SDMS US EPA REGION V -1

SOME IMAGES WITHIN THIS DOCUMENT MAY BE ILLEGIBLE DUE TO BAD SOURCE DOCUMENTS.

August 24, 1978

153983

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Complainant,

vs.

PCB 77-84

PAUL SAUGET, individually, SAUGET AND COMPANY, a Delaware corporation, EAGLE MARINE INDUSTRIES, INC., a Missouri corporation, and RIVER PORT FLEETING INC., a Missouri corporation,

Respondents.

MR. WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.
MR. HAROLD BAKER APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed March 16, 1977 by the Environmental Protection Agency (Agency). An amended complaint was filed August 5, 1977. The amended complaint alleges that Respondents Paul Sauget and Sauget and Company, operated a refuse disposal site of approximately 35 acres located in Township 2 North, Range 10 West of 3rd Principal Meridian, Centreville Township, St. Clair County, Illinois. The site is located partly within the limits of the Village of Sauget, Illinois and lies adjacent to the Mississippi River. It further alleges that the remaining Respondents presently own portions of the site. The amended complaint alleges that the site was run in such a manner as to violate Rule 305(c) of the Chapter 7: Solid Waste Regulations and Section 21 of the Act, Rule 203(a) of the Chapter 3: Water Pollution Regulations (Chapter 3) and Sections 12(a), 12(d) and 9(c) of the Environmental Protection Act (Act), and Rule 5.07(b) of the Public Health Regulations and hence a violation of Section 21(b) of the Act.

Upon a motion by complainant, Respondents, Eagle Marine Industries, Inc. and River Port Fleeting, Inc., were dismissed by a Board order of March 16, 1978. A hearing was held on June 20, 1978 at which the remaining parties presented a stipulation to the Board for acceptance. No testimony was given.

The stipulated agreement provides the following facts. Paul Sauget is an officer and principal owner of Sauget and Company. At all times pertinent until November 15, 1973 Sauget and Company was authorized to transact business in Illinois. Beginning in the fall of 1959 and continuing each and everyday to on or about April 26, 1973, Sauget and Company operated a refuse disposal site located at the site in question.

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Eagle Marine Industries, Inc. presently owns a portion of said refuse disposal site formerly operated by Sauget and Company. River Port Fleeting, Inc. also presently owns a portion of the said disposal site. These Respondents agreed by stipulation to allow access to the site to remedy the situation and were dismissed by a previous Board order.

The stipulation further provides that Paul Sauget and Respondent Sauget and Company have failed to place a final cover of at least two feet of suitable material over the entire surface of all completed portions of the refuse site. Cover which Respondents believed to be acceptable or suitable, or both, has been placed on the site although the Agency gave notice to the contrary. Final cover should have been placed upon the site prior to October 26, 1973.

In PCB 71-29, which the parties agreed should be incorporated into this proceeding, the Board accepted testimony that Paul Sauget had been given permission by the Director of the Illinois Department of Public Health to use cinders as cover material. Thus for the purposes of the stipulation the parties agreed that cinders used by the Respondents as cover material prior to the Board decision in PCB 71-29 on May 26, 1971 are accepted as cover material but not for that portion of the site operated after May 26, 1971. Cinders shall not be used hereafter as cover material by Respondents.

At the disposal site, refuse was deposited commencing in the northern portion of the site in 1959 and continuing thereafter in a southerly direction. The parties agree that the 1966 operating face shall be deemed to have been a straight line perpendicular to the levee running along the road at the south end of Union Electric's fly ash pond. It is further agreed that the 1971 operating face shall be deemed to have been a straight line parallel to and 1200 feet southerly of the 1966 operating face.

Paul Sauget and Sauget and Company admit the allegations contained in paragraph 15 of Count V of the Amended Complaint, in that each of them, since October 26, 1973, has failed to place a compacted layer of at least two feet of suitable material over the entire portion of the refuse disposal site operated by them. They do not necessarily admit that final cover has not been placed upon the refuse disposal site, there having heretofore been disputes concerning the depth or the suitability, or both, of the final cover. These Respondents agree to place two feet of suitable cover material on said site in accordance with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities. The stipulation provides a more detailed plan for placement of final cover. The stipulation provides that the final cover shall be of the quality agreed upon by the parties in May, 1978. If

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there is any change in cover the Agency shall be notified. The agreement also provides conditions under which the time in which Respondents are to meet their obligations may be extended beyond the thirty (30) months stipulated for completion.

Respondents agree to file a performance bond of $125,000.00 with the Agency. Respondents also agree to a penalty of $5,000.00 to be paid in two monthly installments of $2,500.00 per month. All other allegations shall be dismissed with prejudice.

The Board finds the stipulated agreement acceptable under Procedural Rule 331. The Board finds Respondents, Paul Sauget and Sauget and Company, in violation of Rule 5.07(b) of the Public Health Regulations and Section 21(b) of the Act. The remaining allegations are dismissed. In light of Section 33(c) of the Act the stipulated penalty of $5,000.00 is appropriate. This is assessed jointly and severally. Respondents did have notice of cover requirements because of the previous enforcement case PCB 71-29 and considerable time has passed since the cover should have been applied. The Agency's definition of "suitable material" included in Exhibit A is acceptable for the purposes of the stipulated agreement.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the order of the Pollution Control Board that:

1. Paul Sauget and Sauget and Company are found to be in violation of Rule 5.07(b) of the Public Health Regulations and Section 21(b) of the Act. The remaining allegations are dismissed.

2. Respondents shall comply with all the provisions of the stipulation incorporated by reference as if fully set forth herein. Respondents shall file a performance bond with the Agency in the amount of $125,000.00. Respondents shall jointly and severally pay a penalty of $5,000.00 pursuant to the terms of the stipulated agreement. Payment shall be by certified check or money order payable to:

   Environmental Protection Agency
   2200 Churchill Road
   Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 24th day of August, 1978 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board

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STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant, v. PAUL SAUGET, individually, SAUGET AND COMPANY, a Delaware corporation, EAGLE MARINE INDUSTRIES, INC., a Missouri corporation, and RIVER PORT FLEETING INC., a Missouri corporation, Respondents.	PCB 77-84

STIPULATION, STATEMENT OF FACTS AND
PROPOSAL FOR SETTLEMENT

For purposes of settlement only, Respondents, PAUL SAUGET and SAUGET AND COMPANY, a Delaware corporation, by their attorney HAROLD G. BAKER, JR., and the Complainant, ENVIRONMENTAL PROTECTION AGENCY (hereinafter the "Agency"), by its attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, do hereby stipulate and agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that the Statement of Facts is made and agreed upon for the purpose of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding unless the Illinois Pollution Control Board (hereinafter the "Board") approves and disposes of this matter on each and every one of the terms and conditions of settlement set forth herein. This document is admissable only

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for the purposes of this cause and may not be used in any other proceeding between any of these parties and others. None of the matters covered herein may be construed as facts or admissions of fact or admissions against interest for any purpose other than this proceeding.

STATEMENT OF FACTS

1. PAUL SAUGET, one of the Respondents, is an officer and the principal owner of SAUGET AND COMPANY, a Delaware corporation.

2. SAUGET AND COMPANY, one of the Respondents, is a corporation organized under the laws of the State of Delaware and, at all pertinent times until November 15, 1973, was authorized to transact business in the State of Illinois.

3. Beginning in the fall of 1959 and continuing each and every day to on or about April 26, 1973, SAUGET AND COMPANY operated a refuse disposal site located in Township 2 North, Range 10 West of the 3rd Principal Meridian, Centerville Township, St. Clair County, Illinois.

The refuse disposal site consists of two (2) parts which are separated by the right-of-way of the Alton & Southern Railroad.

The part of the refuse disposal site north of the Railroad is bounded on the south by the Railroad; on the west by a line parallel to, and approximately 300 feet easterly of, the Mississippi River; on the north by Riverview Avenue; and on the west by the levee; all excluding the landfill of Monsanto Company and the fly-ash pond of Union Electric Company.

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The part of the refuse disposal site south of the Railroad is bounded on the north by the Railroad; on the east by the levee; on the south by Red House Road; and on the west by a road (shown on Respondents' Exhibit No. 2) which is generally parallel to, and 1200 feet easterly of, the Mississippi River; all excluding an area at the southeastern most corner of such part, which area has an approximate width (measured perpendicularly to the levee) of 500 feet and an approximate length (measured parallel to the levee) of 1200 feet.

4. EAGLE MARINE INDUSTRIES, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. RIVER PORT FLEETING, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. On February 24, 1978, a motion to dismiss without prejudice was filed by the Agency with the Board regarding the Respondents EAGLE MARINE INDUSTRIES, INC. and RIVER PORT FLEETING, INC., based upon a Stipulation entered into by the Agency with said Respondents.

5. Respondent PAUL SAUGET and Respondent SAUGET AND COMPANY (hereinafter "said Respondents") have failed to place a final suitable cover of at least two (2) feet of suitable material over the entire surface of all completed portions of the refuse disposal site described in paragraph 3, although cover which said Respondents believed to be acceptable or suitable, or both, has been placed

on the site, despite notices from EPA to the contrary. Said final cover should have been placed upon the site prior to October 26, 1973.

6. The parties hereby agree that the Hearing Officer may instanter enter an order that the record of a prior proceeding (PCB 71-29) involving said Respondents shall be incorporated, pursuant to Board's Proceedural Rule 320(c), into the record of this proceeding.

7. In PCB 71-29, Respondent PAUL SAUGET testified that he had been given permission from the Director of the Illinois Department of Public Health to use cinders as a cover material (R. 157 and 175) and this testimony was accepted by the Board. Therefore, cinders used by said Respondents as a cover material prior to the decision of the Board in PCB 71-29 on May 26, 1971 are accepted as cover material for the purposes of this stipulation, but not for that portion of the refuse disposal site operated after May 26, 1971. Furthermore, cinders shall not hereafter be used by said Respondents in complying with the provisions hereof.

8. In said Respondents' refuse disposal site, refuse was deposited commencing in the northern portion of the site in 1959 and continuing thereafter in a southerly direction.

9. The parties agree that the 1966 operating face shall be deemed to have been a straight line perpendicular to the levee running along the road at the south end of Union Electric's fly-ash pond (as shown in said Respondents' Exhibit No. 1).

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10. The parties also agree that the 1971 operating face shall be deemed to have been a straight line parallel to, and 1200 feet southerly of, said 1966 operating face (as shown in said Respondents' Exhibit No. 2).

PROPOSED TERMS OF SETTLEMENT

A. As a result of the settlement discussions had and the control programs agreed to hereinafter, and partially heretofore implemented by said Respondents, the parties believe the public interest will be best served by the resolution of this enforcement action under the terms and conditions provided herein. In accordance with the procedure for settlement prescribed in Board's Procedural Rule 331, the parties offer this Stipulation, Statement of Facts and Proposed Terms of Settlement in lieu of a full evidentiary hearing.

B. This stipulation is expressly conditioned upon, and effective only with, approval hereof in all respects by the Board. All statements and agreements contained herein shall be null and void and of no effect and shall not be used in any further proceeding in the event that the Board fails to approve these Terms of Settlement in all respects.

C. Respondents, PAUL SAUGET and SAUGET AND COMPANY, admit the allegations contained in paragraph 15 of Count V of the Amended Complaint, in that each of them, since October 26, 1973, has failed to place a compacted layer of at least two (2) feet of suitable material over the entire portion of the refuse disposal site

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heretofore operated by them. As stated in paragraph [illegible] hereof, they do not necessarily admit, however, that final cover has not been placed upon the refuse disposal site, there having heretofore been disputes concerning the depth or the suitability, or both, of the final cover.

D. Said Respondents agree to place two (2) feet of suitable cover material on said site in accordance with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities (promulgated in 1966 by the Illinois Department of Public Health) as follows:

> (1.) From the 1966 operating face through the 1971 operating face of the refuse disposal site, said Respondents agree to place suitable cover over the site, where necessary, to bring the total final cover to a depth of two (2) feet; cinders already in place used as a cover material north of the 1971 operating face of the site being acceptable as suitable cover material between the 1966 and 1971 operating faces of the site;
>
> (2.) South of the 1971 operating face, said Respondents agree to place suitable cover material over the site, where necessary, to bring the total of final suitable cover to a depth of two (2) feet, excluding cinders already in place;
>
> (3.) Such additional cover shall be placed on the site starting with that part south of the 1971 operating face;
>
> (4.) Subject to extensions of time which may be granted under the provisions of paragraph G hereof, such final cover shall be placed over 20% of the site during each six (6) month period after the date upon which the Board enters an Order approving this settlement and such work on all parts of the site shall be completed within thirty (30) months of the date that the Board enters such Order.

E. The final cover used by Respondents during the month of May, 1978 and sampled by the Agency is satisfactory and acceptable to the Agency. In the event that Respondents hereafter change the type of final cover from that used in May, 1978 and sampled by the Agency, said Respondents shall notify Agency and cooperate

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with it in taking samples of the proposed new type of final cover.

F. Except as hereinbefore specified, the final cover to be used by the Respondents must be "suitable." Neither the Board nor the Agency has heretofore officially adopted any definition of "suitable" cover. The Agency proposes to the Board that it adopt the definition attached hereto, marked Exhibit A and, by this reference, incorporated herein and made a part hereof. Respondents have not seen such definition until the date of the hearing at which this Stipulation is filed and, for that reason and others, do not approve, disapprove or agree to such definition. Respondents' final suitable cover hereafter used shall conform to such definition, if it be approved and adopted by the Board, subject to said Respondents' rights to seek a variance or variances from such definition.

G. Said Respondents' obligation to meet any time requirements set out herein shall be extended as the result of an act of God or by a circumstance beyond said Respondents' control or by the owners' use of the site in violation of the provisions of their Stipulation or by any other circumstance agreed to by the parties. Prompt written notice of the claimed applicability of this provision must be given to Agency by said Respondents, or either of them, or a claim for extension based upon a given set of facts is waived. Should the parties fail to agree on what circumstances shall excuse a delay in the performance or on the period of extendion due, Respondents may submit the matter to the Board of resolution after a hearing which may be called or requested by either the Agency or the Respondents, or both, in accordance with Board Procedural

Rule 334(b)(1). Any such hearing must be requested within thirty (30) months of the date upon which the Board enters an Order approving this settlement, plus any extensions requested by the Respondents and granted by the Agency or the Board under the provisions of this paragraph G.

H. Said Respondents agree to file with the Agency a performance bond in the penal sum of $125,000.00.

I. Said Respondents, jointly and severally, agree to pay a civil penalty of $5000 in the aggregate. According to the Agency, such a penalty is necessary to aid in the enforcement of the Act, in view of the prior decision of the Board regarding said Respondents in PCB 71-29 and in view of the previous notice given to said Respondents regarding the violation of the Act cited in paragraph 15 of Count V of the Amended Complaint and in view of the amount of time that has elapsed since the date that final cover was due. Said penalty shall be payable in two (2) monthly installments of $2,500.00 per month on the thirtieth (30th) and sixteeth (60th) calendar days after the date upon which the Board enters an Order approving this settlement.

I. All other allegations of the Complaint and the Amended Complaint, as they pertain to said Respondents, shall be dismissed with prejudice to the Agency.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Complainant

By: Mike Mangan by DL
Its Director

WILLIAM J. SCOTT, Attorney General

By: _____
Assistant Attorney General
ATTORNEY FOR COMPLAINANT

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PAUL SAUGET
One of the Respondents

SAUGET AND COMPANY
One of the Respondents

By: PAUL SAUGET
Its President

HAROLD G. BAKER, JR.
56 South 65th Street
Belleville, Illinois 62223
(618) 397-6444
ATTORNEY FOR SAID RESPONDENTS

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EXHIBIT 8

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 77-84
	)	
PAUL SAUGET, individually, SAUGET AND COMPANY, a Delaware corporation, EAGLE MARINE INDUSTRIES, INC., a Missouri corporation, and RIVER PORT FLEETING INC., a Missouri corporation,	)	
	)	
Respondents.	)	

MOTION TO DISMISS
WITHOUT PREJUDICE

NOW COMES Complainant, ENVIRONMENTAL PROTECTION AGENCY, by its attorney WILLIAM J. SCOTT, Attorney General of the State of Illinois, pursuant to Section 52(1) of the Civil Practice Act and moves this Board to dismiss without prejudice, as to Respondents, EAGLE MARINE INDUSTRIES, INC. and RIVER PORT FLEETING, INC. only, the Complaint in this matter. In support hereof, Complainant states as follows:

1. The facts, as known to Complainant at the time of the filing of the Amended Complaint in this cause, warranted

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the inclusion of the aforesaid Respondents in this cause.

2. The aforesaid Respondents are the present landowners of the closed refuse disposal site involved in this action.

3. The complaint in this action was amended to add the aforesaid Respondents in order to assure that the alleged former operator of the site, PAUL SAUGET, would have access to the site to place final cover on the site.

4. The aforesaid Respondents have signed the attached stipulation. In this stipulation they agree to freely allow access to the site by the remaining Respondents and state that they will not obstruct efforts of the remaining Respondents to place final cover on the site.

5. Complainant believes that no further relief is necessary or warranted against either of the aforesaid Respondents at this time.

ENVIRONMENTAL PROTECTION AGENCY

WILLIAM J. SCOTT
ATTORNEY GENERAL

BY: _____

Ann L. Carr
Assistant Attorney General
Environmental Control Division
Southern Region

500 South Second Street
Springfield, Illinois 62706
(217) 782-9033

DATED: February 24, 1978

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STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

A F F I D A V I T

I, ANN L. CARR, do affirm and state as follows:

1. I am an Assistant Attorney General for the State of Illinois assigned to the cause.

2. That I have prepared and read the foregoing Motion and that the allegations contained therein are true and correct.

Further Affiant sayeth not.

Ann L. Carr
Affiant

SUBSCRIBED AND SWORN to before me
this 24th day of February, 1978.

Notary Public

My commission expires: August 1980

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EXHIBIT 8

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 77-84
	)	
PAUL SAUGET, individually, SAUGET AND COMPANY, a Delaware corporation, EAGLE MARINE INDUSTRIES, INC., a Missouri corporation, and RIVER PORT FLEETING INC., a Missouri corporation,	)	
	)	
Respondents.	)	

STIPULATION

NOW COME Respondents, EAGLE MARINE INDUSTRIES, INC., a Missouri corporation, and RIVER PORT FLEETING, INC., a Missouri corporation, by counsel Frank L. Pellegrini, and in consideration of the dismissal of the action in PCB 77-84 against both Respondent EAGLE MARINE INDUSTRIES, INC., and Respondent RIVER PORT FLEETING, INC., without prejudice do stipulate as follows:

1. Respondents EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., presently own Parcel No. 5 and Parcel No. 4, respectively, (hereinafter "said property") as marked on the

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attached Exhibit A.

2. Respondents EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., operate a coal loading facility on said property.

3. Said property is land upon which PAUL SAUGET and/or SAUGET AND COMPANY are charged with having operated a refuse disposal site in Environmental Protection Agency v. Paul Sauget, et al, PCB 77-84, now pending before the Pollution Control Board.

4. If Complainant ENVIRONMENTAL PROTECTION AGENCY's action in PCB 77-84 is successful, Respondents PAUL SAUGET and SAUGET AND COMPANY will be ordered by the Pollution Control Board, inter alia, to place final cover (as defined in and required by the Pollution Control Board's Rules and Regulations, Chapter 7) over the entire refuse disposal site on said property.

5. Both Respondents will freely provide access to said property to

a. Paul Sauget and agents or employees of Paul Sauget or Sauget and Company or persons otherwise directed or retained by Paul Sauget or Sauget and Company to provide final cover;

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b. Employees or agents of the Environmental Protection Agency;

c. Any other person retained or directed by the State to provide final cover.

6. Neither Respondent will in any way obstruct or impede the efforts of any of the persons listed in paragraph 5 above to provide final cover.

7. Both Respondents shall allow the persons listed in paragraph 5 above to bulldoze, grade, clear or otherwise change the nature of said property to the extent and in any way necessary to apply final cover.

8. Both Respondents shall work with the persons listed in paragraph 5 above to move whatever coal or other equipment they have on the site so as to allow placement of final cover over all portions of the refuse disposal site.

Respectfully submitted,

RIVER PORT FLEETING, INC. and
EAGLE MARINE INDUSTRIES, INC.

BY: _____
Frank Pellegrini
Counsel for River Port Fleeting, Inc. and Counsel for Eagle Marine Industries, Inc.

DATED: 2-21-78

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DATED: 2/21/78 BY: _____

Fred H. Leyhe, President of
Eagle Marine Industries, Inc. and
River Port Fleeting, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I did, on the 24th day of February, 1978, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Postal Service Box, in Springfield, Illinois, a true and correct copy of the foregoing instruments entitled MOTION TO DISMISS WITHOUT PREJUDICE and STIPULATION

TO: Frank Pellegrini
Attorney at Law
706 Chestnut Street
Suite 1025
St. Louis, Missouri 63101

Harold G. Baker, Jr.
Attorney at Law
56 South 65th Street
Belleville, Illinois 62223

Melroy B. Hutnick
Hearing Officer
9425 West Main Street
Belleville, Illinois 62223

Pollution Control Board
309 West Washington
Chicago, Illinois 60606

Assistant Attorney General

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STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 77-84
PAUL SAUGET, individually, SAUGET AND COMPANY, a Delaware corporation, EAGLE MARINE INDUSTRIES, INC., a Missouri corporation, and RIVER PORT FLEETING INC., a Missouri corporation, Respondents.	)	

AMENDED COMPLAINT

NOW COMES the Complainant ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by William J. Scott, Attorney General, and complaining of the Respondents PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., states as follows:

COUNT I

1. The Complainant ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency") is an administrative agency established in the executive branch of the state government by Section 4 of the Illinois

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later than 60 days following the placement of refuse in the final lift, unless a different schedule has been authorized in the Operating Permit."

14. No permit issued to any of the Respondents authorized a mode of operation contrary to that prescribed in Rule 305(c).

15. Disposal operations at the above-described site were discontinued on or about January 21, 1975.

16. From March 22, 1975, and continuing each and every day until the date of filing of this Complaint, the Respondents PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., and each of them, have failed to place the required final cover over the above-described site in violation of Rule 305(c) of Chapter 7 and of Section 21 of the Act.

WHEREFORE, the Complainant ILLINOIS ENVIRONMENTAL PROTECTION AGENCY prays:

1. That the Board set a hearing date in this matter to be not less than twenty-one (21) days from the date of service of this Complaint, at which time the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., each be required to answer the allegations herein.

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2. That the Board, after due consideration of any statements, testimony, and arguments as shall be duly submitted at the hearing, or upon default in the appearance of the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., enter and issue a final order directing the Respondents and each of them to cease and desist from further violations.

3. That the Board impose upon the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., jointly and severally, a monetary penalty of Ten Thousand Dollars ($10,000) for the violation alleged, plus One Thousand Dollars ($1000) for each day on which the violation alleged shall have continued.

4. That the Board require the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., to post a performance bond or other security to assure the correction of the violation alleged within the time prescribed.

5. That the Board issue and enter such additional final order, or make such additional final determination, as it shall deem appropriate under the circumstances.

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COUNT II

1-8. Complainant realleges and incorporates by reference paragraphs 1-8 of Count I as paragraphs 1-8 of this Count II.

9. Section 12(a) of the Act, Ill. Rev. Stat., 1975, ch. 111 1/2, par. 1012(a), provides:

> "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."

10. Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution ("Chapter 3"), Rule 203(a), provides in part:

> "Except as otherwise provided in this Chapter, all waters of the State shall meet the following standards:
>
> (a) Freedom from unnatural sludge or bottom deposits, floating debris, visible oil, odor, unnatural plant or algal growth, unnatural color or turbidity, or matter in concentrations or combinations toxic or harmful to human, animal, plant or aquatic life of other than natural origin."

11. In the spring of 1973 beginning on or about March 26,

1973, and continuing through at least May 11, 1973, the above-described site was flooded by the Mississippi River, and all refuse previously deposited which had not received cover then became either a bottom deposit or floating debris in the Mississippi River.

12. During the period of time in the spring of 1973 when the above-described site was flooded by the Mississippi River, the Respondents, PAUL SAUGET, SAUGET AND COMPANY, and EAGLE MARINE INDUSTRIES, INC., caused or allowed refuse to be dumped into the water on the site, which refuse was carried off the site and into the main channel of the Mississippi River by receding flood waters.

13. The aforesaid conduct by the Respondents, PAUL SAUGET, SAUGET AND COMPANY, and EAGLE MARINE INDUSTRIES, INC., constitutes violations of Rule 203(a) of Chapter 3 and of Section 12(a) of the Act.

WHEREFORE, the Complainant ILLINOIS ENVIRONMENTAL PROTECTION AGENCY prays:

1. That the Board set a hearing date in this matter to be not less than twenty-one (21) days from the date of service of this Complaint, at which time the Respondents, PAUL SAUGET, SAUGET

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AND COMPANY, and EAGLE MARINE INDUSTRIES, INC., each be required to answer the allegations herein.

2. That the Board, after due consideration of any statements, testimony, and arguments as shall be duly submitted at the hearing, or upon default in the appearance of the Respondents, PAUL SAUGET, SAUGET AND COMPANY, and EAGLE MARINE INDUSTRIES, INC., enter and issue a final order directing the Respondents and each of them to cease and desist from further violations.

3. That the Board impose upon the Respondents, PAUL SAUGET, SAUGET AND COMPANY, and EAGLE MARINE INDUSTRIES, INC., jointly and severally, a monetary penalty of Ten Thousand Dollars ($10,000) for the violation alleged, plus One Thousand Dollars ($1000) for each day on which the violation alleged shall have continued.

4. That the Board require the Respondents, PAUL SAUGET, SAUGET AND COMPANY, and EAGLE MARINE INDUSTRIES, INC., to post a performance bond or other security to assure the correction of the violation alleged within the time prescribed.

5. That the Board issue and enter such additional final order, or make such additional final determination, as it shall deem appropriate under the circumstances.

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COUNT III

1-10. Complainant realleges and incorporates by reference paragraphs 1-10 of Count I as paragraphs 1-10 of this Count III.

11. Section 12(d) of the Act, Ill. Rev. Stat., 1975, ch. 111 1/2, par. 1012(d), provides:

> "No person shall:
>
> (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard."

12. Beginning on or about July 1, 1970, and continuing each and every day of operation until the cessation of dumping in late 1974 or early 1975, the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., and each of them caused or allowed the placement of refuse in the above-described site so as to create a water pollution hazard, in that:

(a) refuse placed in the above-described site was subject to flooding and removal by the Mississippi River; and

(b) inadequate cover over refuse in the above-described site creates a great hazard that leachate will be generated

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and will migrate into the groundwater and into the Mississippi River.

13. The aforesaid conduct by the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., constitute violations of Section 12(d) of the Act.

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY prays:

1. The the Board set a hearing date in this matter to be not less than twenty-one (21) days from the date of service of this Complaint, at which time the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., each be required to answer the allegations herein.

2. That the Board, after due consideration of any statements, testimony, and arguments as shall be duly submitted at the hearing, or upon default in the appearance of the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., enter and issue a final order directing the Respondents and each of them to cease and desist from further violations.

3. That the Board impose upon the Respondents, PAUL SAUGET,

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SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., jointly and severally, a monetary penalty of Ten Thousand Dollars ($10,000) for the violation alleged, plus One Thousand Dollars ($1000) for each day on which the violation alleged shall have continued.

4. That the Board require the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., to post a performance bond or other security to assure the correction of the violation alleged within the time prescribed.

5. That the Board issue and enter such additional final order, or make such additional final determination, as it shall deem appropriate under the circumstances.

COUNT IV

1-10. Complainant realleges and incorporates by reference paragraphs 1-10 of Count I as paragraphs 1-10 of this Count IV.

11. Section 9(c) of the Act, Ill. Rev. Stat., 1975, ch. 111 1/2, par. 1009(c), provides in pertinent part:

"No person shall:

(c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act."

12. Beginning on or about September 8, 1976, and continuing each and every day until September 27, 1976, the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., and each of them caused or allowed the open burning of refuse at the above-described site, in violation of Section 9(c) of the Act.

WHEREFORE, the Complainant ILLINOIS ENVIRONMENTAL PROTECTION AGENCY prays:

1. That the Board set a hearing date in this matter to be not less than twenty-one (21) days from the date of service of this Complaint, at which time the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., each be required to answer the allegations herein.

2. That the Board, after due consideration of any statements, testimony, and arguments as shall be duly submitted at the hearing, or upon default in the appearance of the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT

FLEETING, INC., enter and issue a final order directing the Respondents and each of them to cease and desist from further violations.

3. That the Board impose upon the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., jointly and severally, a monetary penalty of Ten Thousand Dollars ($10,000) for the violation alleged, plus One Thousand Dollars ($1000) for each day on which the violation alleged shall have continued.

4. That the Board require the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., to post a performance bond or other security to assure the correction of the violation alleged within the time prescribed.

5. That the Board issue and enter such additional final order, or make such additional final determination, as it shall deem appropriate under the circumstances.

COUNT V

1-10. Complainant realleges and incorporates by reference paragraphs 1-10 of Count I as paragraphs 1-10 of this Count V.

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11. Section 21 of the Act, Ill. Rev. Stat., 1975, ch. 111 1/2, par. 1021, provides in part:

> "No person shall:
>
> (a) Cause or allow the open dumping of garbage;
>
> (b) Cause or allow the open dumping of any other refuse in violation of regulations adopted by the Board;..."

12. Section 49(c) of the Environmental Protection Act, Ill. Rev. Stat., 1975, ch. 111 1/2, par. 1049(c), provides in pertinent part:

> "All rules and regulations of the Air Pollution Control Board, the Sanitary Water Board, or the Department of Public Health relating to subjects embraced within this Act shall remain in full force and effect until repealed, amended, or superseded by regulations under this Act."

13. In 1966 the Department of Public Health, Division of Sanitary Engineering, adopted "Rules and Regulations for Refuse Disposal Sites and Facilities" hereinafter "Public Health Regulations" which through Section 49(c) of the Act were in force until July 27, 1973.

14. Rule 5.07(b) of these Public Health Regulations provides:

> "Rule 5.07. COVER. Cover material shall be of

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such quality as to prevent fly and rodent attraction and breeding, blowing litter, release of odors, fire hazards, and unsightly appearance, and which will permit only minimal percolation of surface water when properly compacted. Cover shall be applied as follows:

* * *

"(b) Final Cover. A compacted layer of at least two (2) feet of material in addition to the daily cover shall be placed over the entire surface of all completed portions of the fill within six (6) months following the final placement of refuse. Final cover shall be graded as provided on the approved plan and to prevent ponding. The surface of the final cover shall be maintained at the plan elevation at all times, by the placement of additional cover material where necessary."

15. On each and every day from October 26, 1973 to the present, Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., have not placed a compacted layer of at least two (2) feet of material over the entire surface of all completed portions of the fill, in violation of Rule 5.07(b) of the Public Health Regulations and hence in violation of Section 21(b) of the Act.

WHEREFORE, the Complainant ILLINOIS ENVIRONMENTAL PROTECTION AGENCY prays:

1. That the Board set a hearing date in this matter to be

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not less than twenty-one (21) days from the date of service of this Complaint, at which time the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., be required to answer the allegations herein.

2. That the Board after due consideration of any statements, testimony, and arguments as shall be duly submitted at the hearing, or upon default in the appearance of the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., enter and issue a final order directing the Respondents and each of them to cease and desist from further violations.

3. That the Board impose upon the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., jointly and severally, a monetary penalty of Ten Thousand Dollars ($10,000) for the violation alleged, plus One Thousand Dollars ($1000) for each day on which the violation alleged shall have continued.

4. That the Board require the Respondents, PAUL SAUGET, SAUGET AND COMPANY, EAGLE MARINE INDUSTRIES, INC., and RIVER PORT FLEETING, INC., to post a performance bond or other security to assure the correction of the violation alleged within the time prescribed.

5. That the Board issue and enter such additional final order, or make such additional final determination, as it shall deem appropriate under the circumstances.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: WILLIAM J. SCOTT
ATTORNEY GENERAL

BY: _____
Russell R. Eggert
Assistant Attorney General
Environmental Control Division
Southern Region

OF COUNSEL:
Ann L. Carr
Assistant Attorney General
Environmental Control Division
Southern Region
500 South Second Street
Springfield, Illinois 62706
(217) 782-1090

DATED: August 4, 1977

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CERTIFICATE OF SERVICE

I hereby certify that I did, on the 4th day of August, 1977, send by certified mail, with postage thereon fully prepaid, a true and correct copy of the foregoing instruments entitled NOTICE and AMENDED COMPLAINT

TO: Harold G. Baker, Jr.
Attorney at Law
56 South 65th Street
Belleville, Illinois 62223

Eagle Marine Industries, Inc.
% C. T. Corporation Systems,
Registered Agent
208 S. LaSalle Street
Chicago, Illinois 60604

River Port Fleeting, Inc.
% C. T. Corporation Systems
208 S. LaSalle Street
Chicago, Illinois 60604

Melroy B. Hutnick
Hearing Officer
9425 West Main Street
Belleville, Illinois 62223

and the original and nine true and correct copies of the same foregoing instruments

TO: Pollution Control Board
309 W. Washington Street
Chicago, Illinois 60606

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In addition to the foregoing, a copy of the said Notice and Amended Complaint has been sent to Mr. Clyde L. Kuehn, State's Attorney of St. Clair County, St. Clair County Courthouse, Belleville, Illinois 62220.

Ann L. Carr
Assistant Attorney General

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EXHIBIT 8

JACOB D. DUMELLE, CHAIRMAN
OAK PARK, ILLINOIS

IRVIN G. GOODMAN
MEDINAH, ILLINOIS

DONALD P. SATCHELL
CARBONDALE ILLINOIS

STATE OF ILLINOIS
POLLUTION CONTROL BOARD
309 WEST WASHINGTON STREET SUITE 300
CHICAGO, ILLINOIS 60606
TELEPHONE
312-793-3620

NELS E. WERNER
CHICAGO, ILLINOIS

JAMES L. YOUNG
SPRINGFIELD, ILLINOIS

March 21, 1978

Mr. Frank Pellegrini
Attorney at Law
706 Chestnut Street
Suite 1025
St. Louis, Missouri 63101

RE: PCB77-84, EPA v. PAUL SAUGET ET AL

Enclosed is the ORDER of the Board adopted on March 16, 1978 for the above captioned matter.

Very truly yours,

Christan L. Moffett
Clerk of the Board

Enc.

cc: Hon. William Scott, Environmental Control Division
Illinois Environmental Protection Agency

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chlorophenol	polychlorinated dibenzo-p-dioxins
chlorobenzene	chloronitrobenzene
biphenylamine	dichlorobenzene
trichlorophenol	chloronitroaniline
toluene	chloronitroaniline
dichloronitrobenzene	phenol
benzene	biphenol
benzenedicarboxylic acid	methylphenol
benzoic acid	methylchlorophenol
methylbenzenesulphamide	hydroxybenzoic acid
nitrophenol	chloroaniline
4-methyl 2-pentanol	dichloroaniline
2-cyclopentanol	aniline
n-butylphthalate	nitroaniline
polychlorinated biphenyls	2,4-dichlorophenoxyacetic acid
arsenic	mercury
selenium	beryllium
cadmium	chromium
polychlorinated dibenzo-furans	lead

All of the chemical substances listed above are contaminants, and some are highly toxic to human health or animal life, and/or are known or suspected carcinogens or mutagens.

11. To date, MONSANTO has taken no action to prevent the seepage of the above-listed contaminents and hazardous substances from the riverbank property into the Mississippi River.

COUNT I

DEFENDANT HAS CAUSED A PUBLIC NUISANCE

12. This Count is brought by Tyrone C. Fahner, Attorney General for the State of Illinois, pursuant to his common law power and duty to maintain actions for the abatement of public nuisances.

13. Paragraphs 1 and 8 through 11 are realleged.

14. The seepage of the above-described contaminants and

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hazardous substances into the Mississippi River creates a nuisance, and renders said waters harmful or detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses of said waters, or to livestock, wild animals, birds, fish or other aquatic life that come into contact with said waters.

15. The seepage of the above-described contaminants and hazardous substances has caused Plaintiff and those upon whose own behalf Plaintiff brings this action irreparable injury for which there is no adequate remedy at law, for once said chemical substances entered and continue to enter the waters of the State of Illinois, substantial and irreversible damage has and will continue to occur to the citizens and environment of St. Clair County and the State of Illinois and those citizens in areas downstream of the discharge point.

16. Unless enjoined by this Court, the public nuisance created by the discharge of said contaminants and hazardous substances into the Mississippi River will continue unabated.

WHEREFORE, Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, prays that this Court grant it the following relief:

A. Issue an injunction directing Defendant to take measures to immediately prevent all seepage of contaminants or hazardous substances, including those listed in Paragraph 10 above, from its riverbank property from entering the Mississippi River, and to remove all such substances from said property

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together with any soil contaminated by such seepage;

B. Enter an Order requiring Defendant to conduct a study to determine the nature, cause and origin of the seepage as expeditiously as possible;

C. Enter an Order taxing or assessing all costs of this proceeding against the Defendant, such costs to include, but not limited to, the reasonable and necessary expenses of any expert witness called to testify upon behalf of the Plaintiff; and

D. Grant such other and further relief as this Court may deem appropriate under the circumstances.

COUNT II

DEFENDANT THREATENS TO CAUSE A PUBLIC NUISANCE

17. This Count is brought by Tyrone C. Fahner, Attorney General for the State of Illinois, pursuant to his common law power and duty to maintain actions for the abatement of public nuisances.

18. Paragraphs 1 through 7 are realleged.

19. The proximity of the disposal site to the Mississippi River and the site's location outside of the flood control levee create a distinct threat of contamination of the river during flood conditions.

20. In addition, the permeable nature of the soils

underlying and surrounding the disposal site creates a distinct threat of contamination of the underground waters and eventually the Mississippi River.

21. Any migration of the contaminants and hazardous substances deposited at the disposal site either into the Mississippi River or into the underground waters will create a nuisance, and render said waters harmful or detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses of said waters, or to livestock, wild animals, birds, fish or other aquatic life that come into contact with said waters.

22. The continued presence of the contaminants and hazardous substances at the disposal site will cause Plaintiff and those upon whose own behalf Plaintiff brings this action irreparable injury for which there is no adequate remedy at law, for once said contaminants and hazardous substances enter the waters of the State of Illinois substantial and irreversible damage will occur to the citizens and environment of St. Clair County and the State of Illinois and those citizens in areas downstream of the disposal site.

23. Unless enjoined by this Court, the public nuisance posed by the threatened release of said contaminants and hazardous substances into the Mississippi River and/or the underground waters will continue unabated.

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WHEREFORE, Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, prays that this Court grant it the following relief:

A. Issue an injunction directing Defendant to prevent any and all migration of contaminants or hazardous substances from the disposal site from entering the Mississippi River and/or the underground waters and to remove all such substances placed at the site, together with any soil already contaminated;

B. Enter an Order taxing or assessing all costs of this proceeding against the Defendant, such costs to include, but not be limited to, the reasonable and necessary expenses of any expert witnesses called to testify upon behalf of the Plaintiff; and

C. Grant such other and further relief as this Court may deem appropriate under the circumstances.

COUNT III

DEFENDANT HAS CAUSED WATER POLLUTION

24. This Count is brought by Tyrone C. Fahner, Attorney General of the State of Illinois, pursuant to the terms and provisions of "An Act in Relation to the Prevention and Abatement of Air, Land and Water Pollution," (Ill. Rev. Stat., ch. 14, pars. 11 and 12 (1979)).

25. Paragraphs 1 and 8 through 11 are realleged.

26. The discharge of contaminants and hazardous substances from the riverbank area as alleged above into the Mississippi River constitutes water pollution within the meaning of Ill. Rev. Stat. 1979, ch. 14, par. 11(b).

27. The seepage of contaminants and hazardous substances from the riverbank property have caused Plaintiff and those upon whose own behalf Plaintiff brings this action irreparable injury for which there is no adequate remedy at law, for once said contaminants and hazardous substances have entered and continue to enter the waters of the State of Illinois, substantial and irreversible damage has and will continue to occur to the citizens and environment of St. Clair County and the State of Illinois and those citizens in areas downstream of the disposal site.

28. The violations will continue unabated unless enjoined by this Court.

WHEREFORE, Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, prays that this Honorable Court grant the following relief:

A. Issue an injunction directing Defendant to take measures to immediately prevent all seepage of contaminants or hazardous substances, including those listed in Paragraph 10 above, from its riverbank property from entering the Mississippi River, and to remove all such substances from said property together with any soils contaminated by such seepage;

B. Enter an Order requiring Defendant to conduct a

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study to determine the nature, cause and origin of the seepage as expeditiously as possible;

C. Enter an Order taxing or assessing all costs of this proceeding against the Defendant, such costs to include, but not be limited to, the reasonable and necessary expenses of any expert witnesses called to testify upon behalf of the Plaintiff; and

D. Grant such other and further relief as this Court may deem appropriate under the circumstances.

COUNT IV

DEFENDANT THREATENS TO CAUSE WATER POLLUTION

29. Paragraphs 1 through 7 are realleged.

30. This Count is brought by Tyrone C. Fahner, Attorney General of the State of Illinois, pursuant to the terms and provisions of "An Act in Relation to the Prevention and Abatement of Air, Land and Water Pollution," (Ill. Rev. Stat., ch. 14, pars. 11 and 12 (1979)).

31. The proximity of the disposal site into the Mississippi River and the site's location outside of the flood control levee creates a distinct threat of contamination of the river during flood conditions.

32. In addition, the permeable nature of the soils

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underlying and surrounding the disposal site creates a distinct threat of contamination of the underground waters and eventually the Mississippi River.

33. Any migration of the contaminants and hazardous sub[illegible] deposited at the disposal site either into the Mississippi River or into the underground waters will create a nuisance, and render said waters harmful or detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses of said waters, or to livestock, wild animals, birds, fish or other aquatic life that come into contact with said waters.

34. The threatened migration of the contaminants and hazardous substances from the disposal site into the underground waters and/or into the Mississippi River constitutes a threat of water pollution within the meaning of Ill. Rev. Stat. 1979, ch. 14, par. 11(b).

35. The continued presence of the contaminants and hazardous substances at the disposal site will cause Plaintiff and those upon whose own behalf Plaintiff brings this action irreparable injury for which there is no adequate remedy at law, for once said contaminants and hazardous substances enter the waters of the State of Illinois substantial and irreversible damage will occur to the citizens and environment of St.

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Clair County and the State of Illinois and those citizens in areas downstream of the disposal site.

36. Unless enjoined by this Court, the threat of water pollution posed by the threatened release of said contaminants and hazardous substances into the Mississippi River and/or the underground waters will continue unabated.

WHEREFORE, Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, prays that this Honorable Court grant the following relief:

A. Issue an injunction directing Defendant to prevent any and all migration of contaminants or hazardous substances from the disposal site from entering the Mississippi River and/or the underground waters and to remove all such substances placed at the site, together with any soil already contaminated;

B. Enter an Order taxing or assessing all costs of this proceeding against the Defendant, such costs to include, but not be limited to, the reasonable and necessary expenses of any expert witnesses called to testify upon behalf of the Plaintiff; and

C. Grant such other and further relief as this Court may deem appropriate under the circumstances.

COUNT V

DEFENDANT HAS VIOLATED STATE WATER POLLUTION STATUTES

37. This Count is brought pursuant to the statutory

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authority of the Attorney General under Section 42 of the Environmental Protection Act (hereinafter the "Act"), Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1042 to seek injunctive relief for violations of the Act.

38. Paragraphs 1 and 8 through 11 are realleged.

39. Section 12(a) of the Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1012(a) provides:

> "No person shall:
>
> 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."

40. Section 3 of the Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1003 defines "water pollution" as:

> "... 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."

41. Section 3 of the Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1003 defines "contaminant" as:

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

42. By failing to prevent the seepage of the chemical substances listed above into the Mississippi River from its riverbank property, MONSANTO has violated Section 12(a) of the Act by allowing the discharge of contaminants into the Mississippi River, tending to alter the chemical and biological properties of the river and thus has rendered, will render, or is likely to render, the river 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.

43. The violations will continue unabated unless enjoined by this Court.

WHEREFORE, Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, prays that this Honorable Court grant the following relief:

A. Issue an injunction directing Defendant to take measures to immediately prevent all seepage of contaminants and hazardous substances, including those listed in paragraph 10 above, from its riverbank property from entering the Mississippi River, and to remove all such substances from said property together with any soil contaminated by such seepage;

B. Enter an Order requiring Defendant to conduct a study to determine the nature, cause and origin of the seepage as expeditiously as possible;

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C. Enter an Order taxing or assessing all costs of this proceeding against the Defendant, such costs to include, but not be limited to, the reasonable and necessary expenses of any expert witnesses called to testify upon behalf of the Plaintiff; and

D. Impose a civil penalty against Defendant in an amount not to exceed Ten Thousand Dollars ($10,000.00) for each violation and an amount not to exceed One Thousand Dollars ($1,000.00) for each day said violations are found to have continued;

E. Grant such other and further relief as this Court may deem appropriate under the circumstances.

COUNT VI

DEFENDANT HAS CREATED A WATER POLLUTION HAZARD

44. This Count is brought pursuant to the statutory authority of the Attorney General under Section 42 of the Environmental Protection Act (hereinafter the "Act"), Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1042 to seek injunctive relief for violations of the Act.

45. Paragraphs 1 through 7 are realleged.

46. Section 12(d) of the Act, Ill. Rev. Stat. 1979,

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ch. 111 1/2, par. 1012(d) provides:

> "No person shall:
>
> * * *
>
> Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard."

47. Section 3 of the Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1003 defines "water pollution" as:

> "... 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."

48. Section 3 of the Act, Ill. Rev. Stat. 1979, ch. 111 1/2, par. 1003 defines "contaminant" as:

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

49. The proximity of the disposal site to the Mississippi River and the site's location outside of the flood control levee creates a distinct threat of contamination of the river during flood conditions.

50. In addition, the permeable nature of the soils

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Monsanto

Monsanto Company
Sauget, Illinois 62201
Phone: (618) 271-5835

June 3, 1971

Illinois Pollution Control Board
189 West Madison Street
Chicago, Illinois

Re: Environmental Protection Agency vs.
Sauget & Company - #71-29

Dear Sir:

Order number 8 of the reference Opinion and Order of the Board states in part, "On or before June 15, 1971, Sauget & Company and Paul Sauget shall file with the Agency and the Board a list of chemical compounds being deposited in the liquid waste disposal facility, or an affidavit of Monsanto Company that the chemicals do not pose a threat of pollution of the Mississippi River by underground seepage."

In the body of the reference memo we note in Page 4, Paragraph 5 the statement, "The Agency complains that Sauget & Company had disposed of liquids and hazardous materials without prior approval." Also, reading the total paragraph indicates the Agency witnesses had limited information about the nature of the chemical wastes.

We recognize that with the recent re-organization of the Agency and usual change in personnel in recent years much correspondence is probably not readily available to the Agency people. We submit copies (attached) of the August 7, 1968 correspondence from C. W. Klassen of the Sanitary Water Board and our reply of August 16, 1968 which lists the chemical compounds being deposited in the liquid waste disposal facility. It is my understanding that this listing satisfactorily answered all questions the State had about the compounds involved.

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At present we continue to deposit wastes of the same general composition as described in our August 16, 1968 letter. There has been a significant reduction of about 48% in the total quantity involved. In 1968 we deposited at the appropriate rate of about 35,470 cubic yards per year. In the year 1971 we estimate this will be about 18,400 cubic yards. Most of this reduction reflects the termination of certain major production operations at our Plant; such as, our Phenol Plant, the Alkyl Benzene Department and the sale of our "North Area Plant" - the oil additive production facilities - to Edwin Cooper, Incorporated.

We also note that the liquid waste disposal area has five operational test wells at strategic perimeter locations. These are periodically sampled and analyzed for phenol and COD. In the past, samples from these monitoring wells have been picked up by the Illinois Sanitary Water Board upon their request. Our most recent sampling analysis of April 29, 1971 indicated no measurable COD in any of the five test wells and no measurable phenol in four of the wells. One test well analyzed 2 ppm phenol. The previous sample in that well was 1 ppm of phenol. We interpret these data to indicate that no environmental problem exists.

Please advise if we can be of any further service in this matter.

Sincerely yours,

P E Heisler

P. E. Heisler, Director of
Environmental Control

/jhc

Att.

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State of Illinois)
) SS
County of St. Clair)

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

Environmental Protection Agency	)	
	)	
vs.	)	No. PCB
	)	
Sauget & Company	)	

C O M P L A I N T

The ENVIRONMENTAL PROTECTION AGENCY, by William J. Scott, Attorney General, complaining of SAUGET & COMPANY, states:

1) Before, on and since November 30, 1970, SAUGET & COMPANY has allowed open dumping at its solid waste disposal site in violation of Section 21(a) & (b) of the Environmental Protection Act (hereinafter "Act") and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities (hereinafter "Land Rules"), effective pursuant to Section 49(c) of the Act.

2) Since November 30, 1970, SAUGET & COMPANY has allowed open burning at its waste disposal site in violation of Rule 3.05 of the Land Rules and Section 9(c) of the Act.

3) Since November 30, 1970, SAUGET & COMPANY has had no adequate fence at its waste disposal site in violation of Rule 4.03(a) of the Land Rules, effective pursuant to Section 49(c) of the Act.

4) Since November 30, 1970, SAUGET & COMPANY has had no proper shelter at its solid waste disposal site in violation of Rule 4.03(c) of the Land Rules, effective pursuant to Section 49(c) of the Act.

5) Since November 30, 1970, SAUGET & COMPANY has operated its

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solid waste disposal site without adequate provisions for fire protection in violation of Rule 4.04 of the Land Rules, effective pursuant to Section 49(c) of the Act.

6) Since November 30, 1970, SAUGET & COMPANY has allowed unsupervised unloading with no portable fences available and improper policing of the area in violation of Rule 5.04 of the Land Rules, effective pursuant to Section 49(c) of the Act.

7) Since November 30, 1970, SAUGET & COMPANY has not been spreading and compacting the refuse as it is admitted at its solid waste disposal site in violation of Rule 5.06 of the Land Rules, effective pursuant to Section 49(c) of the Act.

8) Since November 30, 1970, SAUGET & COMPANY has operated its solid waste disposal site without covering the refuse at the end of the working day in violation of Rule 5.07(a) of the Land Rules, effective pursuant to Section 49(c) of the Act.

9) Since November 30, 1970, SAUGET & COMPANY has disposed liquids and hazardous materials without prior approval from the department in violation of Rule 5.08 of the Land Rules, effective pursuant to Section 49(c) of the Act.

10) Since November 30, 1970, SAUGET & COMPANY has operated their sanitary landfill operation without insect and rodent control in violation of Rule 5.09 of the Land Rules, effective pursuant to Section 49(c) of the Act.

11) Since November 30, 1970, SAUGET & COMPANY has permitted unsanitary salvage operations in violation of Rule 5.10(a) of the Land Rules, effective pursuant to Section 49(c) of the Act.

12) Since November 30, 1970, SAUGET & COMPANY has permitted salvage operations near the face of the fill in violation of Rule 5.10(b) of the Land Rules, effective pursuant to Section 49(c) of the Act.

13) Since November 30, 1970, SAUGET & COMPANY has been dumping refuse over a large impractical area at its solid waste disposal site in violation of Rule 5.03 of the Land Rules, effective pursuant to Section 49(c) of the Act.

14) Since November 30, 1970, SAUGET & COMPANY has permitted the salvage operations to interfere and delay the fill operation in violation of Rule 5.10(c) of Land Rules, effective pursuant to Section 49(c) of the Act.

15) Since November 30, 1970, SAUGET & COMPANY has allowed salvage materials to remain at the site in violation of Rule 5.10(d) of Land Rules, effective pursuant to Section 49(c) of the Act.

16) Since November 30, 1970, SAUGET & COMPANY has allowed scavenging operations in violation of Rule 5.12(a) of the Land Rules, effective pursuant to Section 49(c) of the Act.

17) Since November 30, 1970, SAUGET & COMPANY has permitted feeding farm or domestic animals in violation of Rule 5.12(b) of the Land Rules, effective pursuant to Section 49(c) of the Act.

WHEREFORE: (a) The ENVIRONMENTAL PROTECTION AGENCY asks that a date be set for a hearing, not less than 21 days from the date of service of this Complaint, before a hearing officer designated by the Board, at which time SAUGET & COMPANY be required to answer the allegations of this Complaint.

(b) The ENVIRONMENTAL PROTECTION AGENCY asks for: (1) the entry of an order directing SAUGET & COMPANY to cease and desist the aforesaid violations; and (2) the assessment of a penalty in the amount of $10,000 plus $1,000 for each day such violation shall be

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shown to have continued.

ENVIRONMENTAL PROTECTION AGENCY
BY: William J. Scott, Attorney General

by: Jim D. Keehner
Assistant Attorney General

William J. Scott, Attorney General
Attorney for Complainant
Jim D. Keehner, Assistant Attorney
General of Counsel
Supreme Court Building
Springfield, Illinois 62706
217/544-4871

001335

ILLINOIS POLLUTION CONTROL BOARD
May 26, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	#71-29
v.	)	
	)	
SAUGET & COMPANY	)	

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. ALDRICH):

Mr. Robert F. Kaucher, Special Assistant Attorney General, for the Environmental Protection Agency.

Mr. Harold G. Baker, Jr., Belleville, for Sauget & Company and Paul Sauget

The Environmental Protection Agency filed a complaint against Sauget and Company, a corporation. On motion of the Assistant Attorney General, Paul Sauget, operator of the company, was added as a party respondent. The complaint alleged that before, on and since November 30, 1970, Respondent had allowed open dumping at his solid waste disposal site in violation of Section 21(a) and (b) of the Environmental Protection Act ("Act") and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules"). The complaint also alleged that since November 30, 1970, Respondent had permitted the open burning of refuse, had failed to provide adequate fencing or shelter, had allowed unsupervised unloading, had not spread and compacted the refuse as it was admitted, and had not covered the refuse at the end of each working day. Further, during the same period, Respondent allegedly had disposed of liquids and hazardous materials without proper approval, had imposed no insect or rodent control, had dumped refuse over a large impractical area and had permitted scavenging and improper salvaging operations. The aforementioned acts are all in violation of various provisions of the Land Rules and/or of the Act. At the hearing on April 13, 1971, allegations of inadequate fire protection and allowing the feeding of domestic animals were dismissed at the request of the Agency.

At the hearing the Agency asked that the wording of its complaint be amended by the substitution of "Before, on and since" for "Since" in all except the first alleged violation. As will become apparent later in the opinion, the failure of the Agency to include the more comprehensive wording was a critical factor in determining the number of violations of which the Board could find Sauget guilty. Respondent claimed surprise, contending that if the request were granted he would be deprived of an opportunity to prepare a defense against the new charges. We agree with Respondent's contention and dismiss

the request for amendments to the complaint. We hold, however, that Respondent was adequately warned by the Agency complaint against surprise of allegations on November 30.

Before considering the issues in the case, we must deal with Respondent's motion to dismiss the complaint. Respondent argues that the entire complaint should be dismissed on constitutional grounds, contending that the delegation of rule-making power to the Pollution Control Board is unconstitutional. He further contends that the Board cannot impose any fines because of constitutional prohibitions. In PCB 70-34, EPA v. Granite City Steel Co., we held that regulatory powers in highly technical fields are commonly delegated to administrative agencies at every level of government. Responsibility for all rule-making activities would impose an impossible burden on legislatures. We further held that the pollution statutes provide sufficient standards to guide the Board's judgement and adequate procedural safeguards to avoid arbitrary action. We have also held, in PCB 70-38 and 71-6, consolidated, EPA v. Modern Plating Corp., that the Board has the constitutional authority to impose money penalties. We find Respondent's constitutional arguments to be without merit.

The evidence offered in the case leaves little doubt that Sauget & Company allowed open dumping at its solid waste disposal site. The Agency introduced photographs showing that certain identifiable objects were visible on successive days. This is in clear violation of Section 21(a) and (b) of the Act and Rules 5.04 and 5.07(a) of the Land Rules which prohibit open dumping and require that all exposed refuse be covered at the end of each working day. Indeed the record indicates that some refuse present on May 22, 1970, was still uncovered on March 8, 1971. Paul Sauget, secretary-treasurer of Sauget & Company admitted that refuse had not always been covered by the end of each day (R.169). He explained that this was mostly due to mechanical breakdowns of the equipment and contended that the "rule book" allows for such problems. However, Respondent did not attempt to prove that the failure to cover on the days specified by the Agency was due to mechanical breakdown. Further, there can be no excuse for permitting any refuse to remain uncovered for a period of almost a year. We do note, however, that conditions at the site have improved somewhat in recent months. Respondent has attempted to cover the refuse on a regular basis, but efforts in this regard have been hampered by the tremendous volume of material accepted.

An important issue in the case is the type of cover material used. The record indicates that since March of 1966 Respondent had used cinders as cover. Paul Sauget testified that he had been told by the Chief Sanitary Engineer of the Department of Public Health that cinders were acceptable as cover. (R. 157). We agree that Sauget could rely upon the statement of the Department of Public Health as a defense against a charge of improper covering. Rule 5.07 of the Land Rules states that cover material must permit only minimal percolation of surface water when properly compacted. Clearly, cinders cannot be properly compacted and they allow more than minimal percolation. They are thus not acceptable as cover material and their use is in violation of the regulations.

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The practice of covering with cinders must stop.

Respondent is alleged to have allowed open burning at his waste disposal site in violation of Section 9(c) of the Act and Rule 3.05 of the Land Rules. Photographs taken on December 1, 1970, and introduced by the Agency show material burning on the surface of the refuse. There is some evidence that both surface and sub-surface burning occurred on November 30, 1970. Paul Sauget testified that burning is not done intentionally but that some fires start accidentally. He claimed that when this happens, attempts are made to extinguish the fire. However, a witness from the Agency testified that on December 1, 1970, while Agency personnel were present no attempt was made by defendant's employees to put out a fire. There is reason to believe that Respondent has been negligent in his attempts to stop open burning at the landfill site.

Several witnesses testified that Sauget & Company did not have adequate fencing at its waste disposal site, a violation of Rule 4.03 (a) of the Land Rules. The Rule also requires that the site be furnish with an entrance gate that can be locked. These provisions are designe to prevent promiscuous dumping which renders impossible the proper daily compaction and covering of the refuse. Testimony by witnesses for the Agency indicated that the site in question was not adequately fenced nor provided with a proper gate. These conditions were said to exist on November 30, 1970 (R.31,89). The record indicates that improvements have been made since that time. Fencing was apparently installed on two sides of the landfill site between February 8, and March 22, 1971 (R. 122). Respondent did not dispute the Agency's observations of November 30, but indicated that since that date steps had been taken to restrict access to the site. The record is unclear as to the adequacy of some of these measures and we are undecided whether permanent fencing should be provided on all sides of the landfill site. The record indicates that the liquid waste disposal facility is adequately fenced.

Rule 4.03(a) of the Land Rules also requires that the hours of operation of a landfill site be "clearly shown". This is necessary in order to inform the public as to when dumping is permissible and to facilitate proper supervision. Witnesses for the Agency testified that hours of operation were not posted on their visits to the site on November 30, 1970 and March 22, 1971 (R.89,119). This was disputed by Respondent who claimed that signs had been posted since July 1, 1970 (R.167). From the record it is evident that on several occasions the hours of operation were not clearly shown, as required by the regulation.

Again with regard to fencing, Rule 5.04 of the Land Rules requir that portable fences be used when necessary to prevent blowing of litter from the unloading site. Witnesses for the Agency testified that portable fencing had not been provided on three separate occasio since November 30, 1970 (R. 31,60,115). Respondent claimed that port ble fences had been used near the face of the landfill since November 30 but did not specifically dispute the contentions of the Agency that fencing was absent on certain dates.

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State of Illinois)
) SS
County of St. Clair)

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

Environmental Protection Agency	)	
	)	
vs.	)	NO. PCB 71-
	)	
Sauget & Company	)	

St Clair 6
Sauget/Sauget

N O T I C E

TO: Mr. Paul Sauget
Sauget & Company
2902 Monsanto Avenue
Sauget, Illinois

You are hereby notified of the filing of the attached Complaint with the Pollution Control Board of the State of Illinois

You are further notified that you will be required to attend a hearing at a date to be set by the Pollution Control Board, at which time you will be required to answer the allegations of the attached Complaint.

ENVIRONMENTAL PROTECTION AGENCY
By: William J. Scott, Attorney General

Jim D. Keehner

by: Jim D. Keehner
Assistant Attorney General

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actual violation, fines of $1500 were assessed (EPA v. Eli Amigoni, PCB 70-15, and EPA v. R. H. Charlett, PCB 70-17). This, however, should not be construed as foreclosing fines of greater amount in appropriate circumstances.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Sauget & Company and Paul Sauget are to comply with Rules 5.06 and 5.07(a) of the Rules and Regulations for Refuse Disposal Sites and Facilities by completing the compaction and covering of all exposed refuse by the end of each working day.

2. Sauget & Company and Paul Sauget are to cease and desist the use of cinders as cover material.

3. Sauget & Company and Paul Sauget are to cease and desist the open dumping of refuse in violation of Section 21(a) and (b) of the Environmental Protection Act and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities.

4. Sauget & Company and Paul Sauget are to cease and desist the open burning of refuse in violation of Section 9(c) of the Environmental Protection Act and Rule 3.05 of the Rules and Regulations for Refuse Disposal Sites and Facilities.

5. Sauget & Company and Paul Sauget are to cease and desist the disposal of liquids at its solid waste disposal facility in violation of Rule 5.08 of the Rules and Regulations for Refuse Disposal Sites and Facilities.

6. Sauget & Company and Paul Sauget are to comply with Rules 4.03(a) and 5.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities with regard to the posting of hours of operation and the provision of proper fencing. Every point of practicable vehicle access shall be fenced.

7. Sauget & Company and Paul Sauget are to cease and desist the sorting of refuse by hand in violation of Rules 5.10 and/or 5.12(a) of the Rules and Regulations for Refuse Disposal Sites and Facilities.

8. On or before June 15, 1971, Sauget & Company and Paul Sauget shall file with the Agency and the Board a list of chemical compounds being deposited in the liquid waste disposal facility, or an affidavit of Monsanto Company that the chemicals do not pose a threat of pollution of the Mississippi River by underground seepage. Upon failure to furnish such information, the Board shall hold a supplemental hearing on five days notice to the parties and shall enter such further Order as shall be appropriate.

6/26/78

Illinois Environmental Protection Agency

TELEPHONE: 217/782-3397

June 26, 1978

Mr. William Barzano
Assistant Attorney General
Environmental Control Division
500 South Second Street
Springfield, Illinois 62706

Re: EPA v. PAUL SAUGET
PCB# 77-84
IEPA# 3602

Dear Bill:

Enclosed please find the Statement of Stipulated Settlement in the above-captioned matter executed by the Agency.

Thank you for your cooperation and representation in this matter.

Very truly yours,

Delbert D. Haschemeyer
Manager, Enforcement Programs

DDH/cp

Enclosure

cc: T. Chiola
: Southern Region
: ~~E.O.~~S.
: E.P.

2200 Churchill Road, Springfield, Illinois 62706

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STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
V.	)	PCB 77-84
PAUL SAUGET, individually, SAUGET AND COMPANY, a Delaware corporation, EAGLE MARINE INDUSTRIES, INC., a Missouri corporation, and RIVER PORT FLEETING INC., a Missouri corporation, Respondents.	)	

STIPULATION, STATEMENT OF FACTS AND
PROPOSAL FOR SETTLEMENT

For purposes of settlement only, Respondents, PAUL SAUGET and SAUGET AND COMPANY, a Delaware corporation, by their attorney HAROLD G. BAKER, JR., and the Complainant, ENVIRONMENTAL PROTECTION AGENCY (hereinafter the "Agency"), by its attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, do hereby stipulate and agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that the Statement of Facts is made and agreed upon for the purpose of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding unless the Illinois Pollution Control Board (hereinafter the "Board") approves and disposes of this matter on each and every one of the terms and conditions of settlement set forth herein. This document is admissable only

for the purposes of this cause and may not be used in any other proceeding between any of these parties and others. None of the matters covered herein may be construed as facts or admissions of fact or admissions against interest for any purpose other than this proceeding.

STATEMENT OF FACTS

1. PAUL SAUGET, one of the Respondents, is an officer and the principal owner of SAUGET AND COMPANY, a Delaware corporation.

2. SAUGET AND COMPANY, one of the Respondents, is a corporation organized under the laws of the State of Delaware and, at all pertinent times until November 15, 1973, was authorized to transact business in the State of Illinois.

3. Beginning in the fall of 1959 and continuing each and every day to on or about April 26, 1973, SAUGET AND COMPANY operated a refuse disposal site located in Township 2 North, Range 10 West of the 3rd Principal Meridian, Centerville Township, St. Clair County, Illinois.

The refuse disposal site consists of two (2) parts which are separated by the right-of-way of the Alton & Southern Railroad.

The part of the refuse disposal site north of the Railroad is bounded on the south by the Railroad; on the west by a line parallel to, and approximately 300 feet easterly of, the Mississippi River; on the north by Riverview Avenue; and on the west by the levee; all excluding the landfill of Monsanto Company and the fly-ash pond of Union Electric Company.

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The part of the refuse disposal site south of the Railroad is bounded on the north by the Railroad; on the east by the levee; on the south by Red House Road; and on the west by a road (shown on Respondents' Exhibit No. 2) which is generally parallel to, and 1200 feet easterly of, the Mississippi River; all excluding an area at the southeastern most corner of such part, which area has an approximate width (measured perpendicularly to the levee) of 500 feet and an approximate length (measured parallel to the levee) of 1200 feet.

4. EAGLE MARINE INDUSTRIES, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. RIVER PORT FLEETING, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. On February 24, 1978, a motion to dismiss without prejudice was filed by the Agency with the Board regarding the Respondents EAGLE MARINE INDUSTRIES, INC. and RIVER PORT FLEETING, INC., based upon a Stipulation entered into by the Agency with said Respondents.

5. Respondent PAUL SAUGET and Respondent SAUGET AND COMPANY (hereinafter "said Respondents") have failed to place a final suitable cover of at least two (2) feet of suitable material over the entire surface of all completed portions of the refuse disposal site described in paragraph 3, although cover which said Respondents believed to be acceptable or suitable, or both, has been placed

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on the site, despite notices from EPA to the contrary. Said final cover should have been placed upon the site prior to October 26, 1973.

6. The parties hereby agree that the Hearing Officer may instanter enter an order that the record of a prior proceeding (PCB 71-29) involving said Respondents shall be incorporated, pursuant to Board's Proceedural Rule 320(c), into the record of this proceeding.

7. In PCB 71-29, Respondent PAUL SAUGET testified that he had been given permission from the Director of the Illinois Department of Public Health to use cinders as a cover material (R. 157 and 175) and this testimony was accepted by the Board. Therefore, cinders used by said Respondents as a cover material prior to the decision of the Board in PCB 71-29 on May 26, 1971 are accepted as cover material for the purposes of this stipulation, but not for that portion of the refuse disposal site operated after May 26, 1971. Furthermore, cinders shall not hereafter be used by said Respondents in complying with the provisions hereof.

8. In said Respondents' refuse disposal site, refuse was deposited commencing in the northern portion of the site in 1959 and continuing thereafter in a southerly direction.

9. The parties agree that the 1966 operating face shall be deemed to have been a straight line perpendicular to the levee running along the road at the south end of Union Electric's fly-ash pond (as shown in said Respondents' Exhibit No. 1).

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10. The parties also agree that the 1971 operating face shall be deemed to have been a straight line parallel to, and 1200 feet southerly of, said 1966 operating face (as shown in said Respondents' Exhibit No. 2).

PROPOSED TERMS OF SETTLEMENT

A. As a result of the settlement discussions had and the control programs agreed to hereinafter, and partially heretofore implemented by said Respondents, the parties believe the public interest will be best served by the resolution of this enforcement action under the terms and conditions provided herein. In accordance with the procedure for settlement prescribed in Board's Procedural Rule 331, the parties offer this Stipulation, Statement of Facts and Proposed Terms of Settlement in lieu of a full evidentiary hearing.

B. This stipulation is expressly conditioned upon, and effective only with, approval hereof in all respects by the Board. All statements and agreements contained herein shall be null and void and of no effect and shall not be used in any further proceeding in the event that the Board fails to approve these Terms of Settlement in all respects.

C. Respondents, PAUL SAUGET and SAUGET AND COMPANY, admit the allegations contained in paragraph 15 of Count V of the Amended Complaint, in that each of them, since October 26, 1973, has failed to place a compacted layer of at least two (2) feet of suitable material over the entire portion of the refuse disposal site

heretofore operated by them. As stated in paragraph 5 hereof, they do not necessarily admit, however, that final cover has not been placed upon the refuse disposal site, there having heretofore been disputes concerning the depth or the suitability, or both, of the final cover.

D. Said Respondents agree to place two (2) feet of suitable cover material on said site in accordance with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities (promulgated in 1966 by the Illinois Department of Public Health) as follows:

> (1.) From the 1966 operating face through the 1971 operating face of the refuse disposal site, said Respondents agree to place suitable cover over the site, where necessary, to bring the total final cover to a depth of two (2) feet; cinders already in place used as a cover material north of the 1971 operating face of the site being acceptable as suitable cover material between the 1966 and 1971 operating faces of the site;
>
> (2.) South of the 1971 operating face, said Respondents agree to place suitable cover material over the site, where necessary, to bring the total of final suitable cover to a depth of two (2) feet, excluding cinders already in place;
>
> (3.) Such additional cover shall be placed on the site starting with that part south of the 1971 operating face;
>
> (4.) Subject to extensions of time which may be granted under the provisions of paragraph G hereof, such final cover shall be placed over 20% of the site during each six (6) month period after the date upon which the Board enters an Order approving this settlement and such work on all parts of the site shall be completed within thirty (30) months of the date that the Board enters such Order.

E. The final cover used by Respondents during the month of May, 1978 and sampled by the Agency is satisfactory and acceptable to the Agency. In the event that Respondents hereafter change the type of final cover from that used in May, 1978 and sampled by the Agency, said Respondents shall notify Agency and cooperate

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with it in taking samples of the proposed new type of final cover.

F. Except as hereinbefore specified, the final cover to be used by the Respondents must be "suitable." Neither the Board nor the Agency has heretofore officially adopted any definition of "suitable" cover. The Agency proposes to the Board that it adopt the definition attached hereto, marked Exhibit A and, by this reference, incorporated herein and made a part hereof. Respondents have not seen such definition until the date of the hearing at which this Stipulation is filed and, for that reason and others, do not approve, disapprove or agree to such definition. Respondents' final suitable cover hereafter used shall conform to such definition, if it be approved and adopted by the Board, subject to said Respondents' rights to seek a variance or variances from such definition.

G. Said Respondents' obligation to meet any time requirements set out herein shall be extended as the result of an act of God or by a circumstance beyond said Respondents' control or by the owners' use of the site in violation of the provisions of their Stipulation or by any other circumstance agreed to by the parties. Prompt written notice of the claimed applicability of this provision must be given to Agency by said Respondents, or either of them, or a claim for extension based upon a given set of facts is waived. Should the parties fail to agree on what circumstances shall excuse a delay in the performance or on the period of extendion due, Respondents may submit the matter to the Board of resolution after a hearing which may be called or requested by either the Agency or the Respondents, or both, in accordance with Board Procedural

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Rule 334(b)(1). Any such hearing must be requested within thirty (30) months of the date upon which the Board enters an Order approving this settlement, plus any extensions requested by the Respondents and granted by the Agency or the Board under the provisions of this paragraph G.

H. Said Respondents agree to file with the Agency a performance bond in the penal sum of $125,000.00.

I. Said Respondents, jointly and severally, agree to pay a civil penalty of $5000 in the aggregate. According to the Agency, such a penalty is necessary to aid in the enforcement of the Act, in view of the prior decision of the Board regarding said Respondents in PCB 71-29 and in view of the previous notice given to said Respondents regarding the violation of the Act cited in paragraph 15 of Count V of the Amended Complaint and in view of the amount of time that has elapsed since the date that final cover was due. Said penalty shall be payable in two (2) monthly installments of $2,500.00 per month on the thirtieth (30th) and sixteeth (60th) calendar days after the date upon which the Board enters an Order approving this settlement.

I. All other allegations of the Complaint and the Amended Complaint, as they pertain to said Respondents, shall be dismissed with prejudice to the Agency.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Complainant

By: Mike Mauzy by DV
Its Director

WILLIAM J. SCOTT, Attorney General

By: _____
Assistant Attorney General
ATTORNEY FOR COMPLAINANT

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PAUL SAUGET
One of the Respondents

SAUGET AND COMPANY
One of the Respondents

By: PAUL SAUGET
Its President

HAROLD G. BAKER, JR.
56 South 65th Street
Belleville, Illinois 62223
(618) 397-6444
ATTORNEY FOR SAID RESPONDENTS

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The term "suitable material" as found in Illinois Pollution Control Board Solid Waste Rules and Regulations, Chapter 7, Rule 305: Cover shall have the following definition: naturally occurring soils which allow minimal surface water infiltration, which are compactable, which will promote plant growth, and which have a low permeability, or, such other material as approved by the Environmental Protection Agency.

EXHIBIT A

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