant's knowledge, 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.
8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Five Thousand dollars (\$5,000.00) 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:

Arlene R. Haas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General’s Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall timely file all future Annual Emission Reports.

2. 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.

3. 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.

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 \$5,000.00 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 violations of the Act and the Board and Illinois EPA 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 April 27, 2020. 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, or entity other than the Respondent.

F. Enforcement 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.

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G. 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. This Stipulation may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

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, Director
Illinois Environmental Protection Agency

BY: /s/ Elizabeth Wallace
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: /s/ Charles W. Gunnarson
CHARLES W. GUNNARSON
Acting Chief Legal Counsel

DATE: April 22, 2020

DATE: April 21, 2020

| BSREP II WEST JACKSON LLC

BY: /s/ Stefan Dembinski
Stefan Dembinski
Executive Vice President

DATE: April 13, 2020