

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL DISTRICT  
CHAMPAIGN COUNTY, ILLINOIS**

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

Plaintiff,

v.

THE PEOPLES GAS LIGHT AND  
COKE COMPANY,  
an Illinois corporation,

Defendant.

No. 17-CH-218

**FIRST AMENDED AGREED INTERIM ORDER FOR  
IMMEDIATE AND PRELIMINARY INJUNCTION**

This cause coming before the Court on Plaintiff's Motion for Immediate and Preliminary Injunction pursuant to Section 11 of the Illinois Oil and Gas Act (the "Oil & Gas Act"), 225 ILCS 725/11 (2016), 62 Ill. Adm. Code 240.155, and Section 42 of the Illinois Environmental Protection Act ("Environmental Protection Act"), 415 ILCS 5/42 (2016); the parties being given due notice; the Court having jurisdiction over the parties and subject matter and being duly advised in the premises.

**I. BACKGROUND**

1. Defendant, THE PEOPLES GAS LIGHT AND COKE COMPANY, at all times relevant to this Complaint, was and is a natural gas provider company and an Illinois corporation authorized to do business in Illinois.

2. Defendant is the owner and operator of Manlove Field, an underground natural gas storage facility (the "Facility") located near the Village of Fisher, Champaign County, Illinois.

3. The Facility contains 153 injection withdrawal wells and an underground gas storage field with a working gas capacity of approximately 36.5 billion cubic feet of gas per year, located beneath 27,500 contiguous acres.

4. The natural gas is stored at the Facility at a depth of approximately 4,000 feet below surface, in the Mount Simon sandstone formation. The Facility stores natural gas purchased during summer months, when prices are traditionally lower, for delivery to homes during the heating season when prices are traditionally higher. The gas supply from the Facility is sufficient to warm more than 320,000 homes a year.

5. The Mahomet Aquifer is located at approximately 200 to 300 feet depth above the Mount Simon sandstone formation and provides fresh water to approximately 850,000 people.

6. On December 6, 2016, an employee of Defendant detected a leak (the "Gas Release") from the well known as L. McCord #2 ("MC2"), when he observed gas bubbles rising out of puddles near MC2. Defendant reported the Gas Release to the Illinois Commerce Commission and other federal and state agencies as required.

7. MC2 is one of the 153 injection withdrawal wells in the Facility and is located at 40.27749 N. latitude and 88.38961 W. longitude.

8. Defendant represents that the estimated natural gas leaked to the atmosphere and sub-surface, as a result of the Gas Release at MC2 as of the filing of this First Amended Agreed Interim Order for Immediate and Preliminary Injunction ("First Amended Order"), is in excess of 76.6 million cubic feet.

9. On or about December 20, 2016, Defendant further determined that some of the leaked natural gas from MC2 migrated into the Mahomet Aquifer.

10. After investigating private water wells located within a 5,000-foot radius of MC2, Defendant identified homes impacted by the Gas Release. The homes Defendant found to be impacted by the Gas Release each had a private water well, and the private water wells each tested positive for natural gas from the Facility.

11. The homes and private water wells that Defendant found to be impacted by the Gas Release are at various locations, generally to the north, east, and south of MC2. The homes range from approximately 1,000 feet to 4,000 feet from MC2.

12. The primary component of natural gas is methane, a greenhouse gas, which is not toxic.

13. Methane is a well-documented, naturally-occurring substance within the Mahomet Aquifer. The scientific literature documents methane in private water wells throughout the State of Illinois, including private and community wells throughout Champaign County.

14. Although there is no molecular difference between methane from a biogenic source versus a thermogenic source, Plaintiff contends that, methane originating from a thermogenic source can be distinguished from methane originating from a biogenic source by the isotopic composition and the ratio of accompanying heavier chain hydrocarbons, including but not limited to ethane, propane, iso-butane, and N-butane. Moreover, the Manlove Field storage reservoir in the Mt. Simon Formation is not a naturally occurring deposit of thermogenic gas. Thus, Plaintiff contends that the thermogenic source of methane from MC2 is a human-caused source of contamination to Class I: Resource Groundwater.

15. The Illinois Department of Public Health ("IDPH") has reviewed the scientific literature regarding the health effects of drinking water containing methane. If called as a witness

in this matter, an IDPH toxicologist would testify that there are currently no known health effects associated with the ingestion of methane in drinking water.

16. In high enough concentrations, methane can be combustible, and an asphyxiant in enclosed, unventilated spaces. In sampling conducted by the Illinois Environmental Protection Agency ("IEPA"), none of the ambient air samples in households accessed by IEPA showed methane above the lower explosive limit nor did any sampling show levels that would present an asphyxiation risk based upon the conditions at sampling.

17. In February of 2017, Defendant began providing bottled water voluntarily to numerous households that may have been impacted, at any measurable level, by the Gas Release at MC2, including those households with "pending" test results. In the First Agreed Interim Order for Immediate and Preliminary Injunction entered on October 20, 2017, Defendant agreed to continue to provide bottled water as required by that Order. Neither the IDPH nor any other state or federal health agency reports any known health effects associated with the consumption, bathing or other ordinary use of drinking water sourced from a private or public water supply well containing methane. Defendant has, however, agreed to continue to provide bottled water service.

18. On May 1, 2018, Defendant applied, at the IDPH's request, for a variance to allow the installation of gas/water separators in certain qualifying impacted homes with thermogenic gas from the Gas Release. On August 3, 2018, IDPH granted Defendant a conditional variance to install the gas/water separators.

19. As of the filing of this First Amended Order, gas/water separators have been installed at five (5) homes with private wells containing thermogenic gas from the Gas Release.

20. Plaintiff alleges, in its Complaint for Injunctive Relief and Civil Penalties ("Complaint") filed in this matter and incorporated by reference herein, that Defendant violated or threatened to violate the Oil & Gas Act, regulations promulgated thereunder, the Environmental Protection Act, and regulations promulgated thereunder, as a result of the Gas Release, on dates commencing on or before December 6, 2016, up to and including the date of entry of this First Amended Order.

IT IS HEREBY ORDERED THAT the Court enters the following First Amended Order against Defendant, which shall remain in full force and effect until further order by this Court:

## II. GENERAL PROVISIONS

21. This First Amended Order shall apply to and bind the parties hereto. This First Amended Order nullifies and supersedes all prior orders in this lawsuit.

22. This First Amended Order is not a final resolution on the merits of Plaintiff's Complaint filed herein, but rather addresses Plaintiff's most immediate concerns alleged in the Complaint.

23. By entering into this First Amended Order and complying with its terms, Defendant does not admit any fact, wrongful conduct, or violation of any applicable statute, law or regulations thereunder by Defendant, and this First Amended Order and compliance therewith shall not be interpreted as including such admission. The parties to this First Amended Order agree that this First Amended Order is made and agreed upon for settlement purposes only, and, except in a proceeding to enforce this First Amended Order, neither this document nor that Defendant entered into it shall be introduced into evidence. The parties to this First Amended Order, however, reserve the right to introduce the facts stated herein in any future proceeding relating to this matter, and the Defendant reserves all of its defenses, including the right to challenge the truthfulness of such facts.

24. This Court shall retain jurisdiction of this matter for the purposes of interpreting and enforcing the terms and conditions of this First Amended Order.

### **III. ACTIONS TO BE UNDERTAKEN BY DEFENDANT**

25. Defendant shall promptly offer to install and maintain, through an IDPH-registered plumbing contractor, an IDPH-approved gas/water separator ("Device") at any household whose groundwater supply has shown concentrations of MC2 thermogenic methane at or above 10 mg/L (an "Affected Household"). As soon as reasonably practicable after receiving notice that an Affected Household wants a Device installed, Defendant shall cause a Device to be installed, per the manufacturer's instructions, at the Affected Household. If requested by the Affected Household, Defendant shall test the Affected Household's water after installation of the Device. Defendant's obligation to install and maintain a Device under this Paragraph 25 shall terminate for an Affected Household that has tampered with an installed Device in contravention of the manufacturer's specifications or recommendations. Defendant shall maintain lists of Affected Households that have i) requested a Device, ii) been offered a Device, iii) rejected Defendant's offer to provide a Device, and iv) received a Device from the Defendant. Defendant shall offer to replace any Device it installed pursuant to this Paragraph 25 that it reasonably believes is not operating in accordance with the manufacturer's specifications.

26. Defendant agrees to continue to distribute on a regular basis bottled water to any household currently (as of date of entry of this First Amended Order) receiving bottled water pursuant to the First Agreed Interim Order for Immediate and Preliminary Injunction, entered on October 20, 2017. Additionally, Defendant shall distribute on a regular basis bottled water to any other additional Affected Household (as defined in Paragraph 25) at the household's request. As to any household not currently receiving water pursuant to the First Agreed Interim Order for Immediate and Preliminary Injunction, entered on October 20, 2017, Defendant's obligation to

provide bottled water shall terminate when the residence is no longer an Affected Household. As to any household not currently receiving bottled water pursuant to the First Agreed Interim Order for Immediate and Preliminary Injunction, entered on October 20, 2017, such residence shall no longer be considered an Affected Household after two consecutive quarterly samples show concentrations of MC2 thermogenic methane below 10 mg/L, though such residence will again be considered an Affected Household if subsequent sampling shows concentrations of MC2 thermogenic methane at or above 10 mg/L.

27. Defendant shall immediately offer to Affected Households, and where requested by the Affected Household, Defendant shall install and maintain at the Affected Household, residential monitoring and alert devices designed to continuously monitor the methane concentrations of indoor air and alarm if the methane concentrations exceed 12,500 ppm in air. Within seven (7) days of receiving notice that an Affected Household wants a monitoring and alert device, or if Defendant is unable to obtain access to the Affected Household within the seven (7) day period, as soon thereafter as Defendant can obtain access, Defendant shall install the monitoring and alert device, per the manufacturer's instructions, at the Affected Household. Defendant shall provide, at Defendant's sole expense, lodging for the members of any Affected Household where a monitoring and alert device has alarmed due to methane concentration. Defendant's obligation to provide lodging shall end when Defendant has reasonably demonstrated that the concentration of household ambient air methane levels is less than 12,500 ppm. Defendant's obligation to install and maintain monitor alert devices under this Paragraph 27 will end for an Affected Household if a) for three (3) consecutive years Defendant's obligation to provide lodging as provided by this Paragraph 27 has not been triggered, b) the Affected Household has tampered with the methane monitoring and alert device or operated or

relocated the methane monitoring and alert device in contravention of manufacturer's specifications or recommendations, or (c) the residence is no longer an Affected Household. Defendant shall maintain lists of Affected Households that have i) requested methane monitoring and alert devices, ii) been offered methane monitoring and alert devices, iii) rejected Defendant's offer to provide methane monitoring and alert devices, and iv) received methane monitoring and alert devices from the Defendant. Defendant shall offer to replace any monitoring and alert device it installed pursuant to this Paragraph 27 that it reasonably believes is providing inaccurate readings.

#### **IV. INVESTIGATION BY DEFENDANT**

28. No later than forty five (45) days after entry of this First Amended Order, Defendant shall submit to Plaintiff its then current written procedures for operations, maintenance, and emergencies implementing the requirements of American Petroleum Institute Recommended Practice 1171, as required by the federal Department of Transportation Pipeline and Hazardous Materials Safety Administration regulations 49 CFR § 192.12(e). Defendant's submission shall include and address, at a minimum, how its current maintenance, integrity demonstration and verification, monitoring, threat and hazard identification, assessment, and emergency response and preparedness procedures would detect and respond to a situation similar to the Gas Release.

##### **A. Root Cause Analysis**

29. On November 20, 2017, Defendant submitted to Plaintiff for review and approval of the Root-Cause Report that Defendant retained a licensed engineering firm to perform, covering structural causes of the Gas Release. If Plaintiff disapproves of the Root-Cause Report, Plaintiff shall initiate discussions with Defendant within 60 days of the entry of this Order. If Plaintiff issues a written notice of disapproval, Defendant shall, within fourteen (14) days of



receiving said notice, submit to Plaintiff for review and approval a plan for, and schedule to complete, a revised document that corrects all deficiencies identified by Plaintiff in its disapproval letter. Defendant shall implement the plan upon receipt of Plaintiff's written approval. This process shall continue until Plaintiff approves the Root-Cause Report, or either Plaintiff or Defendant invokes the Dispute Resolution process in Section XI of this First Amended Order. The Root-Cause Report addressed in this Paragraph is separate and apart from the submission discussed in Paragraph 28.

30. Defendant shall continue to provide to Plaintiff an updated list of all contacts Defendant or its contractors have had with local government officials and citizens regarding the Gas Release.

31. Plaintiff and Defendant have agreed upon a list of private wells for which Defendant will perform quarterly testing for methane levels, provided Defendant obtains reasonable access to such private wells. Should Plaintiff have questions or comments regarding the list, or seek modifications to the list, Plaintiff will submit its questions, comments or modifications to Defendant. With the assistance of Plaintiff to obtain reasonable access, Defendant will begin quarterly testing of the agreed upon private wells for one calendar year commencing within thirty (30) days of the entry of this First Amended Order. Defendant will promptly provide to owners of such private wells and Plaintiff copies of all test results when completed. Defendant's personnel will take all samples using Isotech Flasks and submit to Isotech Laboratories, Inc. for analysis. Nothing contained within this Paragraph will obligate Defendant to consent or otherwise agree to conditions or limitations to testing protocols requested by any homeowner. In the event any homeowner refuses or places conditions that Plaintiff and Defendant agree are unreasonable on Defendant's access to its private well for

testing, Defendant will promptly submit to Plaintiff an alternative private well for review and approval. In addition to the other requirements of this Paragraph, Defendant shall continue to test, on a monthly basis, any Affected Household at which it has caused a separator to be installed for pre-and post-treatment levels of methane, chlorine, fecal coliform, and E. coli. Plaintiff reserves the right to seek testing of additional wells as it deems necessary. In the event any homeowner with a separator refuses or places conditions that Plaintiff and Defendant agree are unreasonable on Defendant's access to its private well for testing, Defendant will promptly notify Plaintiff and cease monthly testing at that residence until access is granted and/or the unreasonable conditions are removed.

**B. Well Inspections**

32. Defendant shall continue to provide to Plaintiff all final Vertilogs, also known as magnetic flux-leakage measurements, including all appendices and exhibits ("Vertilogs"), produced for wells at the Facility. As of April 25, 2019, Defendant has completed and submitted to the State final Vertilogs for 116 of 153 of the wells at the Facility.

33. Defendant shall complete inspections of all injection/withdrawal wells at the Facility by December 31, 2019. Until the earlier of December 31, 2019 or when all work under this Paragraph 33 is completed, Defendant shall direct its contractor performing the inspections and producing the Vertilogs for the wells at the Facility to submit to Plaintiff electronic copies of final Vertilogs at the same time the contractor submits the final Vertilogs to Defendant. In the event that anomalies indicating a leak are identified in the course of such inspections, Defendant shall perform any necessary remedial work or isolate the gas zone from the well with a bridge plug while the inspection work-over rig is on site; and Defendant shall notify Plaintiff, in accordance with Paragraph 36, of such remedial work as non-routine, unscheduled work. Defendant will provide to Plaintiff within 30 days after entry of this First Amended Order an

updated, risk based well inspection prioritization schedule that, in addition to quantitative risk-based criteria, also reasonably accounts for physical proximity of wells to MC2.

34. After completion of any investigations or remedial work performed under Paragraph 33, the Defendant shall perform a mechanical integrity test utilizing tubing and packer or a retrievable bridge plug prior to reactivating the well.

35. Until all work under Paragraph 33 is completed, or per earlier modification of this First Amended Order, Defendant shall a) when testing mechanical integrity of the wells at the Facility, use a minimum initial test pressure of 1.1 times the maximum allowable operating pressure, with test duration of at least 30 minutes and a pressure drop not exceeding 10% of the initial test pressure for a 30 minute period; and b) notify Plaintiff at least twenty-four (24) hours prior to performing such mechanical integrity tests on the wells at the Facility; and c) if a well at the Facility fails the test in subpart a) of this Paragraph 35, Defendant shall take the well offline until it passes the aforementioned testing parameters.

36. Until all work under Paragraph 33 is completed, or per earlier modification of this First Amended Order, Defendant shall notify Illinois Department of Natural Resources ("Illinois DNR") Office of Oil and Gas Resource Management Springfield District Office by email to Dan.Brennan@Illinois.gov and Javonna.Ackerman@Illinois.gov 1) no less than twenty-four (24) hours prior to moving any work-over rig onto a well location. The notification must generally describe the work to be done, and Defendant will notify Plaintiff of any material changes in the planned work prior to commencing the work; and 2) as soon as practicable but no later than twenty-four (24) hours prior to performing any non-routine, unscheduled work on any wellbore or wellhead at the Facility.

37. Until all work under Paragraph 33 is completed, or per earlier modification of this First Amended Order, Defendant will make Facility leak survey materials available to Plaintiff for on-site review at the Facility upon reasonable prior notice. Defendant will provide updates to Plaintiff on a quarterly basis of Facility leak survey activities during the preceding quarter. "Leak survey materials" as used here means materials generated by Defendant to identify any potential or actual natural gas leaks at the Facility.

38. Defendant shall within 10 business days of the entry of this First Amended Order provide to Plaintiff any well water sampling results and gas testing results taken from homes and land within a 10 mile radius of the Facility in the eighteen months prior to the entry of this First Amended Order, unless already provided. Until December 31, 2019, Defendant shall provide to Plaintiff any future well water sampling results and gas testing results from homes and land within a ten (10) mile radius of the Facility taken after the entry of this First Amended Order, within five (5) business days of receiving the results and analysis.

39. Defendant and its agents, employees and successors or assigns shall negotiate in good faith with Plaintiff in order to reach agreement on one or more additional agreed orders that may include but are not limited to plans for Defendant's site investigation and remediation, and a Facility well survey to examine the structural integrity and risk of further gas releases from any wells located at the Facility.

## **V. GROUNDWATER MANAGEMENT ZONE**

### **A. Groundwater Remediation**

40. Section 620.250(a) of the Pollution Control Board's Water Regulations, 35 Ill. Adm. Code 620.250(a), provides the following:

- a) Within any class of groundwater, a groundwater management zone may be established as a three dimensional region containing

groundwater being managed to mitigate impairment caused by the release of contaminants from a site:

- 1) That is subject to a corrective action process approved by the Agency; or
- 2) For which the owner or operator undertakes an adequate corrective action in a timely and appropriate manner and provides a written confirmation to the Agency. Such confirmation must be provided in a form as prescribed by the Agency.

41. Groundwater monitoring results from affected homes have found thermogenic methane at levels as high as 87 mol.% percent. Defendant shall develop and implement, upon approval by the Illinois Environmental Protection Agency ("Illinois EPA"), a groundwater management zone ("GMZ") to monitor and mitigate thermogenic methane relating to the Gas Release in area groundwater sampled from all Monitoring Wells in and around the Facility. "Monitoring Wells" is used here to mean any well that is being routinely sampled to characterize water quality, whether this is a water supply well or a well installed specifically for testing water quality. The proposed GMZ shall include information and a proposal, as described below, to ensure area groundwater impacted by MC2 thermogenic methane gas complies with the requirements of Section 12(a) of the Environmental Protection Act, 415 ILCS 5/12(a) (2016), and 35 Ill. Adm. Code 620.301(a)(1) and (2). Plaintiff's agreement, for purposes of Sections III and IV of this First Amended Order, to the definition of an "Affected Household" as any household whose groundwater supply has shown concentrations of MC2 thermogenic methane at or above 10 mg/L, is not and should not be construed as an explicit or implicit agreement or statement at this time that concentrations of thermogenic gas below 10 mg/L are in compliance with Section 12(a) of the Environmental Protection Act, 415 ILCS 5/12(a) (2016), or 35 Ill.

Adm. Code 620.301(a)(1) and (2). Defendant's proposed GMZ for approval by the Illinois EPA shall, at a minimum, contain the following information:

a. A description of Defendant's Facility, including, but not limited to, identification of all operating and closed/unused equipment and facilities used to operate and maintain the Facility, as well as location information of all wells of any type utilized by Defendant regarding the Facility.

b. Maps and engineering drawings accurately describing the Facility and all its component parts.

c. A statement of the groundwater classification at the Facility.

d. Identification of any chemical or gas constituents released to groundwater during the Gas Release.

e. Description of how groundwater has and will be monitored to determine the rate and extent of the Gas Release, and if the Gas Release has migrated off the Facility.

f. A schedule for investigation of the extent of the Gas Release, if it has not already been completed.

g. The results of available soil testing and groundwater monitoring associated with investigation of the Gas Release, including locations and depths of samples, as well as any monitoring well construction details with well logs.

h. Defendant's proposed remedy, including:

i. The concentration of thermogenic methane gas to be achieved to ensure area groundwater impacted by thermogenic methane gas complies with the requirements of Section 12(a) of the Environmental

Protection Act, 415 ILCS 5/12(a) (2016), and 35 Ill. Adm. Code 620.301(a)(1) and (2).

ii. A detailed description of all possible remedies considered, the actual remedy selected by Defendant and reasons why that remedy was selected over the others considered.

iii. A discussion of the manner in which the selected remedy will achieve compliance with the cleanup objective.

iv. A description of the fate and transport of contaminants with the selected remedy over time.

v. A statement of how groundwater at the Facility will be monitored following implementation of the remedy to ensure that the cleanup objective has been obtained.

42. Defendant submitted a proposed GMZ, including all supporting documents, to the Illinois EPA pursuant to Section VI of this First Amended Order, for Illinois EPA review and approval on August 1, 2019. Should the Illinois EPA not concur with Defendant's proposed thermogenic methane concentrations for compliance with Section 12(a) of the Environmental Protection Act, 415 ILCS 5/12(a) (2016), and 35 Ill. Adm. Code 620.301(a)(1) and (2), or have questions or comments regarding the proposed GMZ, or request additional information from Defendant regarding the release and/or proposed GMZ, Defendant shall respond to those requests within 21 days. Defendant's response shall a) propose a revised thermogenic methane concentration for Illinois EPA review and concurrence, and/or b) provide information responsive to the Illinois EPA's requests and comments. Defendant shall begin implementing its GMZ no later than 21 days after receipt of approval of its proposed GMZ by the Illinois EPA, and after

obtaining all necessary permits from the Illinois EPA and other applicable entities, pursuant to the approved schedule.

43. Any amendments to the approved GMZ proposed by Defendant shall be provided to the Illinois EPA for review and approval. Should the Illinois EPA have questions or comments to the proposed GMZ, or request additional information from Defendant regarding the release and/or proposed GMZ, Defendant shall respond to those requests within 21 days.

44. Defendant shall provide progress reports every 30 days beginning 30 days after initiating implementation of its approved GMZ within the first year, and quarterly for years two through four, and annually thereafter until cleanup objectives are achieved. Such progress reports shall, at a minimum, include updates regarding the installation of any equipment or facilities designed to monitor and/or remediate MC2 thermogenic gas in and around the Facility and surrounding aquifers, monitoring results for MC2 thermogenic gas levels in and around the Facility and surrounding aquifers received during the preceding reporting period, technical analysis of the ongoing effectiveness of the GMZ in achieving remediation objectives and description of upcoming remedial activities over the next reporting period. Copies of these reports shall be submitted to the Illinois EPA pursuant to Section VI of this First Amended Order.

**B. Post Corrective Action Monitoring**

45. Upon achieving and maintaining the cleanup objectives identified in the approved GMZ, at the request of Defendant, and upon the review and approval of the Illinois EPA, Defendant shall begin post corrective action monitoring of MC2 thermogenic methane in all Monitoring Wells in and around the Facility. Such monitoring shall occur on a semi-annual basis, beginning 30 days after the Illinois EPA provides written agreement that concentrations of MC2 thermogenic methane meet clean up objectives of the approved GMZ, or have achieved an



asymptotic state in all Monitoring Wells in and around the Facility. Such semi-annual monitoring shall continue for a period of three (3) years after the Illinois EPA provides written agreement that concentrations of MC2 thermogenic methane are either at or below cleanup objectives in the approved GMZ, or have achieved an asymptotic state in all Monitoring Wells in and around the Facility.

46. Defendant shall provide such annual reports during the post corrective action monitoring period. These reports will be submitted by January 31 of each year, and describe the monitoring results from the previous calendar year.

47. During the period of post corrective action monitoring, should concentrations of MC2 thermogenic methane in any of Defendant's Monitoring Wells exceed either cleanup objectives in the approved GMZ, or exceed the asymptotic concentration level previously established, Defendant shall, perform confirmation sampling within 30 days of receiving laboratory analysis results indicating these concentrations, and if the second sample confirms the initial value, within 45 days of receiving laboratory analysis results for the confirmation sampling, provide a written report to the Illinois EPA describing the increased concentrations found in the sampling, an explanation of the cause or causes of the increase, and a proposed corrective action plan (the "Corrective Action Plan") to reduce concentrations to their previous levels, subject to review and approval by the Illinois EPA.

48. During implementation of any Illinois EPA-approved Corrective Action Plan, should MC2 thermogenic methane concentrations exceed cleanup objectives in the approved GMZ or exceed a previously-established asymptotic state concentration, Defendant shall provide progress reports every thirty (30) days beginning thirty (30) days after initiating implementation of its approved Corrective Action Plan for the first year, and quarterly for years two to four, then

annually thereafter. Such progress reports may be combined with other GMZ progress reporting, and shall, at a minimum, include updates regarding the installation of any equipment or facilities designed to monitor and/or remediate MC2 thermogenic gas in and around the Facility and surrounding aquifers, monitoring results for MC2 thermogenic gas levels in and around the Facility and surrounding aquifers received during the preceding reporting period, technical analysis of the ongoing effectiveness of the Corrective Action Plan in returning methane levels to previously achieved cleanup objectives in the approved GMZ, or the asymptotic state concentration of MC2 thermogenic methane, and a description of upcoming remedial activities over the next reporting period. Copies of these reports shall be submitted to the Illinois EPA pursuant to Section VI of this First Amended Order.

**C. Reimbursement of Illinois EPA Costs**

49. Defendant shall reimburse the Illinois EPA for its costs for lab analysis work on water samples taken by the Illinois EPA during its investigation of thermogenic gas in groundwater in and around the Facility. As of the date of entry of this First Amended Order, those costs totaled \$29,080.00. Payment shall be made no later than seven (7) days after the date of entry of this First Amended Order, and shall be made by certified check or money order payable to the Illinois EPA for deposit into the Illinois Environmental Protection Trust Fund 074. The case name and case number shall appear on the face of the certified check or money order.

Payment shall be sent to the following address:

State of Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Copies of the payment transmittal letter shall be sent to:

Charles Gunnarson, Deputy General Counsel

Amanda Kimmel, Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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**D. Illinois EPA Review and Approval Process of Proposals, Plans and Reports**

50. Defendant shall submit each plan, report, proposal or other such document required by this First Amended Order to the Illinois EPA whenever such plan, report, proposal or other such document is required to be submitted for review or approval pursuant to this First Amended Order.

51. After review of any plan, report, proposal or other document that is required to be submitted pursuant to this First Amended Order, the Illinois EPA shall in writing: (i) approve the submission; (ii) approve the submission upon specified conditions; (iii) approve part of the submission and disapprove the remainder; or (iv) disapprove the submission.

52. If the submission is approved pursuant to Paragraph 51(i), the Defendant shall take all actions required by the proposal, plan, report or other document, in accordance with the schedules and requirements of the proposal, plan, report or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 51(ii) or (iii), the Defendant shall, upon written direction from the Illinois EPA, take all actions required by the approved proposal, plan, report, or other item that the Illinois EPA determines are technically severable from any disapproved portions.

53. If the submission is disapproved in whole or in part pursuant to Paragraph 51(iii) or (iv), the Defendant shall, within thirty (30) days or such other time as the Illinois EPA agrees in writing, correct all deficiencies and resubmit the proposal, plan, report, or other document, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the Defendant shall proceed in accordance with the preceding Paragraphs.

54. If a resubmitted proposal, plan, report, or other item, or portion thereof, is disapproved in whole or in part, the Illinois EPA may again require the Defendant to correct any deficiencies, in accordance with the preceding Paragraphs.

#### **VI. NOTICES**

55. All submittals and correspondence relating to the requirements of this First Amended Order shall be directed to the following persons:

##### **FOR PLAINTIFF**

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#### **VII. NOTIFICATION OF SUBSEQUENT RELEASES**

56. Subsequent to the entry of this First Amended Order, in the event of an release of thermogenic gas from any well or the Mount Simon formation, from or in the Facility, to surrounding aquifers, soils and/or the atmosphere, in addition to all required reporting of such releases to the Illinois Emergency Management Agency ("Illinois EMA"), Defendant shall also report any releases exceeding 500,000 cubic feet directly to the Illinois DNR, Illinois EPA and Illinois DPH ("the Agencies") via email within 48 hours of initially learning of such a release. Such reporting shall include the same information as provided to the Illinois EMA, and Defendant shall respond to any questions or requests for additional information from any of the Agencies within 21 days. Reports shall be submitted pursuant to Section VI of this First Amended Order.

#### **VIII. RIGHT OF ENTRY AND SITE ACCESS**

57. In addition to any other authority, Defendant, its respective employees and representatives, grant to the Illinois DNR and the Illinois EPA, their employees, agents and representatives, and the Attorney General, and his employees, agents and representatives the right of entry onto all portions of the Facility to which Defendant has a right of access at all reasonable times for purposes of conducting inspections and evaluating compliance status. In conducting such inspections, Illinois DNR and Illinois EPA, their employees, agents and representatives, and the Attorney General, his employees, agents and representatives, may take photographs, samples and collect information as they deem necessary. Illinois DNR and

Illinois EPA, their employees, agents and representatives, and the Attorney General, his employees, agents and representatives, will comply with all safety rules and requirements applicable to the site location and will be escorted by employees of Defendant when conducting inspections within the fence lines of the Facility.

58. Where any action under this First Amended Order is to be performed in areas owned by or in possession of someone other than Defendant, Defendant shall use reasonable efforts to obtain the necessary permission from the third-party landowner to undertake such actions. Such reasonable efforts shall include, at a minimum, attempts to contact the third-party landowner by telephone and by letter (if time permits). If Defendant is unable to obtain the necessary access after reasonable efforts as just described, it shall notify the Illinois DNR and/or Illinois EPA of such refusal by the third party and the Illinois DNR and/or Illinois EPA will determine, in its/their discretion, whether it will take affirmative actions to assist Defendant in obtaining access to the properties in question. If Defendant is unable to gain access to third party property after following the requirements of this Paragraph 58, then it shall not be considered in violation of this First Amended Order with respect to such action.

#### **IX. MODIFICATION OF SCHEDULES**

59. The Parties to the First Amended Order may, by mutual consent, extend any compliance dates under this First Amended Order without leave of Court. Any such agreed modification shall be in writing, signed by authorized representatives of each party and incorporated into this First Amended Order by reference.

#### **X. STIPULATED PENALTIES**

60. Defendant shall self-report any failures to comply with any requirements of this First Amended Order within seven (7) days of becoming aware of such failures to comply. If the Defendant fails to comply with any of the requirements of this First Amended Order without

an agreed modification pursuant to Paragraph 59, and Plaintiff issues a written notice requesting payment of stipulated penalties, the Defendant shall pay to Plaintiff the following stipulated penalties for each violation, from the date the violation occurred until such time as compliance is achieved:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1 <sup>st</sup> to 30 <sup>th</sup> Calendar Days	\$400.00/day per violation
31 <sup>st</sup> to 60 <sup>th</sup> Calendar Day	\$500.00/day per violation
After 60 <sup>th</sup> Calendar Day	\$1,000.00/day per violation

61. If written notice of any violation of this First Amended Order is given, it shall be served upon Defendant via certified or overnight U.S. Mail, to the persons identified in Section VI (Notices) of this First Amended Order. However, the failure of Plaintiff to give Defendant notice of the violation(s) does not in any way waive Plaintiff's right to obtain stipulated penalties for the violation(s) in issue.

62. All penalties owed shall be payable within thirty (30) calendar days after Defendant becomes aware of the occurrence of the violation(s). However, payment shall not be due until thirty (30) calendar days after Plaintiff notifies Defendant as provided in Paragraphs 60 and 61. For violation(s) of Section III and/or Section IV of this First Amended Order, payment shall be made by certified check payable to the Illinois DNR for deposit into the Underground Resources Conservation Enforcement Fund ("URCE Fund") and delivered to:

Department of Natural Resources  
Office of Oil and Gas Resource Management  
One Natural Resources Way  
Springfield, Illinois 62702-1271

For violation(s) of Section V of this First Amended Order, payment shall be made by certified check payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and delivered to:



Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The case name and number shall appear on the face of the check. A copy of the certified check and any transmittal letter shall be sent to:

Brian Navarrete  
Natalie Long  
Assistant Attorneys General  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

63. Stipulated penalties shall be in addition to, and not a substitute for, any other remedy or sanction available to Plaintiff.

#### XI. DISPUTE RESOLUTION

64. The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this First Amended Order, informally and in good faith. If, however, a dispute arises concerning this First Amended Order that the parties are unable to resolve informally, either party may, by written motion, request that an evidentiary hearing be held before the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois, to resolve the dispute between the parties. At the evidentiary hearing, Defendant shall bear the burden of proof by preponderance of the evidence that it did not violate this First Amended Order.

#### XII. FORCE MAJEURE

65. For the purpose of this First Amended Order, *force majeure* is an event arising beyond the reasonable control of Defendant which prevents the timely performance of any of the requirements of this First Amended Order. For purposes of this First Amended Order, *force*

*majeure* shall include, but is not limited to, events such as unusual or extreme weather, floods, fires, tornadoes, other natural disasters and labor disputes or contractor and equipment unavailability beyond the reasonable control of Defendant.

66. When, in the opinion of Defendant, circumstances have occurred that cause or may cause a delay in the performance of any of the requirements of this First Amended Order, Defendant shall notify the Attorney General's Office, the Illinois DNR, and the Illinois EPA in writing as soon as practicable, but oral notice shall be given to the Attorney General's Office, the Illinois DNR, and the Illinois EPA within 48 hours of the occurrence, and written notice shall be given to the Attorney General's Office, the Illinois DNR, and the Illinois EPA no later than ten (10) calendar days after the claimed occurrence, through the persons identified in Section VI, above. Defendant shall provide a detailed written description of the precise cause or causes of the claimed occurrence which resulted or will result in the delay, the nature of the delay and its expected duration, the measures taken or to be taken to prevent or mitigate the delay and the timetable under which such measures will be taken. Defendant shall adopt all reasonable measures to avoid or minimize such delay. Failure to notify the Attorney General's office, the Illinois DNR, and the Illinois EPA of the *force majeure* event shall render this *force majeure* provision voidable by Plaintiff as to the specific event for which Defendant failed to comply with the notice requirements. If voided, this section shall be of no effect to the particular event involved.

67. If the parties agree that the delay has been or will be caused by circumstances beyond the control of the Defendant, the time for performance may be extended for a period equal to the length of the delay as determined by the parties.

68. In the event that the parties cannot agree that a *force majeure* event has occurred or the extent thereof, the dispute shall be resolved in accordance with Section XI of this First Amended Order. Provided however, that the invocation of the Dispute Resolution provisions of Section XI of this First Amended Order is not in and of itself a *force majeure* event. Defendant shall have the burden of proving *force majeure* by a preponderance of the evidence as a defense to compliance with this First Amended Order.

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

### XIII. RESERVATIONS OF RIGHTS

70. Nothing contained herein shall be deemed a finding of fact or adjudication by this Court of any of the facts or claims contained in the Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter.

### XIV. STATUS CONFERENCE WITH THE COURT

71. This matter is set for status on TBD, 2019 at KOR without further notice.

### XV. SIGNATURE

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

WHEREFORE the parties, by their representatives, enter into this First Amended Order and submit it to the Court that it may be approved and entered.

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

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

By: Andrew Armstrong  
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau South  
Assistant Attorney General

THE PEOPLES GAS LIGHT AND COKE  
COMPANY

By: Charles Matthews  
Title:

ENTERED:

R. Lee B. Paul  
JUDGE

9/13/19  
DATE