

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

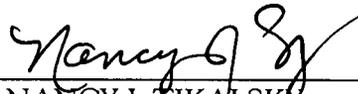
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 2008-051
)	
HIGHLAND BAKING COMPANY, INC., an)	(Enforcement-Air)
Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Joseph R. Podlewski
Dykema
10 S. Wacker Drive
Suite 2300
Chicago, Illinois 60606

PLEASE TAKE NOTICE that on the 29th day of January, 2009, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

BY: 
NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
312-814-8567

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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 March 12, 2008, Complaint number PCB 08-51 was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. On January 29, 2009, a Stipulation and Proposal for Settlement was filed with the Board.
3. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), effective August 1, 1996, 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.
4. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2006), 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).

5. No hearing is currently scheduled in the instant case.
6. The Complainant requests the relief conferred 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, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2)(2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

BY: 
NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
312-814-8567

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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and HIGHLAND BAKING COMPANY, INC. ("Respondent") ("Parties to the Stipulation and Proposal for Settlement"), 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.* (2006), the Illinois EPA's regulations, and the Board's regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On March 12, 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 was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a bakery located at 3665 West Lunt Avenue, Lincolnwood, Cook County, Illinois ("Facility").

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act, the Illinois EPA regulations, and Board regulations at the Facility:

COUNT I: CONSTRUCTING EMISSION SOURCES WITHOUT A PERMIT
Section 9(b) of the Act, 415 ILCS 5/9(b)(2006), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

COUNT II: OPERATING NEW EMISSION SOURCES WITHOUT A PERMIT
Section 9(b) of the Act, 415 ILCS 5/9(b)(2006), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143.

COUNT III: OPERATING A MAJOR STATIONARY SOURCE WITHOUT A CAAPP PERMIT

Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2006).

COUNT IV: FAILURE TO COMPLY WITH NEW SOURCE REVIEW REQUIREMENTS

Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), and Sections 203.201 and 203.203(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201 and 203.203(a).

COUNT V: FAILURE TO COMPLY WITH EMISSION REDUCTION MARKET SYSTEM REQUIREMENTS

Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and Section 205.310(a)(3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a)(3).

COUNT VI: FAILURE TO SUBMIT COMPLETE AND ACCURATE ANNUAL EMISSIONS REPORTS

Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a).

C. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation and Proposal for Settlement, 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. 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, the Illinois EPA regulations 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 (2006).

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. Illinois EPA's information-gathering responsibilities were hindered by the Respondent's alleged violations.
2. There was a social and economic benefit to the Lincolnwood site.
3. Operation of the Facility was suitable for the area in which it occurred.
4. Obtaining the requisite permits prior to construction and operation of air emission sources at the Facility, and compliance with their terms as well as submitting the requisite reports, was both technically practicable and economically reasonable.
5. Respondent ceased operations at the Facility in February 2007.

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 "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.

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

1. The Respondent failed to obtain a permit to construct and operate air emission units prior to beginning construction activities and operating the air emission units at the Facility. Additionally, the source failed to timely submit to the Illinois EPA certain records concerning its air pollution emissions, including annual emission reports, as required. The unpermitted operations began on or around June 1992. The source ceased operations in February 2007.
2. Respondent ceased operations at the Lincolnwood site in February 2007.
3. The Respondent recognized an economic benefit representing avoided air pollution site fees for the years 1992 through 2005. The civil penalty of \$75,000.00 far exceeds any economic benefit derived by the Respondent.

4. The complainant has determined, based upon the specific facts of this matter, that a penalty of Seventy-five Thousand dollars (\$75,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act, the Illinois EPA regulations, 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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Seventy-five Thousand dollars (\$75,000.00) 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

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit as follows:

- a. Eight Thousand, Six Hundred Seventy-five Dollars (\$8,675.00) into the Environmental Permit and Inspection Fund; and
- b. Sixty-six Thousand, Three Hundred Twenty-five Dollars (\$66,325.00) 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, IL 62794-9276

The name, case number and the Respondent's federal tax identification number shall appear on the face of each certified check or money order. Copies of each certified check or money order and any transmittal letter shall be sent to:

Nancy J. Tikalsky
Environmental Bureau
Illinois Attorney General's Office

69 West Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. This Stipulation in no way limits or 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, the Illinois EPA Regulations, and the Board Regulations.

2. The Respondent shall cease and desist from future violations of the Act, the Illinois EPA regulations, and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$75,000.00 penalty, the completion of all activities hereunder, and its commitment to Cease and Desist as contained in Section V.D. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent and any of its officers, directors, agents, employees or successors or assigns from any further liability or penalties for the violations of the Act, the Illinois EPA regulations, 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 on March 12, 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 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 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.

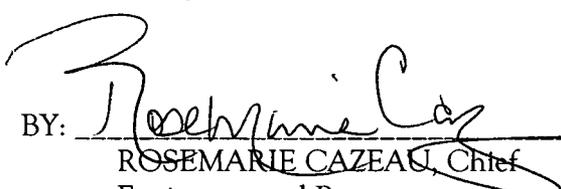
PEOPLE OF THE STATE OF ILLINOIS

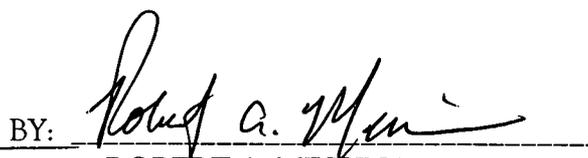
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

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: 1/14/09

DATE: 1/13/09

HIGHLAND BAKING COMPANY, INC.

BY: _____

Name: _____

Title: _____

DATE: _____

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

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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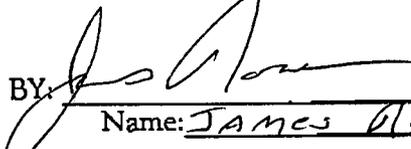
BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

DATE: _____

HIGHLAND BAKING COMPANY, INC.

BY:  _____
Name: JAMES OLESEN
Title: CEO

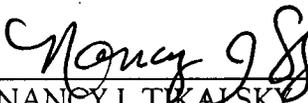
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HIGHLAND BAKING COMPANY, INC., an)	(Enforcement-Air)
Illinois corporation,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on January 29, 2009.

BY: 
NANCY J. TIKALSKY