

**IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT  
WINNEBAGO COUNTY, ILLINOIS  
CHANCERY DIVISION**

**\*\*ELECTRONICALLY FILED\*\***  
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CASE NO: 2021-CH-0000115  
DATE: 4/25/2022 11:02 AM  
BY: L G, DEPUTY

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State Illinois, and *ex rel.* )  
J. HANLEY, State’s Attorney )  
of Winnebago County, Illinois, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHEMTOOL INCORPORATED, )  
a Delaware corporation, )  
 )  
Defendant. )

No. 2021-CH-115

**AGREED IMMEDIATE AND PRELIMINARY INJUNCTION ORDER**

This cause coming before this Court on Plaintiff’s, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* J. HANLEY, State’s Attorney for Winnebago County, Illinois, Motion for Immediate and Preliminary Injunction, due notice having been given, the Court having jurisdiction over the parties and the subject matter herein, and the Court otherwise being duly advised in the premises;

NOW THEREFORE, the Plaintiff having alleged pursuant to Section 43(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/43(a) (2020), that a substantial danger to the environment or to the health and welfare of persons exists pursuant to the Act, 415 ILCS 5/1 *et seq.* (2020); and having also alleged that the Defendant, CHEMTOOL INCORPORATED, (“Chemtool”) has violated the Act and Illinois Pollution Control Board (“Board”) regulations and that a preliminary injunction should issue pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2020), to restrain the violations; and the parties having agreed to the entry of this Agreed

Immediate and Preliminary Injunction Order (“Agreed Order”), the Court enters the following immediate and preliminary injunction pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2020), and Section 42(e) of the Act, 415 ILCS 5/42(e) (2020), which shall remain in effect until further order of this Court.

## **I. BACKGROUND**

1. The Plaintiff incorporates by reference herein the allegations in its Verified Complaint for Injunctive Relief and Civil Penalties filed on July 9, 2021 (“Complaint”).

2. The Plaintiff alleges in its Complaint that as the result of the fire and explosions (“Fire”) that began on June 14, 2021 at Defendant’s facility, located at 1165 Prairie Hill Road, Rockton, Winnebago County, Illinois (“Site”), the Defendant created a substantial danger to the environment and public health and violated the Act and Board regulations.

3. At all times relevant to the Complaint, Defendant was and is a Delaware corporation registered to do business in Illinois and is in good standing. Defendant owned and operated a grease, lubricating oil, and fluids manufacturing plant located at the Site.

4. The Fire resulted in the emission of smoke, particulate matter and potentially other unknown contaminants into the atmosphere, the release of vapor suppression foam to the Rock River, and the deposition of firefighting water runoff and foam runoff. The runoff from firefighting activities remains at the Site and must be handled so as to prevent any further releases into the environment.

5. An estimated 57,667 gallons of petroleum product remained on the Site following the Fire and were stored in fire compromised tanks prior to being removed for temporary storage in frac tanks to prevent a threat of discharge of petroleum product to the Rock River and any potential impacts to area groundwater.

6. Defendant asserts that it has taken the following actions, among others, in response to the Fire:

a. From the start of the fire on June 14 until it regained control of the Site from the Rockton Fire Department on June 19, Defendant engaged in the following activities:

i. Retained US Fire Pump to assist in fighting the fire and CTEH, Hepaco, Ouray, EHS Support, Clean Harbors, and Environmental Restoration to assist in evaluating and responding to potential environmental and health impacts;

ii. Constructed two trench systems surrounding the fire area to contain releases of fire water and foam;

iii. Established booms and sampling programs for the Rock River to capture potential releases into the river;

iv. Retained CTEH to institute and implement an air sampling program to evaluate air quality on-site and off-site;

v. Instituted and implemented a program to provide assistance to nearby residents regarding debris generated by the fire;

vi. On June 16, 2021, Defendant submitted to Illinois Environmental Protection Agency (“Illinois EPA”) a Particulate Deposition Sampling Plan to evaluate potential offsite deposition impacts as a result of the Fire and associated response activities, and a Water Sampling and Disposal Plan.

b. Since regaining control of the site, Defendant engaged in the following activities:

- i. Increased the scope of its water detention system by constructing berms, trenches and collection points to enable collection of fire water and rain water to prevent site runoff;
  - ii. Continued sampling activities to confirm if there were any releases to the Rock River;
  - iii. Collected and stored all material onsite to prevent release to the environment, storing the material in more than 60 frac tanks and 84 roll-off boxes;
  - iv. Removed nearly 57,667 gallons of product from product storage tanks and stored in frac tanks until disposal can be arranged;
  - v. Constructed a clay berm along the west side of the Site to contain and minimize potential for releases;
  - vi. Identified facilities at which to dispose collected firefighting water and have started to ship the wastewater off-Site to those facilities;
  - vii. Performed soil scraping and removal of visually impacted soils around the perimeter of the Site.
- c. Chemtool provided sample results including frac tank wastewater sample results collected on June 21, 2021 and August 10, 2021.

7. On June 17, 2021, Defendant established a hotline number for residents to schedule appointments for debris removal. In response to calls on this hotline, Defendant removed debris, ash and other materials from the property of residents who called the hotline. As of July 27, 2021, Defendant received approximately 848 calls.

8. Chemtool, without approval or review from the Plaintiff, obtained approval and authorization from Republic Services to transfer and dispose of wastewater that was stored on-

Site. On August 20, 2021, Defendant provided the Republic Services “Special Waste Department Decision” document to the Plaintiff. On August 30, 2021, Chemtool began removing wastewater contained in frac tanks from the Site for transfer and disposal with Republic Services.

9. Chemtool, without approval or review from the Plaintiff, also obtained approval and authorization from Clean Harbors, Inc. to transfer and dispose of wastewater that was stored on-Site. On October 7, 2021, Defendant provided the Clean Harbors waste approval document to the Plaintiff. As of the date of entry of this Agreed Order, Chemtool has not removed wastewater contained in frac tanks from the Site for transfer and disposal with Clean Harbors.

10. Defendant represents that wastewater contained in frac tanks on-Site is being taken to licensed disposal facilities, including but not limited to Republic Services, and Defendant has received all proper authorization from these facilities to transfer and dispose of Site wastewater in frac tanks.

11. Defendant’s Site is located within the Beloit Corp. Superfund site. A groundwater treatment system used to address chlorinated solvent contamination at the Beloit Corp. Superfund site is located on Defendant’s Site.

## **II. GENERAL PROVISIONS**

1. This Agreed Order is not a final resolution of the merits of the Plaintiff’s Complaint, but rather addresses the Plaintiff’s most immediate concerns regarding the Fire alleged in the Complaint, and this Agreed Order and compliance therewith shall not be interpreted as addressing all alleged violations or response costs.

2. By entering into this Agreed Order and complying with its terms, the Defendant does not admit the factual allegations or allegations of violation within the Complaint and

referenced above, and this Agreed Order and compliance therewith shall not be interpreted as including such admission.

3. Where applicable, terms used in this Agreed Order shall have the meaning as defined in the Plaintiff's Complaint in this matter.

4. The Defendant shall not claim that any report or any exhibits or attachments thereto, or any portion thereof, submitted to the Plaintiff pursuant to this Agreed Order are subject to attorney-client privilege or constitute attorney work product.

5. This Agreed Order shall apply to and bind the parties hereto.

### **III. IMMEDIATE INJUNCTIVE RELIEF**

1. Effective immediately upon the entry of this Agreed Order, the Defendant shall take all necessary actions to prevent the further discharge or release of wastewater, petroleum products, oils, chemicals, and other contaminants, as a result of the Fire, from the Site onto the land, air, sediment, surface water, and/or groundwater.

2. Within fourteen (14) days after the date of entry of this Agreed Order, the Defendant shall provide to the Plaintiff a plan, for its review and approval, that addresses how Defendant will identify, store and properly dispose of all chemical products remaining on the Site.

3. Effective immediately upon the entry of this Agreed Order, and reported every Wednesday as provided in Section IV.G below, Defendant shall, with respect to waste materials generated by the Fire, provide the following:

- a. The quantities of liquids and solids removed from the Site, listed in quantities removed per day, including total running amounts;
- b. Amounts of liquids and solids removed from product storage areas;

- c. Amounts of liquids and solids that have been collected from the ground;
  - d. Amounts of liquids and solids that have been collected from berms or trenches;  
and
  - e. Collection method and disposition of the liquids and solids.
4. Effective immediately upon the entry of this Agreed Order, and reported every Wednesday as provided in Section IV.G below, Defendant shall provide a summary of on-Site activities, including but not limited to, i) daily visual inspections of remaining product storage areas, ii) the integrity of berms and trenches, and iii) visual inspection of portions of the Site outside of berms and trenches to ensure that no waste enters the ground or reaches, or is in imminent danger of reaching, the Rock River or any other surface water.
5. For Defendant's disposal of wastewater at any disposal facility **outside the State of Illinois**, the Defendant shall:
- a. At least seven (7) days prior to the disposal facility being utilized, submit to Plaintiff, for review, the following information (collectively, "Water Sampling and Disposal Information");
    - i. Sampling protocols (including sampling for Per- and Polyfluoroalkyl substances ("PFAS") for any wastewater stored on Site;
    - ii. Sample results for frac tanks containing wastewater stored on-Site that were not previously provided; and
    - iii. Disposal destination(s) for on-Site wastewater, including copies of disposal facility authorizations and any waste characterizations.
  - b. Provide to Plaintiff manifests for all disposal of wastewater where: i)

disposal has already occurred, but Defendant has not yet provided a manifest; and ii) any disposal occurring after the entry of this Agreed Order.

Defendant may provide Plaintiff such manifests and Water Sampling and Disposal Information by uploading the documents to an electronic data room that Plaintiff may access and download. The documents shall not contain a watermark or other information that was not present before the documents were uploaded to the data room. Defendant will maintain the documents in the electronic data room for at least ninety days.

6. Defendant shall not send any on-Site wastewater for disposal to any publicly owned treatment works (“POTW”) or other waste disposal facility **in the State of Illinois** without first submitting a Water Sampling and Disposal Plan for review and approval to Plaintiff. The Water Sampling and Disposal Plan shall include the following:

- a. A plan for representative sampling of all on-Site wastewater proposed for disposal at the Illinois facility(ies) in question;
- b. Disposal destination(s) for all on-Site wastewater in question, including copies of POTW or other disposal facility authorizations, if applicable, and any waste characterizations; and
- c. If the wastewater in question contains PFAS, Defendant shall also include: i) a detailed plan as to how such wastewater will be handled, ii) the PFAS sampling methods utilized, including detection limits utilized, and iii) results of the PFAS sampling.

For any work done pursuant to the approved Water Sampling and Disposal Plan, Defendant shall provide to Plaintiff all manifests for disposal of all wastewater stored on-Site within seven days



of receipt. Defendant may provide Plaintiff such manifests by uploading the manifests to an electronic data room that Plaintiff may access and download. The manifests shall not contain a watermark or other information that was not present before the manifests were uploaded to the data room. Defendant will maintain the manifests in the electronic data room for at least ninety days.

7. If Plaintiff has not approved of a disposal destination for the wastewater described in Section III.6 within sixty (60) days of Plaintiff's receipt of a Water Sampling and Disposal Plan, or if Plaintiff has denied the use of a disposal location, Defendant may invoke the Dispute Resolution provisions of this Agreed Order to request that the Court determine whether Defendant may dispose of its wastewater at Defendant's chosen disposal destination in accordance with Illinois law.

#### **IV. PRELIMINARY INJUNCTIVE RELIEF**

##### **A. Summary Report**

1. Within ninety days after the date of entry of this Agreed Order, the Defendant shall provide to the Plaintiff a written report identifying the contaminants released, including PFAS, with a detailed calculation of the amount of each contaminant discharged as a result of the Fire, and all assumptions made by the Defendant in performing such calculations and supporting documentation.

2. The Defendant shall provide clarifying information, if requested by the Plaintiff, according to a reasonable schedule established by the Plaintiff.

##### **B. Root Cause Analysis**

1. The Defendant has retained independent engineering consultant Baker Engineering and Risk Consultants, Inc. to perform an investigation to determine the root cause or causes of the Fire (“Root Cause Analysis”).

2. Defendant has submitted a copy of the Root Cause Analysis report to the Plaintiff.

3. The Defendant shall provide clarifying information related to the root cause or causes of the Fire, if requested by the Plaintiff, according to a reasonable schedule established by the Plaintiff.

### **C. Demolition**

1. Within fourteen (14) days of the entry of this Agreed Order, the Defendant shall submit to the Plaintiff, for its review and comment, a demolition and decontamination schedule, which shall include a schedule of activities with anticipated completion dates.

2. If the Plaintiff provides comments on the demolition and decontamination schedule, the Defendant shall, within thirty (30) days after receiving such comments, provide a response to the Plaintiff addressing the Plaintiff’s comments. This process shall continue until the Plaintiff provides notice to the Defendant that it does not have any additional comments.

### **D. Site Investigation**

1. Within thirty (30) days after the entry of this Agreed Order, the Defendant shall submit to the Plaintiff, for its review and approval, a plan for the investigation of all on- and off-Site impacts, including, as appropriate, soil, soil gas, sediment, surface water and groundwater, including private drinking water wells, in compliance with the “Tiered Approach to Corrective Action Objectives” (“TACO”) standards and methods set forth in 35 Ill. Adm. Code Part 742, that may have been impacted by the Fire (“Site Investigation Work Plan”). The Site Investigation

Work Plan shall include: i) a scope of work for the investigation, and ii) a schedule for completion of the investigation and submission of a Site Investigation Report to the Plaintiff.

2. Upon receipt of the Plaintiff's written approval of the Site Investigation Work Plan, with or without conditions, the Defendant shall implement the Site Investigation Work Plan in accordance with the approved schedule. Approval of a Site Investigation Work Plan does not guarantee additional investigation will not be required.

3. Within sixty (60) days after completion of all activities required in the Site Investigation Work Plan, the Defendant shall submit to the Plaintiff, for its review and approval, a report of the findings of the site investigation ("Site Investigation Report"). If all on- and off-Site soil, soil gas, sediment, surface water, and groundwater contamination caused by the Fire has not been identified and fully delineated in compliance with TACO, then Defendant shall repeat the submission and completion of additional Site Investigation Work Plans and Site Investigation Reports in accordance with paragraphs IV.C.2 through 4, according to a reasonable schedule set by Plaintiff, until all Fire-related contamination has been identified and fully delineated.

4. At least ten (10) days prior to any field work to be performed under the Site Investigation Work Plan, such as sampling or excavating, the Defendant shall provide notice to the Plaintiff, as identified in Section VI herein, of the date and time that such work is scheduled.

5. The Defendant shall notify each contractor to be retained to perform work required by this Agreed Order of the requirements of this Agreed Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Agreed Order to each contractor already retained no later than ten (10) days after the date of entry of this Agreed Order.

#### **E. Additional Compliance Obligations**

1. Within fourteen (14) days after the entry of this Agreed Order, Defendant shall temporarily plug any connections from the Site to the Rockton sanitary and storm sewer systems to ensure that contaminants remain within the Site's current footprint, while not permanently eliminating any upstream property owner's access to those systems.

2. Within sixty (60) days of entry of this Agreed Order, Defendant shall install permanent, clay seals of all plugged storm water drains along the west side of the Site.

3. Upon completion of the demolition of the building structures located on-Site, if Illinois EPA determines that a permanent seal is necessary to protect the Rockton sanitary sewer system, Defendant shall install a permanent seal of the Chemtool sewer line at its junction to the main sanitary sewer within thirty (30) days of such determination.

4. Defendant may submit a written request for Plaintiff's review and approval that either or both of the Site's sanitary or storm sewers connections no longer pose a threat to the Rockton sanitary and storm sewer systems or the environment, and that Defendant be allowed to remove the temporary plug(s) or permanent plug(s) from the connections to the sanitary and/or storm sewers systems.

5. The demolition and removal of the burned building structures on Site shall comply with the requirements of the National Emission Standards for Hazardous Air Pollutants for Asbestos. Also, all site work shall be conducted under an acceptable fugitive particulate operating program that meets the requirements of 35 Ill. Admin. Code 212, Subpart K: Fugitive Particulate Matter, specifically 35 Ill. Admin. Code 212.309 and 212.310.

6. Notwithstanding any provision herein, this Agreed Order shall not impede, impact, or supplant any requirements for investigation and/or remediation relating to the Beloit Corp. Superfund Site, including but not limited to compliance with the restrictive covenant on the Site,

whether in relation to the Fire-related waste or otherwise. In the event of a conflict between the requirements of this Order and the Superfund requirements, the most restrictive requirement shall be followed.

#### **F. Approval of Plans, Reports and Submittals**

If the Plaintiff approves any plan or submittal, without conditions, other than plans submitted under Section IV.C, the Defendant shall implement the approved plan or other submittal pursuant to the approved schedule. If the Plaintiff disapproves of any plan, report or other submittal, including the Plan required by Section III.2, the Site Investigation Work Plan, the Site Investigation Report, or other submittal or any revisions required by this Agreed Order, other than plans submitted under Section IV.C, the Defendant shall, within seven (7) days after receiving written notice of such disapproval, submit a proposal that addresses the Plaintiff's conditions or reasons for disapproval. This process shall continue until the Plaintiff approves the document or either party invokes the Dispute Resolution provision in Section X of this Agreed Order as to that document.

#### **G. Weekly Email Status Updates**

Effective immediately upon entry of this Agreed Order, each week on each Wednesday, the Defendant shall provide to Plaintiff, via email, status updates indicating the status of work required under this Agreed Order, including reports identified in paragraphs III.3. The Defendant shall continue submitting such reports until further order of the Court or the parties agree in writing that the Defendant may discontinue the updates required by this paragraph or change the frequency of updates.

### **V. PLAINTIFF'S COSTS**

1. The Defendant shall reimburse the Illinois EPA for all reasonable and necessary

past and future costs incurred by the Illinois EPA from the date of the Fire, including but not limited to costs related to: field response to the fire; sampling of ash, soil, groundwater, surface water and residential wells; sample analysis; site inspections and oversight; oversight of site investigation and remediation; and review and evaluation of documents and reports submitted to it pursuant to this Agreed Order (“Response Costs”). Response Costs shall include direct program costs, allocated program costs and indirect costs. Direct costs shall include, but are not limited to, all related payroll costs for all applicable organizational units, outside contractor/consultants fees, travel costs, and costs associated with photographs, maps, and laboratory services. Allocated program costs represent program costs that are related to the overall program operations, including but not limited to, fiscal services, bill preparation and clerical duties, Division of Legal Counsel program meetings and regulatory preparation and implementation, staff program meetings and management oversight. Indirect costs are those costs incurred by the Illinois EPA in day-to-day operations, including but not limited to, the operation and maintenance of buildings, utilities and administrative costs. The Illinois EPA reserves the right to seek any additional costs incurred by the Illinois EPA pursuant to Section 22.2(f) of the Act, 415 ILCS 5/22.2(f). The Illinois EPA's response and oversight costs shall not be considered as civil penalties, and nothing in this Agreed Order shall be construed to limit the Plaintiff from seeking civil penalties up to the maximum recoverable under Section 42 of the Act, 415 ILCS 5/42 (2020).

2. The Illinois EPA will submit to the Defendant(s) on a quarterly basis invoices for Response Costs incurred during the billing period with supporting documentation. The supporting documentation shall include, at a minimum: (1) hours billed by each biller per pay period; and (2) copies of invoices for all outside services and equipment. Within forty-five (45) days of the receipt of each invoice, the Defendant(s) shall pay (unless contested pursuant to the terms of this Agreed

Order) the Response Costs detailed therein by means of a check or checks made payable to the Illinois Environmental Protection Agency for deposit into the Fund indicated by the Illinois EPA invoice. The case name and case number shall appear on the face of the check. The Defendant shall send each check and a copy of the Illinois EPA invoice to:

Division of Administration Fiscal Services Section  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

If the Defendant does not receive an invoice in the time frame indicated above, this failure does not waive the Illinois EPA's right to submit an invoice or receive cost reimbursement for Response Costs. A copy of the check(s) and the transmittal letters shall be sent to:

Ellen F. O'Laughlin  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

3. The Defendant shall reimburse Illinois EPA and its contractors for the cost of: (i) any repairs or replacements to the pump and treat system, groundwater monitoring well network, and any other equipment of the Superfund remedy that were damaged as a result of the Fire, and (ii) any other Fire-related impact that interferes with or affects the integrity, operation, or maintenance of the system. Illinois EPA will provide supporting documentation for such costs, and payment shall be made by the Defendant within forty-five (45) days of receipt of supporting documentation, by means of a check or checks made payable to the Illinois Environmental Protection Agency for deposit into the Fund indicated by the Illinois EPA. The Defendant shall send each check and a copy of the Illinois EPA's reimbursement request to:

Division of Administration Fiscal Services Section  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

4. Pursuant to Section 10 of the Oil Spill Responders Liability Act, 740 ILCS 113/10 (2020), the Defendant shall reimburse the Illinois Emergency Management Agency (“IEMA”) for all reasonable response, oversight and review costs that it may incur relating to the Fire. Payments for IEMA costs shall be made payable to Illinois Emergency Management Agency. IEMA will provide supporting documentation for such costs, and payment shall be made by the Defendant within 45 days of receipt. The Plaintiff reserves the right to pursue recovery of any other costs of investigation in pursuit of this matter.

5. The Defendant shall reimburse Winnebago County for all reasonable response and oversight costs it incurred as a result of the Fire (“Winnebago County Costs”). Payments for Winnebago County Costs shall be made payable to the County of Winnebago. Winnebago County will provide supporting documentation for such costs, and payment shall be made by the Defendant within 45 days of receipt. The Plaintiff reserves the right to pursue recovery of any other costs of investigation in pursuit of this matter.

## **VI. NOTICES**

All submittals and correspondence relating to the requirements of this Agreed Order shall be directed to the following persons:



For the Plaintiff:

Ellen O’Laughlin  
Kevin Garstka  
Assistant Attorneys General  
Illinois Attorney General’s Office  
Environmental Bureau North  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(312)-814-3094  
(312)-814-1511  
[ellen.olaughlin@ilag.gov](mailto:ellen.olaughlin@ilag.gov)  
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(By electronic mail)

Lafakeria S. Vaughn  
Chief of the Civil Bureau  
Winnebago County State’s Attorney’s Office  
400 W. State Street, Suite 804  
Rockford, IL 61101  
(815) 319-4799  
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Maureen Wozniak  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
(217) 524-3157  
[maureen.wozniak@illinois.gov](mailto:maureen.wozniak@illinois.gov)  
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Grace McCarten  
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1021 North Grand Avenue East  
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(217)-558-3097  
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Michelle Ryan  
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1021 North Grand Avenue East  
Springfield, Illinois 62794  
(217)-524-6671  
[michelle.ryan@Illinois.gov](mailto:michelle.ryan@Illinois.gov)  
(By electronic mail)

Joyce Gibbons  
Illinois Environmental Protection Agency  
Bureau of Land  
4302 North Main Street  
Rockford, Illinois 61103  
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[joyce.gibbons@Illinois.gov](mailto:joyce.gibbons@Illinois.gov)  
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Jeron Schultz  
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Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
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[Jeron.Schultz@illinois.gov](mailto:Jeron.Schultz@illinois.gov)  
(By electronic mail)

Todd Bennett  
Illinois Environmental Protection Agency  
Bureau of Water, Manager of Field Operations  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
(217)-782-8367  
[Todd.Bennett@illinois.gov](mailto:Todd.Bennett@illinois.gov)

Jhein Siclon  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
217-557-2476  
[Jhein.Siclon@illinois.gov](mailto:Jhein.Siclon@illinois.gov)  
(By electronic mail)

For the Defendant:

Michael Mostow  
Quarles & Brady LLP  
300 North LaSalle Street  
Suite 4000  
Chicago, Illinois 60654  
Phone: (312) 715-5158  
[Michael.mostow@quarles.com](mailto:Michael.mostow@quarles.com)  
(By electronic mail)

Karen L. Walter  
Director, Regulatory Services  
Chemtool Incorporated  
c/o The Lubrizol Corporation  
29400 Lakeland Blvd  
Wickliffe, Ohio 44092  
Phone: (440) 347-5028  
[Karen.walter@lubrizol.com](mailto:Karen.walter@lubrizol.com)  
(By electronic mail)

**VII. DUTY TO COOPERATE**

The Plaintiff and the Defendant shall cooperate with each other in the implementation of this Agreed Order.

**VIII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Agreed Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2020), and the Board Regulations, 35 Ill. Adm. Code Part 101 *et seq.*

**IX. STIPULATED PENALTIES**

1. If the Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Agreed Order, the Defendant shall provide notice to the Plaintiff of each failure to comply with this Agreed Order and shall pay stipulated penalties in the amount of \$400.00 per day per violation for up to the first fifteen (15) days of

violation, \$500.00 per day per violation for the next fifteen (15) days of violation, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon the Defendant for its noncompliance with this Agreed Order. However, failure by the Plaintiff to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Defendant knows or should have known of its noncompliance with any provision of this Agreed Order.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Defendant 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.

3. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Agreed Order.

4. All stipulated penalty and interest payments shall be made by certified check, cashier's check or money order payable to Illinois EPA for deposit into the Environmental Protection Trust Fund. 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 case name and case number shall appear on the face of the certified check, cashier's check or money order. A copy of the certified check, cashier's check or money order and any transmittal letter shall be sent to:

Ellen F. O'Laughlin  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

#### **X. DISPUTE RESOLUTION**

The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Agreed Order, informally and in good faith, within seven (7) days of a party providing notice to the other party of such a dispute. If, however, a dispute arises concerning this Agreed Order that the parties are unable to resolve informally, any party to this Agreed Order may, by written motion, within fourteen (14) days of receiving written notice of the conclusion of the informal resolution efforts, request that an evidentiary hearing be held before the Circuit Court for the Seventeenth Judicial Circuit, Winnebago County, Illinois, to resolve the dispute between the parties.

#### **XI. FORCE MAJEURE**

1. The Defendant may declare *force majeure* in appropriate circumstances as follows:
  - a. A *force majeure* event is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Agreed Order. For the purposes of this Agreed Order, *force majeure* shall include, but is not limited to, events such as floods, tornadoes, other natural

disasters, labor disputes beyond the reasonable control of the Defendant, or prohibitions imposed by any court having jurisdiction over the Defendant.

b. When, in the opinion of the Defendant, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Agreed Order, the Defendant shall orally notify the Illinois EPA (Thomas A. Rivera, Office Phone: 847-294-4079; Cell Phone: 847-370-1284) within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) business days after the claimed occurrence.

c. Failure by the Defendant to comply with the notice requirements of the preceding paragraph shall render this *force majeure* provision voidable by the Plaintiff as to the specific event for which the Defendant has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

d. An increase in costs associated with implementing any requirement of this Agreed Order shall not, by itself, excuse the Defendant under the provisions of this Agreed Order from a failure to comply with such a requirement.

## **XII. RIGHT OF ENTRY**

In addition to any other authority, the Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Winnebago County State's Attorney, his employees and representatives, shall have the right of entry into and upon the Site which is the subject of this Agreed Order, at all reasonable times for the purpose 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.

### **XIII. EXTENSIONS AND MODIFICATIONS**

The parties may, by mutual consent, extend any compliance dates or modify the terms of this Agreed Order without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party and incorporated into this Agreed Order by reference. Any request for modification shall be made by the Defendant in writing and shall be independent of any other submittal made pursuant to this Agreed Order. Moreover, notice of a request for any proposed modification shall be provided to the Plaintiff's representatives listed in Section VI of this Agreed Order.

### **XIV. RESERVATION OF RIGHTS**

Nothing contained herein shall be deemed an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by the Defendant, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter. Defendant reserves all rights not explicitly waived or impaired in this Agreed Order. Nothing in this Agreed Order shall affect the rights and defenses of Plaintiff or Defendant under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"), the August 30, 2013 Agreement and Certification of Successor in Interest or Assign (the "Assignment"), or the "Giuffre Agreement," as it is referred to in the Assignment. Plaintiff and Defendant reserve all rights and defenses under CERCLA, the Assignment, and the Giuffre Agreement.

**XV. RETENTION OF JURISDICTION**

This Court shall retain jurisdiction of this matter and shall consider any motion by the Plaintiff or the Defendant for the purposes of interpreting and enforcing the terms and conditions of this Agreed Order.

**XVI. BINDING ON SUCCESSORS, ASSIGNS AND FUTURE OWNERS/OPERATORS**

This Agreed Order shall be binding upon the Defendant, its successors, assigns and future owners and/or operators of the Site.

**XVII. SIGNATURE**

This Agreed Order may be signed in counterparts, all of which shall be considered one agreement.

**XVIII. STATUS CONFERENCE WITH THE COURT**

This matter is set for status conference on July 21, 2022 at 9:00 a.m. without further notice.

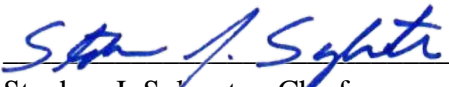


WHEREFORE the parties, by their representatives, enter into this Agreed Immediate and Preliminary Injunction Order and submit it to the Court that it may be approved and entered.

**AGREED:**

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois,

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

By:   
Stephen J. Sylvester, Chief  
Assistant Attorney General  
Environmental Bureau

Date: 4/19/22

*ex rel.* J. HANLEY, State's Attorney  
of Winnebago County,

By: \_\_\_\_\_  
Lafakeria S. Vaughn  
Chief of the Civil Bureau  
Assistant State's Attorney

Date: \_\_\_\_\_

CHEMTOOL INCORPORATED

By: \_\_\_\_\_  
Karen L. Walter  
Director, Regulatory Services  
Chemtool Incorporated  
c/o The Lubrizol Corporation

Date: \_\_\_\_\_

**ENTERED:**

\_\_\_\_\_  
Judge Lisa R. Fabiano

Date: \_\_\_\_\_

WHEREFORE the parties, by their representatives, enter into this Agreed Immediate and Preliminary Injunction Order and submit it to the Court that it may be approved and entered.

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PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois,

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

By: \_\_\_\_\_  
Stephen J. Sylvester, Chief  
Assistant Attorney General  
Environmental Bureau

Date: \_\_\_\_\_

*ex rel.* J. HANLEY, State's Attorney  
of Winnebago County,

By: Lafakeria S. Vaughn  
Lafakeria S. Vaughn  
Chief of the Civil Bureau  
Assistant State's Attorney

Date: 4/13/2022

CHEMTOOL INCORPORATED

By: \_\_\_\_\_  
Karen L. Walter  
Director, Regulatory Services  
Chemtool Incorporated  
c/o The Lubrizol Corporation

Date: \_\_\_\_\_

**ENTERED:**

\_\_\_\_\_  
Judge Lisa R. Fabiano

Date: \_\_\_\_\_

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PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois,

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

By: \_\_\_\_\_  
Stephen J. Sylvester, Chief  
Assistant Attorney General  
Environmental Bureau


Date: \_\_\_\_\_

*ex rel.* J. HANLEY, State's Attorney  
of Winnebago County,

By: \_\_\_\_\_  
Lafakeria S. Vaughn  
Chief of the Civil Bureau  
Assistant State's Attorney

Date: \_\_\_\_\_

CHEMTOOL INCORPORATED

By:   
\_\_\_\_\_  
Karen L. Walter  
Director, Regulatory Services  
Chemtool Incorporated  
c/o The Lubrizol Corporation

Date: 4/18/2022

**ENTERED:** 

\_\_\_\_\_  
Judge Lisa R. Fabiano  
4/25/2022

Date: \_\_\_\_\_