

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	
MACY'S RETAIL HOLDINGS, INC.,)	
a New York corporation,)	
)	
Respondent.)	

NOTICE OF FILING

To: Monica Y. Ng
Macy's Environmental Services Manager
Macy's Retail Holdings, Inc.
755 Route 18
East Brunswick, NJ 08816

PLEASE TAKE NOTICE that on the 9th day of September, 2014, I filed with the Clerk of the Illinois Pollution Control Board a Complaint, Motion to Request Relief from Hearing Requirement with Respondent, Macy's Retail Holdings, Inc. and Stipulation and Proposal for Settlement, 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: 
ELLEN O'LAUGHLIN
Assistant Attorney General
Environmental Bureau North
69 W. Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-3094

Dated: September 9, 2014

THIS IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, ELLEN O'LAUGHLIN, an Assistant Attorney General, do certify that I caused to be mailed this 9th day of September, 2014, the foregoing Complaint, Motion for Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing with Respondent, Macy's Retail Holdings, Inc., by certified mail with return receipt requested to the person listed on the Notice of Filing on September 9, 2014.



ELLEN O'LAUGHLIN

Assistant Attorney General

Environmental Bureau

69 W. Washington Street, Suite 1800

Chicago, IL 60602

(312) 814-3094

County, Illinois ("Facility").

4. Macy's operates emission units at its Facility. Emission units at the Facility include five boilers. Emissions from the boilers include carbon dioxide, carbon monoxide and nitrogen oxide.

5. Macy's is required to submit Annual Emission Reports and was required to submit its Annual Emission Report ("AER") for calendar year 2012 to the Illinois EPA no later than May 1, 2013.

6. Macy's did not submit its 2012 AER to the Illinois EPA until July 9, 2013, more than two months late.

7. Macy's operation of the Facility is subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board ("Board") and Illinois EPA. The Board regulations for air pollution are found in Title 35, Subtitle B, Chapter I of the Illinois Administrative Code ("Board Air Pollution Regulations") and Illinois EPA rules and regulations for air pollution are found in Title 35, Subtitle B, Chapter II of the Illinois Administrative Code ("Illinois EPA Air Pollution Regulations").

8. Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), provides as follows:

No person shall:

a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides the following definition:

"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.

10. Macy's, a New York corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

11. Section 3.115 of the Act, 415 ILCS 5/3.115 (2012), provides the following definition:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

12. Section 3.165 of the Act, 415 ILCS 5/ 3.165 (2012), provides the following definition:

"CONTAMINANT" is any solid, liquid, gaseous matter, any odor, or any form of energy, from whatever source.

13. Carbon dioxide, carbon monoxide and nitrogen oxide are each a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

14. Because the boilers at the Facility emit or are capable of emitting a contaminant, to the atmosphere, they are capable of causing or contributing to air pollution.

15. Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill Adm. Code 201.302(a), provides as follows:

The owner or operator of any emission unit or air pollution control equipment, unless specifically exempted in this Section, shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions; provided, however, that the Agency may require more frequent reports where necessary to accomplish the purposes of the Act and this Chapter.

16. Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides the following definitions:

"Emission Source": Any equipment or facility of a type capable of emitting

specified air contaminants to the atmosphere.

“Owner or Operator”: Any person who owns, leases, controls or supervises an emission source or air pollution control equipment.

17. Macy’s is an “owner or operator” of an “emission source” as those terms are defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

18. Macy’s is not exempt from the provisions of Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and therefore is obligated to submit annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions.

19. Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides:

Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this Subpart shall be a violation of this Part and 35 Ill. Adm. Code 201.302(a).

20. Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a), provides:

All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

21. All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

22. Macy’s failed to timely submit its AER for calendar year 2012 because it submitted its AER for the calendar year 2012 in July of 2013, more than two months late.

23. By failing to timely submit its AER for the year 2012, Respondent violated Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a),

and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, MACY'S RETAIL HOLDINGS, INC., with respect to Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a);
3. Ordering the Respondent to cease and desist from future violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

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

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

By: 
ELIZABETH WALLACE, Chief
Environmental Bureau North
Assistant Attorney General

Of Counsel:

Ellen F. O'Laughlin
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312-814-3000

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 now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2010).

Respectfully submitted,

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

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

BY:


ELLEN O'LAUGHLIN
Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
Chicago, Illinois 60602
(312) 814-3094

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 (2012), 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 (2012).

3. At all times relevant to the Complaint, Respondent was and is a New York corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a business at 111 North State Street, Chicago, Cook County, Illinois ("Facility").

5. Respondent is required to submit Annual Emission Reports and was required to submit its Annual Emission Report ("AER") for calendar year 2012 to the Illinois EPA no later than May 1, 2013.

6. Respondent did not submit its 2012 AER to the Illinois EPA until July 9, 2013, more than two months late.

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 Submit Annual Emissions Reports in violation of Section 9(a) of the Act, 201.302(a) of the Board Air Pollution Regulations and Section 254.132(a) of the Illinois EPA Air Pollution Regulations.

C. Non-Admission of Violations

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), 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. The Illinois EPA's information gathering responsibilities were hindered by the

Respondent's violations thereby threatening human health and the environment.

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.
4. Timely submitting Annual Emissions Reports 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) (2012), 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. The Respondent failed to timely submit its AER for calendar year 2012 because it submitted its AER for the calendar year 2012 in July of 2013, more than two months late.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and Illinois EPA regulations, once the Illinois EPA notified it of its noncompliance.
3. Respondent gained no economic benefit as a result of its untimely AER submittal.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of five thousand dollars (\$5,000.00) 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 not at issue in this matter

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of five thousand dollars(\$5,000.00) 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:

Ellen F. O'Laughlin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall timely file all future Annual Emission Reports.

2. 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 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.

E. Release from Liability

In consideration of the Respondent's payment of the \$5,000.00 penalty, its commitment to cease and desist as contained in Section V.D.4 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 on August 28, 2014. 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 and Modification of Stipulation

1. 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

LISA MADIGAN
Attorney General
State of Illinois

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

LISA BONNETT, Director
Illinois Environmental Protection Agency

BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

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Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 9/5/14

DATE: 8/28/14

MACY'S RETAIL HOLDINGS, INC.

Maureen Ng

Its: Environmental Services Manager

DATE: 8-27-14