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CLERK'S OFFICE

MAR 13 2009

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

March 11, 2009

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. MII, Inc.***
PCB No. 09-16

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen J. Janasie", is written over a horizontal line.

Stephen J. Janasie
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SJJ/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
MII, INC.,)
)
Respondents.)

PCB No. 09-16

NOTICE OF FILING

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MAR 13 2009

STATE OF ILLINOIS
Pollution Control Board

To: MEYERS INDUSTRIES, INC.
c/o Paul E. Presney
726 South Second Street
Springfield, IL 62704

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

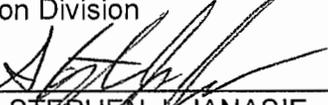
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:


STEPHEN J. JANASIE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on March 11, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: MEYERS INDUSTRIES, INC.
c/o Paul E. Presney
726 South Second Street
Springfield, IL 62704

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therrault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



Stephen J. Janasie
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
MII, INC.,)
)
Respondent.)

PCB No. 09-16

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STATE OF ILLINOIS
Pollution Control Board

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006). In support of this motion, Complainant states as follows:

1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby 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
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

STEPHEN J. JANASIE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 11, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
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v.)
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MII, INC.,)
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Respondent.)

PCB No. 09-16

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STATE OF ILLINOIS
Pollution Control Board

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 MII, INC., ("Respondent") ("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.* (2006), 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 September 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 a Delaware corporation in good standing and authorized to do business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent was the owner of a manufacturing facility ("facility") located at 2200 West 5th Street Road, Lincoln, Logan County, Illinois.

5. On September 7, 2006, Illinois EPA performed an inspection of the facility.

6. On September 7, 2006, the Illinois EPA inspector found an area of white, water-based glue in the bed of a railroad spur just outside the facility's loading dock door. The area of glue measured approximately 10 feet by 8 feet by 1 foot in size.

7. On September 7, 2006, the inspector also found an area of oil contaminated soil and gravel along the railroad spur. The area of contaminated soil measured approximately 6 feet by 4 feet by 1 foot.

8. On September 7, 2006, the inspector also found discarded pallets, cardboard, wood and other refuse in a pile on the east side of the facility grounds; the pile measured approximately 15 feet by 8 feet by 2 feet.

9. On September 7, 2006, the Illinois EPA inspector observed an open drum used for satellite accumulation of the waste solvent in the facility's paint vault area. The drum was not labeled as containing hazardous waste.

10. On September 7, 2006, the inspector also observed several open plastic buckets and open cans containing sludge. None of these containers were labeled as containing hazardous waste.

11. On September 7, 2006, the inspector also observed several unlabeled drums of

waste solvent in a locked, fenced-in area outside on the facility's north side. These containers were not labeled as containing hazardous waste. In the same area, a bag of sludge was also not labeled as containing hazardous waste.

12. In June 2007, in response to a citizen complaint, the Office of the Attorney General contracted with the professional services of Noise Solutions by Greg Zak, Inc. ("Noise Solutions") to conduct sound level measurements of the facility.

13. On June 14, 2007, Noise Solutions performed sound level measurements during daytime hours at the residential property nearest to the facility, with the measurement devices directed at the facility. The measurement devices used, along with their calibration and operation, were in compliance with the Board's required measurement protocol, the American National Standards Institute's requirements, and the International Electro-technical Commission's requirements.

14. Noise Solutions measurements of the facility's sound pressure levels included 70 db at the 63 Hz octave band center frequency ("octave band"), 68 db at the 125 Hz octave band, 66 db at the 250 Hz octave band, 55 db at the 500 Hz octave band, 56 db at the 1 KHz octave band, 56 db at the 2 KHz octave band, 51 db at the 4 KHz octave band, and 47 db at the 8 KHz octave band.

B. Allegations of Non-Compliance

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

COUNT I: Section(s) 21(a) and (p) of the Act, 415 ILCS 5/21(a) and (p) (2006).

Respondent caused or allowed the open dumping of refuse and waste, and caused or allowed open dumping in a manner resulting in litter. Complainant withdraws the violations of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006), and Section 812.101(a) of the Board's Waste Disposal Regulations, 35 Ill.

Adm. Code 812.101(a), alleged in the Complaint.

COUNT II: Section(s) 21(f)(1) and (f)(2), 415 ILCS 5/21(f)(1) and (f)(2), Section(s) 703.121(a) and (b), 722.134(a) and (c) and 725.273(a) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 703.121(a) and (b), 722.134(a) and (c) and 725.273(a).

Respondent stored hazardous wastes without a RCRA permit, in unlabeled containers, and in open containers in the paint vault area. Complainant withdraws the alleged violation of Section 21(e) of the Act, 415 ILCS 5/21(e) 2006 alleged in the Complaint.

COUNT III: Section 24 of the Act, 415 ILCS 5/24, Section(s) 901.102(a) and (b), 901.106(a), and 900.102 of the Board's Noise Regulations.

Respondent's operations produced sound pressure levels in violation of the Board's noise regulations for sound emitted from a Class C Land to a Class A Land during daytime hours at the 250 Hz, 1 KHz, 2 KHz, 4 KHz, and 8 KHz octave bands. Respondent's operations also produced sound pressure levels in violation of the Board's noise regulations for sound emitted from a Class C Land to a Class A Land during nighttime hours at 63 Hz, 125 Hz, 250 Hz, 500 Hz, 1 KHz, 2 KHz, 4 KHz, and 8 KHz octave bands. Respondent's operations also produced sound pressure levels in violation of the Board's noise regulations for prominent discrete tone at the 250 Hz octave band. Respondent's violations of the Board's Noise Regulations mentioned above also represent a violation of the Act and further Board regulations.

C. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

1. Prior to the Illinois EPA's referral of the violations alleged in Counts I and II of the Complaint referenced herein, the Office of the Attorney General investigated the noise pollution violations alleged in Count III. This investigation included the services of a professional consultant on contract to the Office of the Attorney General.

2. The Respondent has closed the facility that is the subject of this enforcement

action. The open dumping and hazardous waste violations were previously remediated to the satisfaction of Illinois EPA. The noise violations have been resolved by the facility closure.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, 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 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 the Stipulation state the following:

1. All of Respondent's open dumping violations, RCRA permit violations, hazardous waste storage violations, and noise violations threatened human health and the environment.
2. Respondent's manufacturing operations did have social and economic benefit.
3. While Respondent's facility was the first in time to the area in which it operated and was in an area zoned for this type of manufacturing operation, it ultimately was not suitable for that area due to the surrounding residential development.
4. The prevention of Respondent's violations was 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)(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 the Stipulation state as follows:

1. Respondent's violations began on or around September 7, 2006, and were individually resolved at various times in the following two years. All violations were individually resolved within a year of their discovery.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once either the Illinois EPA, or the Office of the Attorney General, notified it of its noncompliance.
3. The economic benefit of Respondent's noncompliance was nominal.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,000.00) and the payment of Ten Thousand Dollars (\$10,000.00) for investigation time and costs will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. Respondent entered into a 1993 consent order, including the payment of a five-thousand dollar (\$5,000.00) penalty, stemming from admitted violations of the Act for the improper storage of hazardous waste.
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 Fifteen Thousand Dollars

(\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

2. This payment 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, IL 62794-9276

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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

B. Investigative Costs Payment

1. The Respondent shall pay investigative costs in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

2. This payment shall be made by certified check or money order payable to the Illinois Attorney General's Office for deposit into the State Projects and Court Ordered Distribution Fund for subsequent expenditure as authorized by the Attorney General and shall be sent by first class mail and delivered to:

Josiah E. Small, Accounting Director
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

C. 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.

D. Payment Procedures

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, IL 62794-9276

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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

E. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon all sites within the State of Illinois where Respondent is conducting activities regulated by the Act, Board regulations and/or the asbestos NESHAP, 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.

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.

F. Release from Liability

In consideration of the Respondent's payment of \$25,000.00 in penalties and investigation costs, 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. 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 or the Illinois EPA 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.

G. Enforcement and Modification 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.

H. 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

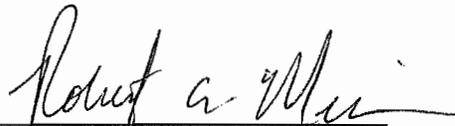
THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 

ROBERT A. MESSINA
Chief Legal Counsel

DATE: 3/02/09

DATE: 2/26/09

MII, INC.

BY: 

Name: PAUL E. PRESHEY
Title: Attorney

DATE: 3/6/09