

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 16-_____
)	(Enforcement)
)	
CHEROKEE WELL SERVICE,)	
)	
Respondent.)	

NOTICE OF FILING

Brian Clappier, Assistant Attorney General, hereby certifies that he has served a copy of the foregoing Notice of Filing, Complaint, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements upon:

Gregory K. Stewart
Conger & Elliott, P.C.
304 E Robinson St, Ste. A
Carmi, IL 62821

by placing a copy of same in the United States Mail in Springfield, Illinois, with postage fully prepaid on March 16, 2016.

Respectfully submitted,

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

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

BY: s/Brian Clappier
Brian Clappier
Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
CHEROKEE WELL SERVICE LLC,)	
an Illinois limited liability company,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, CHEROKEE WELL SERVICE LLC, an Illinois limited liability company, as follows:

COUNT I
OPEN DUMPING VIOLATIONS

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2014).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2014), and charged *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. CHEROKEE WELL SERVICE, LLC ("Cherokee"), is an Illinois limited liability company in good standing and authorized to conduct business in Illinois. The principal office for the Respondent is located at 630 Fifth Avenue, Suite 2300, New York, New York, 10111.

5. The Respondent is a "person" as that term is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, political subdivision, state agency, or any other legal entity or their legal representative, agent or assigns.

6. Carolyn W. Campbell resides at the property located at 1352 County Road 1175E, Carmi, White County, Illinois (the "Site"). The Carolyn Campbell Trust owns the Site. A house, barn, utility building, grain silo, and stormwater drainage ditch, which is a tributary of the Little Wabash River, are located at the Site. The Site is not a permitted sanitary landfill.

7. Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2014) state as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

* * *

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of the Act and of regulations and standards thereunder.

* * *

8. Sections 21(p)(1), (4) and (6) of the Act, 415 ILCS 5/21(p)(1) (2014), (4), and (6), provide as follows:

No person shall:

* * *

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter;

* * *

(4) deposition of waste in standing or flowing waters;

* * *

(6) standing or flowing liquid discharge from the dump site;

9. Section 3.185 of the Act, 415 ILCS 5/3.185 (2014), provides as follows:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

10. Section 3.305 of the Act, 415 ILCS 5/3.305 (2014), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

11. The term "refuse" is defined under Section 3.385 of the Act, 415 ILCS 5/3.385 (2014), as follows:

"Refuse" means waste.

12. Section 3.445 of the Act, 415 ILCS 5/3.445 (2014), provides as follows:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating

nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

13. Section 3.535 of the Act, 415 ILCS 5/3.535 (2014), provides as follows:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. . . .

14. On dates prior to July 18, 2013 and better known to the Respondent, Johnathan Campbell, an employee of the Respondent and son of Carolyn W. Campbell, released oil sludge and salt water on the gravel driveway, parking area, dirt roadway leading to a stormwater drainage ditch and vegetation leading off the access road at the Site. An estimated 1,368 gallons of oil were disposed on the road surface at the Site.

15. On July 18, 2013, the Illinois EPA conducted an inspection of the Site.

16. During the July 18, 2013 inspection and on dates better known to the Respondent, oil sludge existed on the edge of the driveway, the gravel of the driveway, the parking area, and a dirt roadway leading toward a stormwater drainage ditch. The thick, black, oil sludge covered the vegetation leading off the farm access road to the stormwater drainage ditch. Pools of orange-colored sludge existed in several areas of the ditch. A test strip indicated that the chloride level of the liquid found in the ditch was above 6,000 parts per million.

17. During the July 18, 2013 inspection and on dates better known to the Respondent, oil staining existed on approximately 155 yards of the stormwater drainage ditch.

An estimated 2,244 gallons of oil sludge and salt water existed in the stormwater drainage ditch.

18. On July 18, 2013, the Illinois EPA met with Brian Kirkpatrick, the business operations manager for the Respondent, and Mr. Kirkpatrick confirmed that the Respondent was aware of its employee, Johnathan Campbell, discarding the Respondent's salt water and oil sludge at the Site.

19. On July 29, 2013, the Illinois EPA conducted a follow-up inspection of the Site. Patriot Engineering and Environmental, Inc. ("Patriot"), had remediated the Site, installed booms on the stormwater drainage ditch, and removed contaminated soil and corn crops from the Site. Patriot had removed thousands of dead fish from the stormwater ditch during the remediation process, accumulated at the boom where the oil sludge terminated.

20. On September 18, 2013, the Illinois EPA issued Violation Notice L-2013-01247 to the Respondent, alleging violations of the Act and Board regulations.

21. On November 7, 2013, the Respondent submitted proposed terms for a Compliance Commitment Agreement ("CCA") to the Illinois EPA, and on November 15, 2013, the Illinois EPA replied with a letter of non-issuance to the Respondent.

22. The Respondent requested a meeting with the Illinois EPA pursuant to Section 31(b) of the Act and a telephonic meeting was held on August 18, 2014.

23. The oil sludge and salt water that the Respondent disposed at the Site was refuse and a waste, as defined in Sections 3.385 and 3.535 of the Act, 415 ILCS 5/3.385 and 3.535 (2014).

24. The Respondent's release of oil sludge and salt water on the gravel driveway, parking area, dirt roadway leading to a stormwater drainage ditch and vegetation leading off

the access road at the Site constituted disposal and open dumping of waste, as defined under Sections 3.185 and 3.305 of the Act, 415 ILCS 5/3.185 and 3.305 (2014).

25. By disposing oil sludge and salt water in the stormwater drainage ditch, on the soil and on the crops at the Site, and in such a way as to create a flowing liquid discharge, the Respondent violated Sections 21(a), (e), (p)(1), (4) and (6) of the Act, 415 ILCS 5/21(a), (e), (p)(1), (4), and (6) (2014).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

A. Find that the Respondent has violated Sections 21(a), (e), (p)(1), (4) and (6) of the Act, 415 ILCS 5/21(a), (e), (p)(1), (4), and (6) (2014);

B. Order the Respondent to cease and desist from further violations of Section Sections 21(a), (e), (p)(1), (4) and (6) of the Act, 415 ILCS 5/21(a), (e), (p)(1), (4), and (6) (2014) and associated regulations pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2014);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), impose upon the Respondent a monetary penalty of Fifty Thousand Dollars (\$50,000) for each violation of the Act with an additional penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

D. Grant such other and further relief as the Board deems appropriate and just.

COUNT II
FAILURE TO OBTAIN A PERMIT FOR WASTE DISPOSAL

1-24. The Complainant realleges and incorporates by reference herein paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count II.

25. Section 21(d) of the Act, 415 ILCS 5/21(d) (2014), provides in pertinent part as follows:

No person shall:

* * *

(d) Conduct any waste-storage, waste-treatment, or waste disposal operation:

- (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder. . . .
- (2) in violation of any regulations or standards adopted by the Board under this Act;

26. Section 812.101(a) of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 812.101(a), provides as follows:

- (a) All persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021(d)) shall submit to the Agency an application for a permit to develop and operate a landfill. The application must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

27. By disposing oil sludge and salt water at the Site, which is not permitted for such disposal, the Respondent violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2014).

28. By disposing oil sludge and salt water at the Site, without having submitted to the Illinois EPA an application for a permit to develop and operate a landfill, the Respondent violated Section 812.101(a) of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code Section 812.101(a), and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 21(d)(2) (2014).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

A. Find that the Respondent has violated Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2014) and Section 812.101(a) of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code Section 812.101(a);

B. Order the Respondent to cease and desist from further violations of Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2014) and Section 812.101(a) of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 812.101(a);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), impose upon the Respondent a monetary penalty of Fifty Thousand Dollars (\$50,000) for each violation of the Act with an additional penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

D. Grant such other and further relief as the Board deems appropriate and just.

COUNT III
WATER POLLUTION

1-24. The Complainant realleges and incorporates by reference herein paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count III.

25. Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with

matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

26. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides, in pertinent part, as follows:

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

27. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), provides, in pertinent part, as follows:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

28. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), provides in pertinent part, as follows:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

29. The waters in the stormwater drainage ditch were waters of the state, as it is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2014).

30. The oil sludge and salt water that the Respondent disposed of at the Site were contaminants, as defined under Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

31. By disposing of oil sludge and salt water at the Site, the Respondent caused and allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

- A. Find that the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- B. Order the Respondent to cease and desist from further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), impose upon the Respondent a monetary penalty of Fifty Thousand Dollars (\$50,000) for each violation of the Act with an additional penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
- D. Grant such other and further relief as the Board deems appropriate and just.

COUNT IV
WATER POLLUTION HAZARD

1-30. The Complainant realleges and incorporates by reference paragraphs 1 through 24 of Count I and paragraphs 25 through 30 of Count III as if fully set forth herein as paragraphs 1 through 30 of this Count IV.

31. Section 12(d) of the Act, 415 ILCS 5/12(d) (2014), provides as follows:

No person shall:

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

32. The Respondent deposited oil sludge in close proximity to and into the stormwater drainage ditch at the Site, where thousands of fish were later found dead.

33. By depositing oil sludge and salt water onto the soil and waters located at the Site, where thousands of fish were later found dead in the stormwater drainage ditch, the Respondent deposited contaminant upon the land in such place and manner so as to create a water pollution hazard and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

A. Find that the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).;

B. Order the Respondent to cease and desist from further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2014);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), impose upon the Respondent a monetary penalty of Fifty Thousand Dollars (\$50,000) for each violation of the Act with an additional penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

D. Grant such other and further relief as the Board deems appropriate and just.

COUNT V
FAILURE TO PERFORM WASTE DETERMINATION

1-33. The Complainant realleges and incorporates by reference paragraphs 1 through 24 of Count I, paragraphs 25 through 30 of Count III, and paragraphs 31 through 33 of Count IV as if fully set forth herein as paragraphs 1 through 33 of this Count V.

34. Section 722.111 of the Board's Solid Waste and Special Waste Hauling

Regulations, 35 Ill. Adm. Code 722.111, provides as follows:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste using the following method:

- (a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- (b) The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.
BOARD NOTE: Even if a waste is listed as a hazardous waste, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.
- (c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
 - 1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
 - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
- (d) If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 721, 724 through 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

35. Section 808.121(a) of the Board's Solid Waste and Special Waste Hauling

Regulations, 35 Ill. Adm. Code 808.121(a), provides as follows:

- a) Each person who generates waste shall determine whether the waste is a special waste.

36. Section 808.110 of the Board's Solid Waste and Special Waste Hauling

Regulations, 35 Ill. Adm. Code 808.110, provides as follows:

"Special waste" means any hazardous waste, and any industrial process waste or pollution control waste which has not been declassified pursuant to Section 808.245. (Section 3.45 of the Act.)

37. On dates prior to July 18, 2013 and better known to the Respondent, the Respondent generated the waste that Johnathan Campbell released on the gravel driveway, parking area, dirt roadway leading to a stormwater drainage ditch and vegetation leading off the access road at the Site

38. The Respondent failed to determine whether the waste, specifically the oil sludge that the Respondent generated and then deposited at the Site, was a hazardous or a special waste.

39. By failing to determine whether the waste generated was a hazardous waste or a special waste, the Respondent violated Sections 21(a) of the Act, 415 ILCS 5/21(a) (2014), and Sections 722.111 and 808.121(a) of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

A. Find that Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2014), and Sections 722.111 and 808.121(a) of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a);

B. Order the Respondent to cease and desist from further violations of Section 21(a) of the Act, 415 ILCS 5/21(a) (2014), and Sections 722.111 and 808.121(a) of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a);


C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), impose upon the Respondent a monetary penalty of Fifty Thousand Dollars (\$50,000) for each violation of the Act with an additional penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

D. Grant such other and further relief as the Board deems appropriate and just.

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: 
ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield
Assistant Attorney General

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ebs@atg.state.il.us

Dated: 03/14/2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB NO.
)	(Enforcement)
CHEROKEE WELL SERVICE, LLC,)	
an Illinois limited liability company,)	
)	
)	
Respondent.)	

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 CHEROKEE WELL SERVICE, LLC (“Respondent”) (“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.* (2014), 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. Simultaneously with the filing of this Stipulation, 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 (2014), 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 (2014).

3. At all times relevant to the Complaint, Respondent was and is an Illinois limited liability company that is authorized to transact business in the State of Illinois. The principal office for the Respondent is located at 630 Fifth Avenue, Suite 2300, New York, New York, 10111.

4. At all times relevant to the Complaint, Carolyn W. Campbell resided, and at the time of filing, resides at the property located at 1352 County Road 1175E, Carmi, White County, Illinois (the "Site"). The Carolyn Campbell Trust owns the Site. A house, barn, utility building, grain silo, and stormwater drainage ditch, which is a tributary of the Little Wabash River, are located at the Site. The Site is not a permitted sanitary landfill.

5. On dates prior to July 18, 2013 and better known to the Respondent, Johnathan Campbell, an employee of the Respondent and son of Carolyn W. Campbell, released oil sludge and salt water on the gravel driveway, parking area, dirt roadway leading to a stormwater drainage ditch, and vegetation leading off the access road at the Site. An estimated 1,368 gallons of oil were disposed on the road surface at the Site.

6. On July 18, 2013, the Illinois EPA conducted an inspection of the Site.

7. During the July 18, 2013 inspection and on dates better known to the Respondent, oil sludge existed on the edge of the driveway, the gravel of the driveway, the parking area, and a dirt roadway leading toward a stormwater drainage ditch. The thick, black, oil sludge covered the vegetation leading off the farm access road to the stormwater drainage ditch. Pools of

orange-colored sludge existed in several areas of the ditch. A test strip indicated that the chloride level of the liquid found in the ditch was above 6,000 parts per million.

8. During the July 18, 2013 inspection and on dates better known to the Respondent, oil staining existed on approximately 155 yards of the stormwater drainage ditch. An estimated 2,244 gallons of oil sludge and salt water existed in the stormwater drainage ditch.

9. On July 29, 2013, the Illinois EPA conducted a follow-up inspection of the Site. Patriot Engineering and Environmental, Inc. ("Patriot"), had remediated the Site, installed booms on the stormwater drainage ditch, and removed contaminated soil and corn crops from the Site. Patriot had removed thousands of dead fish from the stormwater ditch during the remediation process, accumulated at the boom where the oil sludge terminated.

B. Allegations of Non-Compliance

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

- Count I: Open Dumping Violations
415 ILCS 5/21(a), (e), (p)(1), (4) and (6) (2014).
- Count II: Failure to Obtain a Permit for Waste Disposal
415 ILCS 5/21(d)(1) and (2) (2014); 35 Adm. Code 812.101(a).
- Count III: Water Pollution
415 ILCS 5/12(a) (2014).
- Count IV: Water Pollution Hazard
415 ILCS 5/12(d) (2014).
- Count V: Failure to Perform Waste Determination
415 ILCS 5/21(a) (2014); 35 Adm. Code 722.111, 808.121(a).

C. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

On July 18, 2013, Cherokee contacted Patriot Engineering and Environmental ("Patriot") regarding the spill and made arrangements with Patriot for clean-up and remediation of the Site, commencing on July 19, 2013. From July 25, 2013 to July 26, 2013, Patriot removed the contaminated soil and gravel from the ditch, agricultural field, and driveway at the Site and transported the removed materials to Republic Services Landfill. On July 29, 2013, Patriot placed 332.2 tons of CA-6 rock where the contamination had been removed in the driveway. Patriot had removed and manifested all of the contamination in the ditch, agricultural field and driveway to the Republic Services Landfill by July 29, 2013.

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 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2014), 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 violations.
2. There is social and economic benefit to the Site.
3. Other than Respondent's improper disposal of waste at the Site, operation of the Site was suitable for the area in which it is located.
4. Proper disposal of the waste and the required record keeping of waste transport and disposal is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2014), 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 properly dispose of oil sludge and salt water, created a flowing liquid discharge, failed to obtain a permit for waste disposal, discharged contaminants into the environment so as to cause or tend to cause water pollution and a water pollution hazard, and failed to perform a waste determination. The violations began on dates prior to July 18, 2013, and better known to the Respondent, and were resolved by July 29, 2013.
2. After Illinois EPA detected the violations, the Respondent exercised due diligence in attempting to comply with the requirements of the Act or its associated regulations.

3. The violations relate specifically to the Respondent's failure to properly dispose of oil sludge. The economic benefit of noncompliance could be determined by assessing the additional costs that the Respondent would have needed to pay to properly dispose of the waste in the first place. Although the Complainant has not assessed the economic benefit of noncompliance in detail, the economic benefit of noncompliance is less than the penalty agreed upon in this Stipulation.

4. Based upon the specific facts of this matter, the Complainant has determined that a penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent has no previously adjudicated violations of the Act.

6. The Respondent did not self-disclose the violations contained in this referral.

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

8. The Respondent proposed terms for a Compliance Commitment Agreement, but the Illinois EPA rejected those terms.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) 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

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 the Respondent's 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:

Brian Clappier, AAG
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. Respondent shall at all times properly handle and dispose of wastes generated

through its activities.

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 Site 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 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 \$12,500.00 penalty, its commitment to cease and desist as contained in Section V.D.4. above, completion of all activities required hereunder, 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 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 simultaneously with this Stipulation. 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 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.

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.

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

LISA MADIGAN
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA BONNETT, Director
Illinois Environmental Protection Agency

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

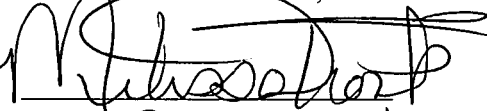
BY: 
ANDREW ARMSTRONG, Chief
Environmental Bureau, South
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 03/10/2016

DATE: 3/8/16

CHEROKEE WELL SERVICES, LLC

BY: 
Name: Melissa Trout
Title: POA

DATE: 2/16/16

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
CHEROKEE WELL SERVICE LLC,)	
an Illinois limited liability company,)	
)	
Respondent.)	

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 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 filed on March 14, 2016 the initial Complaint in this matter and a Stipulation and Proposal for Settlement executed between Complainant and Respondent, Cherokee Well Service LLC.

2. Section 31 of the Act, 415 ILCS 5/31 (2014), 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 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) (2014).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
BRIAN CLAPPIER
Environmental Bureau, Springfield
Assistant Attorney General

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ebs@atg.state.il.us

Dated: March 10, 2016