

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, by KWAME )	)	
RAOUL, Attorney General of the State of Illinois, )	)	
	)	
Complainant, )	)	
	)	
v. )	)	PCB No. 20-
	)	(Enforcement – Land)
CERRO FLOW PRODUCTS, LLC, )	)	
a Delaware Limited Liability Company, )	)	
	)	
Respondent. )	)	

**NOTICE OF FILING**

TO: See attached service list

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, Stipulation and Proposal for Settlement, and Motion for Relief From Hearing Requirement, copies of which is attached and hereby served upon you. You may be required to answer the charges of the Complaint at a hearing before the Board. at a date set by the Board.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

Respectfully submitted,

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

By: s/Andrew Armstrong  
Andrew Armstrong, #6282447  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62701  
aarmstrong@atg.state.il.us  
ebs@atg.state.il.us

Date: March 20, 2020

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

Service List

For the Respondent

Cerro Flow Products, LLC c/o  
Illinois Corporation Service Co.  
801 Adlai Stevenson Drive  
Springfield, Illinois 62704

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by KWAME RAOUL, Attorney General	)	
of the State of Illinois	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 20 -
	)	(Enforcement – Land)
	)	
CERRO FLOW PRODUCTS, LLC,	)	
a Delaware Limited Liability Company,	)	
	)	
Respondent.	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondent, CERRO FLOW PRODUCTS, LLC, as follows:

**COUNT 1**  
**FAILURE TO MAINTAIN PERMIT FOR**  
**HAZARDOUS WASTE MANAGEMENT FACILITY**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2016).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2016), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board.

3. The Illinois Pollution Control Board ("Board") is an independent board created by the Illinois General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2016), and charged, *inter alia*, with the duty of promulgating standards and regulations under the Act.

4. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2016), after providing Respondent, Cerro Flow Products, LLC, a Limited Liability Company authorized to do business in the State of Illinois, with notice and the opportunity for a meeting with the Illinois EPA.

5. Respondent, Cerro Flow Products, LLC, ("Cerro" or "Respondent") is an active Delaware Limited Liability Company authorized to do business in the State of Illinois and a copper tubing manufacturing facility located at 3000 Mississippi Avenue, Sauget, St. Clair County, Illinois (the "facility").

6. Respondent is a manufacturer of copper tubing for plumbing, HVAC, refrigeration, and industrial products. Billets are produced at Respondent's casting plant in Mexico, Missouri, and are then sent to the Sauget, Illinois manufacturing plant for processing.

7. Respondent generates quantities of waste solvent at the facility.

8. The spent solvent generated at the facility is a hazardous waste containing isopropyl alcohol and methyl ethyl ketone-F005 (spent non-halogenated solvents), D001 (ignitability), D008 (Lead), D035 (toxicity of MEK), and D040 (toxicity of TCE). The spent solvent is generated from the cleaning of the exterior surface of the copper tubing. The tubing is rinsed with the solvent. When the solvent becomes unusable, it is drummed and replaced with fresh solvent.

9. Respondent places the drums of spent solvent in a waste accumulation area at the facility referred to as the Materials Reclamation Facility.

10. On April 19, 2018, the Illinois EPA conducted a routine RCRA Compliance Evaluation Inspection of the facility.

11. Section 21(f)(1)–(2) of the Act, 415 ILCS 5/21(f)(1)–(2) (2016), provides as follows:

No person shall:

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

(1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

(2) in violation of any regulations or standards adopted by the Board under this Act

\* \* \*

12. Section 3.315 of the Act, 415 ILCS 5/3.315 (2016) provides as follows:

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

13. Respondent is a “person” as defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2016).

14. Section 3.460 of the Act, 415 ILCS 5/3.460 (2016), provides as follows:

“Site” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder

15. The facility is a "site" as defined in Section 3.460 of the Act, 415 ILCS 5/3.460 (2016), subject to the regulation and control of the Act and regulations thereunder.

16. Section 3.480 of the Act, 415 ILCS 5/3.480 (2016), provides as follows:

"Storage" means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.

17. Respondent conducted "storage" of spent solvent at the facility, as defined in Section 3.480 of the Act, 415 ILCS 5/3.480 (2016).

18. Section 3.220 of the Act, 415 ILCS 5/3.220 (2016), provides the following definition:

"Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations.

19. Section 3.370 of the Act, 415 ILCS 5/3.370 (2016), provides the following definition:

"RCRA Permit" means a permit issued by the Agency pursuant to authorization received by the Agency from the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act of 1976, (P.L. 94-580) (RCRA) and which meets the requirements of Section 3005 of RCRA and of this Act.

20. Sections 703.121(a)–(b) of the Board Regulations, 35 Ill. Adm. Code 703.121(a)–

(b), provide:

- (a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:
  - (1) Without a RCRA permit for the HWM (hazardous waste management) facility; or
  - (2) In violation of any condition imposed by a RCRA permit.
- (b) An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit. An owner or operator of a surface impoundment, landfill, land treatment unit or a waste pile unit that received wastes after July 26, 1982, or that certified closure (according to 35 Ill. Adm. Code 725.215) after January 26, 1983, must have a post-closure care permit, unless it demonstrates closure by removal or decontamination, as provided under Sections 703.159 and 703.160, or obtains enforceable documents containing alternative requirements, as provided under Section 703.161. If a post-closure care permit is required, the permit must address applicable 35 Ill. Adm. Code 724 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements.

21. Section 702.110 of the Board Regulations, 35 Ill. Adm. Code 720.110, provides,

in pertinent part, the following definitions:

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency, or assigns.

"Hazardous waste" (RCRA) means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.

"Generator" (RCRA) means any person, by site location, whose act or process produces hazardous waste.

"Storage" (RCRA) means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"RCRA permit" (RCRA) means a permit required pursuant to Section 21(f) of the Act [415 ILCS 5/21(f)].

"Hazardous waste management facility" or "HWM facility" (RCRA) means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the RCRA... program.

"Permit" means an authorization, license, or equivalent control document issued to implement the requirements of this Part and 35 Ill. Adm. Code 703, 704, and 705. "Permit" includes RCRA permit by rule (35 Ill. Adm. Code 703.141), ...

"Small quantity generator" or "SQG" means a generator that generates the following amounts of material in a calendar month:

- Greater than 100 kg (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste;
- Less than or equal to 1 kg (2.2 lbs) of acute hazardous waste listed in 35 Ill Adm. Code 721.131 or 721.133(e);
- and
- Less than or equal to 100 kg (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 35 Ill Adm. Code 721.131 or 721.133(e).

22. Section 721.121 of the Board Regulations, 35 Ill. Adm. Code 721.121, provides in pertinent part:

- (a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:
  - (1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume,

and has a flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM D 93-85 (Standard Test Methods for Flash Point by Pensky-Martens Closed Tester), or a Setaflash Closed Cup Tester, using the test method specified in ASTM D 3828-87, (Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester), each incorporated by reference in 35 Ill. Adm. Code 720.111(a).

- (2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.
- (3) It is a flammable gas, as defined in federal 49 CFR 173.115 (Class 2, Divisions 2.1, 2.2, and 2.3 - Definitions), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and as determined by the test methods described in that regulation or equivalent test methods approved by the Board (35 Ill. Adm. Code 720.120).

\* \* \*

- (4) It is an oxidizer, as defined in federal 49 CFR 173.127 (Class 5, Division 5.1 - Definition and Assignment of Packaging Groups), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

\* \* \*

- (b) A solid waste that exhibits the characteristic of ignitability has the USEPA hazardous waste number of D001.

23. Section 721.124 of the Board Regulations, 35 Ill. Adm. Code 721.124, provides in

pertinent part:

- (a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using Method 1311 (Toxicity Characteristic Leaching Procedure (TCLP)) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA publication number

EPA 530/SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111(a), the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) of this Section at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this Section.

\* \* \*

- (b) A solid waste that exhibits the characteristic of toxicity has the USEPA hazardous waste number specified in the following table that corresponds to the toxic contaminant causing it to be hazardous.

MAXIMUM CONCENTRATION OF CONTAMINANTS FOR THE TOXICITY CHARACTERISTIC

USEPA Hazardous Waste No.	Contaminant	CAS Number	Note Regulatory Level (mg/l)
* * *	* * *	* * *	* * *
D008	Lead	7439-92-1	5.0
* * *	* * *	* * *	* * *
D035	Methyl ethyl ketone	78-93-3	200.0
* * *	* * *	* * *	* * *
D040	Trichloroethylene	79-01-6	0.5
* * *	* * *	* * *	* * *

24. Section 721.131 of the Board Regulations, 35 Ill. Adm. Code 721.131, provides in pertinent part:

- a) The following solid wastes are listed hazardous wastes from non-specific sources, unless they are excluded under 35 Ill. Adm. Code 720.120 and 720.122 and listed in Appendix I.

USEPA	Industry Hazardous Waste	Hazard
-------	--------------------------	--------

Hazardous  
Waste No.

Code

\* \* \*

\* \* \*

\* \* \*

F005 The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures and blends, containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

(I, T)

\* \* \*

\* \* \*

\* \* \*

25. The spent solvent generated at the facility is "hazardous waste" as that term is defined by Section 3.220 of the Act, 415 ILCS 5/3.220 (2016), and its characteristics identified by Sections 721.121 and 721.124 of the Board Regulations, 35 Ill. Adm. Code 721.121 and 721.124.

26. As a result of Respondent's operations at the Facility, Respondent was and is a "generator" of "hazardous waste," as those terms are defined in Section 702.110 of the Board Regulations, 35 Ill. Adm. Code 702.110.

27. As a result of Respondent's operations at the Facility, Respondent was and is a "person" conducting a "hazardous waste-storage" operation without a "RCRA permit", as those terms are used in Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2016), and as defined in Section 702.110 of the Board Regulations, 35 Ill. Adm. Code 702.110.

28. As a result of Respondent's operations at the Facility, Respondent is the "owner or operator" of a "HWM" unit at the facility, as those terms are defined in Section 702.110 of the Board Regulations, 35 Ill. Adm. Code 702.110.

29. Section 722.113 of the Board Regulations, 35 Ill. Adm. Code 722.113 provides:

A generator of waste must determine its generator category. A generator's category is based on the amount of hazardous waste generated each calendar month and may change from calendar month to calendar month.

30. At the time of the April 19, 2018 inspection, Respondent did not have a RCRA permit for the facility.

31. In 2018, Respondent submitted an annual report to Illinois EPA stating that it had generated 770 pounds of spent solvent during 2017, thereby qualifying Respondent as a Small Quantity Generator of hazardous waste pursuant to the Act and Board Regulations.

32. At time of the April 19, 2018 inspection, Section 722.116 of the Board Regulations, 35 Ill. Adm. Code 722.116 provided as follows:

An SQG may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of 35 Ill. Adm. Code 702, 703, 705, and 724 through 727, or the notification requirements of section 3010 of RCRA (42 USC 6930), provided that all of the following conditions for exemption listed in this Section are met:

(c) Transporting Waste More Than 200 Miles. An SQG that must transport its waste or offer its waste for transportation over a distance of 200 miles or more for off-site treatment, storage, or disposal may accumulate hazardous waste on site for 270 days or less without having a permit or interim status, provided that the SQG complies with the conditions of subsection (b).

33. At the time of the April 19, 2018 inspection, Respondent's last shipment of spent solvent had been on March 1, 2017, more than 270 days prior to the April 19, 2018 inspection.

34. At the time of the April 19, 2018 inspection, Respondent shipped its spent solvent to a Safety-Kleen Systems facility in Westfield, Kentucky, greater than 200 miles in distance from the facility.

35. By exceeding the amount of time an SQG may accumulate hazardous waste on site, Respondent failed to qualify for the exemption for SQGs in Section 725.116 of the Board Regulations, 35 Ill. Adm. Code 725.116.

36. By conducted a hazardous-waste storage operation at the facility with a RCRA permit, Respondent violated Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2016), and Sections 703.121(a)–(b) of the Board Regulations, 35 Ill. Adm. Code 703.121(a)–(b).

37. By violating Sections 703.121(a)–(b) of the Board Regulations, 35 Ill. Adm. Code 703.121(a)–(b), Respondent conducted a hazardous waste-storage in violation of Board Regulations, and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2016).

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CERRO FLOW PRODUCTS, LLC:

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

B. Finding that Respondent has violated Section 21(f)(1)-(2) of the Act, 415 ILCS 5/21(f)(1)-(2) (2016), and Section 703.121 of the Board Regulations;

C. Ordering Respondent to cease and desist from any future violations of the Act and associated Regulations;

D. Assessing against Respondent a civil penalty not to exceed Twenty Five Thousand Dollars (\$25,000.00) for each day of violation, pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3) (2016); and

E. Granting such other relief as the Board may deem appropriate.

**COUNT II**  
**FAILURE TO HAVE WRITTEN CLOSURE PLAN**

1-33. Complainant realleges and incorporates by reference paragraphs 1 through 29, and 31 through 34 of Count I as if fully set forth herein as paragraphs 1 through 33 of this Count II.

34. Section 725.212(a) of the Board's Regulations, 35 Ill. Adm. Code 725.212(a), provides, as follows:

- (a) Written plan. Within six months after the effective date of the rule that first subjects a facility to provisions of this Section, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215, a copy of the most current plan must be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the day of inspection to any officer, employee, or representative of the Agency.

35. At the time of the April 19, 2018, and on dates best known to Respondent, Respondent did not have a written closure plan for the facility.

36. By failing to have a written closure plan for the facility, Respondent violated Section 725.212(a) of the Board's Regulations, 35 Ill. Adm. Code 725.212(a), and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2016).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CERRO FLOW PRODUCTS, LLC:

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

B. Finding that Respondent has violated Section 725.212(a) of the Board Regulations, 35 Ill. Adm. Code 725.212(a), and thereby violated Section 21(f)(2) of the Act, 415 ILCS 21(f)(2) (2016);

C. Ordering Respondent to cease and desist from any future violations of the Act and associated Regulations;

D. Assessing against Respondent a civil penalty not to exceed Twenty Five Thousand Dollars (\$25,000.00) for each day of violation, pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3) (2016); and

E. Granting such other relief as this Board deems appropriate and just.

**COUNT III**  
**FAILURE TO HAVE ADOQUATE FINANCIAL ASSURANCE**

1-33. Complainant realleges and incorporates by reference paragraphs 1 through 29, and 31 through 34 of Count I as if fully set forth herein as paragraphs 1 through 33 of this Count III.

34. Section 725.242(a) of the Board Regulations, 35 Ill. Adm. Code 725.242(a), provides as follows:

- a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.

- 1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 725.212(b)); and
- 2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" in Section 725.241(d).) The owner or operator may use costs for on-site disposal if the owner or operator demonstrates that on-site disposal capacity will exist at all times over the life of the facility.
- 3) The closure cost estimate must not incorporate any salvage value that may be realized by the sale of hazardous wastes, or non-hazardous wastes if permitted by the Agency pursuant to Section 725.213(d), facility structures or equipment, land or other facility assets at the time of partial or final closure.
- 4) The owner or operator must not incorporate a zero cost for hazardous waste, or non-hazardous waste if permitted by the Agency pursuant to Section 725.213(d), that may have economic value.

35. At the time of the April 19, 2018 inspection, and at times better known to Respondent, Respondent did not have a written cost estimate or financial assurance for closure of the facility.

36. By failing to have a written cost estimate or financial assurance for closure of the facility, Respondent violated Section 725.242(a) of the Board's Regulations, 35 Ill. Adm. Code 725.242(a), and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/42(f)(2) (2016).

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that that the Board enter an order against Respondent, CERRO FLOW PRODUCTS, LLC:

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

B. Finding that Respondent has violated Section 725.242(a) of the Board Regulations, 35 Ill. Adm. Code 725.242(a), and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2016);

C. Ordering Respondent to cease and desist from any future violations of the Act and associated Regulations;

D. Assessing against Respondent a civil penalty not to exceed Twenty Five Thousand Dollars (\$25,000.00) for each day of violation, pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3) (2016); and

E. Granting such other relief as this Board may deem appropriate.

**COUNT IV**  
**FAILURE TO CONDUCT WEEKLY INSPECTIONS**

1-33. Complainant realleges and incorporates by reference paragraphs 1 through 29, and 31 through 34 of Count I as if fully set forth herein as paragraphs 1 through 33 of this Count IV.

34. Section 725.274 of the Board Regulations, 35 Ill. Adm. Code 725.274, provides as follows:

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Section 725.171 for remedial action required if deterioration or leaks are detected.

35. As of the April 19, 2018 inspection, and at times best known to Respondent, Respondent failed to conduct weekly inspections of the area of the facility in which containers of hazardous waste were maintained.

36. By failing to conduct weekly inspections of the area of the facility in which containers of hazardous waste were maintained. Respondent Section 725.274 of the Board Regulations, 35 Ill. Adm. Code 725.274, and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/42(f)(2) (2016).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CERRO FLOW PRODUCTS, LLC:

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

B. Finding that Respondent has violated Section 725.274 of the Board Regulations, 35 Ill. Adm. Code 725.274, and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2016).

C. Ordering Respondent to cease and desist from any future violations of the Act and associated Regulations;

D. Assessing against Respondent a civil penalty not to exceed Twenty Five Thousand Dollars (\$25,000.00) for each day of violation, pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3) (2016); and

E. Granting such other relief as this Board may deem appropriate.

**COUNT V**  
**FAILURE TO MAINTAIN AISLE SPACE**

1-33. Complainant realleges and incorporates by reference paragraphs 1 through 29, and 31 through 34 of Count I as if fully set forth herein as paragraphs 1 through 33 of this Count V.

34. Section 725.135 of the Board Regulations, 35 Ill. Adm. Code 725.135, provides as follows:

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

35. As of the April 19, 2018 inspection, and at times better known to Respondent, Respondent failed to provide adequate aisle space to allow the unobstructed movement of personnel, fire protection, and decontamination equipment in the case of an emergency at the facility.

36. By failing to provide adequate aisle space to allow the unobstructed movement of personnel, fire protection, and decontamination equipment, Respondent violated Section 725.135 of the Board Regulations, 35 Ill. Adm. Code 725.135, and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/42(f)(2) (2016).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CERRO FLOW PRODUCTS, LLC:

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

B. Finding that Respondent has violated Section 725.135 of the Board Regulations, 35 Ill. Adm. Code 725.135, and thereby violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2016).

C. Ordering Respondent to cease and desist from any future violations of the Act and associated Regulations;

D. Assessing against Respondent a civil penalty not to exceed Twenty Five Thousand Dollars (\$25,000.00) for each day of violation, pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3) (2016); and

E. Granting such other relief as this Board may deem appropriate.

Respectfully Submitted,

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

MATTHEW J. DUNN, Chief  
Environmental/Asbestos Litigation Division

By:



ANDREW ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel

CHELSEA E. KASTEN, # 6322619  
Assistant Attorney General  
500 South Second Street  
Springfield, IL 62701  
(217) 557-9457  
[ckasten@atg.state.il.us](mailto:ckasten@atg.state.il.us)  
[ebs@atg.state.il.us](mailto:ebs@atg.state.il.us)

Dated: March 20, 2020

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by KWAME RAOUL, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
	)	PCB No.
v.	)	(Enforcement - _____)
	)	
CERRO FLOW PRODUCTS, LLC,	)	
a Delaware Limited Liability Company,	)	
	)	
Respondent.	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and CERRO FLOW PRODUCTS, LLC, ("Respondent"), (collectively "Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1, et seq. (2018), and the Board's regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. Contemporaneously with this Stipulation, a Complaint was filed on behalf of the PEOPLE OF THE STATE OF ILLINOIS by KWAME RAOUL, Attorney General of the State

of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2018).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2018).

3. At all times relevant to the Complaint, Respondent was and is a Delaware Limited Liability Company ("LLC") authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a copper tubing manufacturing facility located at 3000 Mississippi Avenue, Sauget, St. Clair County, Illinois ("Facility").

5. Respondent generates quantities of waste solvent at the Facility.

6. The spent solvent generated at the Facility is a hazardous waste containing isopropyl alcohol and methyl ethyl ketone-F005 (spent non-halogenated solvents), D001 (ignitability), D008 (Lead), D035 (toxicity of MEK), and D040 (toxicity of TCE).

7. Respondent places the drums of spent solvent in a waste accumulation area at the facility referred to as the Materials Reclamation Facility.

8. On April 19, 2018, the Illinois EPA conducted a routine RCRA Compliance Evaluation Inspection of the Facility.

9. At the time of the April 19, 2018 inspection, Respondent was operating as a Small Quantity Generator, and therefore did not have a RCRA permit for the Facility.

10. At the time of the April 19, 2018 inspection, Respondent's last shipment of spent solvent had been on March 1, 2017, more than 270 days prior to the April 19, 2018 inspection. Respondent shipped its spent solvent to a Safety-Kleen Systems facility in Westfield, Kentucky,

greater than 200 miles in distance from the Facility. Accordingly, Respondent had failed to meet all requirements of a Small Quantity Generator.

At the time of the April 19, 2018 inspection, Respondent did not have a written closure plan for the Facility, did not have a written cost estimate or financial assurance for closure of the Facility, did not have records of weekly inspections of the area where the containers of hazardous waste were maintained, and failed to maintain adequate aisle space in hazardous waste storage area.

**B. Allegations of Non-Compliance**

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

Count I: Failure to Maintain Permit for Hazardous Waste Management Facility  
415 ILCS 5/21(f)(1)  
415 ILCS 5/21(f)(2)  
35 Ill. Adm. Code 703.121

Count II: Failure to Have Written Closure Plan  
415 ILCS 5/21(f)(2)  
35 Ill. Adm. Code 725.212(a)

Count III: Failure to Have Adequate Financial Assurance  
415 ILCS 5/21(f)(2)  
35 Ill. Adm. Code 725.242(a)

Count IV: Failure to Conduct Weekly Inspections  
415 ILCS 5/21(f)(2)  
35 Ill. Adm. Code 725.274

Count V: Failure to Maintain Aisle Space  
415 ILCS 5/21(f)(2)  
35 Ill. Adm. Code 725.135

**C. Non-Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does

not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Stipulation and Settlement shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

On June 8, 2018, Respondent shipped the waste identified at the April 19, 2018 Illinois EPA inspection to an off-site disposal location. Closure was approved and technical violations were resolved with Illinois EPA on or about November 14, 2019.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Human health and the environment were threatened by Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was and is suitable for the area in which it is located, so long as it is operated in compliance with the Act and Board regulations.
4. Compliance with the Act and Board regulations is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary

compliance with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. At the time of Illinois EPA's April 19, 2018 inspection, Respondent had not made a waste shipment for 13 months, exceeding the allowed timeframe for the accumulation of hazardous waste (greater than 270 days for waste being shipped over 200 miles) to maintain Small Quantity Generator status. As a result, Respondent accumulated an excess of hazardous waste in violation of the Act, and was regulated as an unpermitted hazardous waste container storage facility. Other violations observed during the inspection included failure to maintain a written closure plan, financial assurance, and weekly container inspection records; and failure to maintain adequate aisle space to allow the unobstructed movement of personnel.

2. Respondent was diligent in attempting to come back into compliance with the Act and Board regulations once the Illinois EPA notified it of its noncompliance.

3. The civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty Thousand Dollars (\$20,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

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

8. A Compliance Commitment Agreement was proposed by Respondent, but rejected by the Illinois EPA.

#### V. TERMS OF SETTLEMENT

##### A. **Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Twenty Thousand Dollars (\$20,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

##### B. **Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment

is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Chelsea K. Neilson  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62706

**D. Future Compliance**

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondent's Facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the

Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$20,000.00 penalty, its commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed contemporaneously with this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

**F. Enforcement of Stipulation**

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

**G. Execution of Stipulation**

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

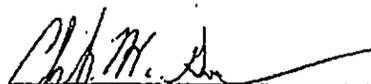
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

KWAME RAOUL  
Attorney General  
State of Illinois

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

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

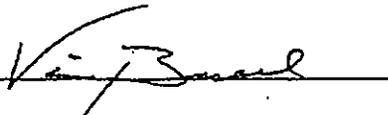
BY:   
ANDREW ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
CHARLES W. GUNNARSON  
Acting Chief Legal Counsel

DATE: 03/20/2020

DATE: 3/19/2020

CERRO FLOW PRODUCTS, LLC

BY: 

DATE: 3/3/2020

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by KWAME RAOUL, Attorney General	)	
of the State of Illinois	)	
	)	
Complainant,	)	
	)	PCB No. 20 -
v.	)	(Enforcement – Land)
	)	
CERRO FLOW PRODUCTS, LLC,	)	
a Delaware Limited Liability Company,	)	
	)	
Respondent.	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant filed on March 20, 2020 the initial Complaint in this matter and a Stipulation and Proposal for Settlement executed between Complainant and the Respondent, Cerro Flow Products, LLC.

2. Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018), provides as follows:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

3. No hearing is scheduled in this matter.

4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018).

Respectfully submitted,

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

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

BY: s/Andrew Armstrong  
ANDREW ARMSTRONG  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62704  
(217) 782-9031  
aarmstrong@atg.state.il.us  
ebs@atg.state.il.us.us

Dated: March 20, 2020

**CERTIFICATE OF SERVICE**

I, Andrew Armstrong, an Assistant Attorney General, certify that on the 20th day of March, 2020, I caused to be served by certified mail the foregoing Notice of Filing, Complaint, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirements on:

Cerro Flow Products, LLC c/o  
Illinois Corporation Service Co.  
801 Adlai Stevenson Drive  
Springfield, Illinois 62704

s/Andrew Armstrong  
Andrew Armstrong, #6282447  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62701  
(217) 782-9031  
aarmstrong@atg.state.il.us  
ebs@atg.state.il.us