

SERVICE LIST

Mr. Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

Jon S. Faletto
Hinshaw & Culbertson LLP
416 Main Street - 6th Floor
Peoria, IL 61602

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 2009 – 013
)	(Enforcement – Air)
)	
BEHR IRON & STEEL, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On September 5, 2008, the Complaint was accepted for hearing by the Pollution Control Board (“Board”) in this matter. On September 5, 2008, a Stipulation and Proposal for Settlement with Respondent Behr Iron & Steel, Inc. was filed with the Board. If accepted, the Stipulation and Proposal for Settlement will dispose of the case.

2. Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2006), allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

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 currently scheduled in the instant case.

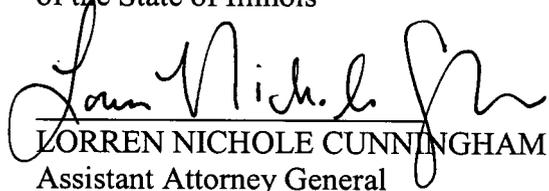
4. Both parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

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

BY:


LORREN NICHOLE CUNNINGHAM
Assistant Attorney General

Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-3532

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On September 5, 2008, a Complaint was filed on behalf of the PEOPLE OF THE STATE OF ILLINOIS by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006).

3. At all times relevant to the Complaint, Respondent BEHR IRON & STEEL, INC. ("Respondent"), was and is an Illinois corporation that is authorized to transact business in the State of Illinois. Respondent owns and operates a metal processing facility located at 208 Quaker Road in Rockford, Winnebago County, Illinois ("Facility").

B. Allegations of Non-Compliance

In the Complaint, Complainant and the Illinois EPA alleged that the Respondent violated the following provisions of the Act and Board Regulations:

Count I: **Failure to Obtain a Construction Permit** in violation of Section 9(b) of the Act and Section 201.142 of the Board Air Pollution Regulations

Count II: **Failure to Obtain an Operating Permit** in violation of Section 9(b) of the Act and Section 201.143 of the Board Air Pollution Regulations

Count III: **Failure to Submit Annual Emission Reports** in violation of Section 9(a) of the Act and Section 201.302 of the Board Air Pollution Regulations

Count IV: **Failure to Submit Site-Specific Test Plans and Conduct Performance Testing Pursuant to the NESHAP** in violation of Section 9.1(d)(1) of the Act and Sections 63.1511(a) & (b) of the NESHAP for secondary aluminum production

Count V: **Failure to Submit Notice of Compliance Status Report Pursuant to the NESHAP** in violation of Section 9.1(d)(1) of the Act and Section 63.1515(b) of the NESHAP for secondary aluminum production

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation solely for the purpose of settling and compromising disputed claims without having to incur the time, effort, and expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including any such admission.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. 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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 this Stipulation state the following:

1. Complainant asserts that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's alleged violations.
2. The Facility provides social and economic benefit.
3. Operation of the Facility is suitable for the area in which it is located.
4. Maintaining compliance with state and federal permitting, reporting and compliance obligations is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations by obtaining an operating permit from Illinois EPA for all regulated emissions sources and air pollution

control equipment and by terminating operation of the aluminum sweat furnace at its Facility.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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; and
7. whether the respondent has agreed to undertake a Asupplemental 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.

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

1. Complainant asserts that Respondent constructed and began operating emissions

sources at its Facility, without a first obtaining construction and operating permits from the Illinois EPA, in approximately 1999. Respondent submitted a permit application to the Illinois EPA for the emission sources in May 2005. The alleged violations were fully resolved on May 29, 2008, when the Illinois EPA issued an operating permit to the Respondent for all regulated emission sources and pollution control equipment at the Facility. Complainant further asserts that Respondent was not in compliance with the NESHAP testing and reporting requirements from the initial compliance deadline in June 2000 until December 2004, when Respondent ceased operations of its aluminum sweat furnace at the Facility.

2. Since February 2005, Respondent has acted diligently in attempting to achieve and maintain compliance with the Act, Board regulations and applicable federal regulations.

3. The Complainant maintains a settlement amount totaling Ten Thousand Dollars (\$10,000.00) reflects the duration of noncompliance and lowest cost alternative for achieving compliance associated with economic benefits derived by Respondent.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. On November 16, 1995, the Board issued an opinion and order requiring that Behr Precious Metals, Inc., pay a civil penalty in the amount of \$10,000.00 in settlement of violations of Sections 9(a)-(b) of the Act, 415 ILCS 5/9(a)-(b), and Sections 201.142 and 201.143 of the Board Regulations, 35 Ill. Adm. Code 201.142 and 201.143, that were the subject of Complainant's complaint. *See PCB 96-80*. On May 6, 1999, Behr Iron & Steel, Inc. sent a notification letter to the

Illinois EPA stating that the name of Behr Precious Metals, Inc. had been changed to Behr Specialty Metals, a Division of Behr Iron & Steel, Inc. However, as verified by William J. Bremner, President of Behr Iron & Steel, Inc., the letter was inaccurate. Behr Precious Metals did not change its name to Behr Specialty Metals, a Division of Behr Iron and Steel, Inc., and Behr Precious Metals, Inc., and Behr Iron & Steel, Inc., have existed at all times as separate and distinct corporate entities with no relationship to one another.

6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Civil Penalty

Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

1. The civil penalty payment 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. Payments shall be sent by first class mail and delivered to:

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

2. The name, case number and the Respondent's federal tax identification number shall

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

L. Nichole Cunningham
Environmental Bureau
Illinois Attorney General's Office
69 West Washington St., Suite 1800
Chicago, Illinois 60602

C. Future Compliance

1. Effective immediately, Respondent shall ensure that no emissions source or air pollution control equipment is constructed or operated at the Facility without first obtaining a construction or operating permit from the Illinois EPA as required by the Act and Board regulations.

2. In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the 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, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

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

D. Release from Liability

In consideration of the Respondent's payment of a Ten Thousand Dollar (\$10,000.00) penalty, its commitment to Cease and Desist as contained in Section V.C.4 above, and completion of all activities required hereunder, 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. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on September 5, 2008. 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 violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), other than the Respondent.

E. Execution of Stipulation

The undersigned representatives for each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

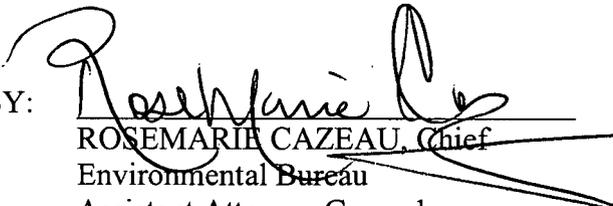
PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 8/6/08

DATE: 8/5/08

BEHR IRON & STEEL, INC.

BY: _____

DATE: _____

Name: _____

Title: _____

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Attorney General
State of Illinois

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Environmental Enforcement/
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FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

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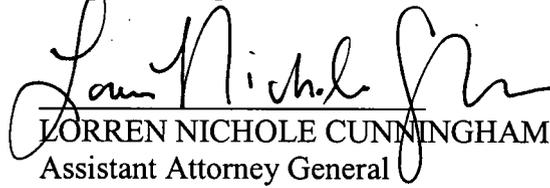
BEHR IRON & STEEL, INC.

BY: *Leland R. Foeking*
Name: *Leland R. Foeking*
Title: *Treasurer*

DATE: *Sept. 3, 2008*

CERTIFICATE OF SERVICE

I, Lorren Nichole Cunningham, Assistant Attorney General, do certify that on the 5th day of September, 2008, I caused to be served upon Respondent Behr Iron & Steel, Inc. the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing by depositing the same at the United States Postal Service facility located at 100 W. Randolph, Chicago, Illinois.



LORREN NICHOLE CUNNINGHAM
Assistant Attorney General

Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-3532