

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	No. 16-61
)	(Enforcement – Air)
AMSTED RAIL COMPANY, INC.,)	
a Delaware corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that on the 31st day of October, 2019, I filed with the Illinois Pollution Control Board the Motion to Request Relief from Hearing Requirement with Respondent, AMSTED RAIL COMPANY, INC. and Stipulation and Proposal for Settlement, copies of which are attached hereto and are hereby served upon you.

Respectfully submitted,

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

By: /s/ Jamie D. Getz
JAMIE D. GETZ
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, Illinois 60602

Date: October 31, 2019

CERTIFICATE OF SERVICE

People of the State of Illinois v. Amsted Rail Company, PCB 16-61

I, Jamie D. Getz, do hereby certify that, today, October 31, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of the Notice of Filing, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement on each of the parties listed below:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
Carol.Webb@illinois.gov

Don Brown
Clerk of the Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Don.Brown@illinois.gov

Michael L. Maher
Elizabeth Harvey
Swanson, Martin & Bell, LLP
330 N. Wabash, 33rd Floor
Chicago, IL 60611
mmaher@smbtrials.com
eharvey@smbtrials.com

/s/ Jamie D. Getz

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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 pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2018), moves that the Illinois Pollution Control Board (“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) (2018). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 9(a) and (b), 9.1(d)(1), 9.12(a), and 39.5(6)(a) and (b) of the Act, 415 ILCS 5/9(a) and (b), 9.1(d)(1), 9.12(a), and 39.5(6)(a) and (b) (2014), and Sections 201.142, 212.309(a), 212.312, 212.316(g)(1) and (2)(c), 212.324(f)(1-3) and (g)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, 212.309(a), 212.312, 212.316(g)(1) and (2)(c), 212.324(f)(1-3) and (g)(1).
2. Complainant is filing the Complaint with the Board simultaneous with this Motion and a Stipulation and Proposal for Settlement.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for

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Settlement filed this same date.

5. 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) (2018).

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) (2018).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General
State of Illinois

BY: /s/ Jamie D. Getz
Jamie D. Getz
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-8630
Primary e-mail address: jgetz@atg.state.il.us
Secondary e-mail address: mcacaccio@atg.state.il.us

DATE: October 31, 2019

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by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
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)	
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 AMSTED RAIL COMPANY, INC. (“Amsted” or “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. On November 16, 2015, 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 (2014), 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 (2018).

3. At all times relevant to the Complaint, Respondent was a Delaware corporation authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a steel manufacturing facility located at 1700 Walnut Street, Granite City, Madison County, Illinois (“Facility”).

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 inspect and maintain process emission units, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), and Section 212.324(f)(1-3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.324(f)(1-3).

Count II: Failure to maintain air pollution emission control records, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), and Section 212.324(g)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.324(g)(1).

Count III: Failure to maintain emission unit records, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), and Section 212.324(g)(1) and 212.316(g)(1) and (2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.324(g)(1) and 212.316(g)(1) and (2)(C).

Count IV: Violation of Fugitive Particulate Matter Operating Program, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), and Sections 212.309(a) and 212.312 of the

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Board Air Pollution Regulations, 35 Ill. Adm. Code 212.309(a) and 212.312.

Count V: Constructing an emission source without a permit, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2014), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

Count VI: Failure to submit construction permit fee, in violation of Section 9.12(a) of the Act, 415 ILCS 5/9.12(a) (2014).

Count VII: Violation of conditions in Construction Permit 06060046, including violations of conditions 1.8, 1.9(d), 1.1.9(d), 1.9(e)(1), and 1.9(e)(ii), in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

Count VIII: Violation of conditions in Construction Permit 08060024, including violations of condition 9(b)(i), in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

Count IX: Violation of conditions in Construction Permit 09060002, including violations of conditions 1.3, 1.7(a), 1.7(b)(ii), and 1.7(c), in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

Count X: Clean Air Act Permit Program (“CAAPP”) permit emissions limitation violations, including violations of conditions 7.2.6(a) and 7.4.6(a), in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014).

Count XI: Violations of conditions in the CAAPP permit, including violations of conditions 5.2.3(a), 5.2.3(c), 5.2.6(a), 5.4.1(a-c), 5.6.2(a), 5.6.2(d), 5.6.3(b), 5.6.5(a), 5.7.3(c), 5.7.4, 7.1.9(d), 7.2.9(d), 7.3.9(c), 7.4.9(c), 7.5.7(a), 9.6.3(b) and 9.8(a), in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014).

Count XII: Operating a major source without a CAAPP permit, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2014).

Count XIII: Violations of National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Iron and Steel Foundries Area Sources requirements, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

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 within

Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

During the period from November, 2008 through July, 2014, Respondent applied for and obtained required permits for the Facility and paid requisite permit application fees. In addition, Respondent revised its monitoring and recordkeeping protocols, performed required hazardous air pollutant (“HAP”) and volatile organic compound (“VOC”) testing, revised its Fugitive Particulate Matter (“PM”) Operating Program and other required operation, maintenance, and repair procedures, and submitted documentation demonstrating its scrap suppliers participate in Illinois EPA’s mercury switch program.

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).

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof.

The Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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.

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

1. Complainant alleges human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility. The Facility is employee-owned, and employs approximately 808 people. Of that total, approximately 621 are hourly union employees, and approximately 187 are salaried employee-owners.
3. Operation of the facility was and is suitable for the area in which it is located.
4. Inspection and maintenance of process emission units; maintenance of records, including air pollution emission control records, emission unit records, and written records required by Respondent's construction permits and CAAPP permit; compliance with its Fugitive PM Operating Program; obtaining a permit prior to construction at the Facility, timely submission of the construction permit fee, and compliance with the terms of construction permits, Respondent's CAAPP Permit, and NESHAP requirements are all 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. Complainant alleges Respondent failed to maintain required records, failed to timely obtain construction permits and violated the terms of those permits once issued, failed to modify its CAAPP permit, and violated emission limitations contained in its CAAPP permit. Illinois EPA first observed violations on August 26 and 27, 2008. Illinois EPA observed further violations on May 30 and 31, 2012.

2. In both 2008 and 2012, the Illinois EPA identified the violations described in paragraph 1, above. Complainant alleges the duration of the violations demonstrates Respondent's lack of diligence in complying with recordkeeping, reporting, and maintenance requirements. Complainant alleges Respondent also failed to apply for necessary construction and operating permits in a timely manner.

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 One Hundred Thousand Dollars (\$100,000.00) 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 One Hundred Thousand Dollars (\$100,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. **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:

Jamie D. Getz
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

C. Future Compliance

1. Respondent shall comply with "Special Method 9 Procedure for MACT Compliance" attached hereto as Exhibit A. This procedure includes recording visible emission observations in accordance with 40 C.F.R. 63.6(h)(5), 40 C.F.R. 63.10898(h), and Table 1, paragraph 2, to subpart ZZZZZ of Part 63. Respondent may continue to use the "limited building openings or vents that appear to have the highest visible emission" as provided by and in compliance with subpart ZZZZZ, Part 63, Table I, paragraph 2(a), and as set forth more fully in Exhibit A. The opacity testing protocol referenced in the attached Exhibit A regarding Method 22 tests shall occur no less than every eighteen (18) months and shall begin no later than April 1, 2020.

2. 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, 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. 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 the \$100,000.00 penalty, its commitment to cease and desist as contained in Section V.C.4 above, completion of all activities required hereunder, 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 November 16, 2015. 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, (2018) or entity other than the Respondent.

E. 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.

F. 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

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: *Elizabeth Wallace*
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: *Dana Vetterhoffer*
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: 10/4/19

DATE: 9-23-19

AMSTED RAIL COMPANY, INC.

BY: _____

Name: _____

Title: _____

DATE: _____

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

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Illinois Environmental Protection Agency

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

BY: _____
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: _____

DATE: _____

AMSTED RAIL COMPANY, INC.

BY: Paul A. Limbach

Name: Paul A. LIMBACH

Title: Exec. VP & C.OO Amsted Rail

DATE: 10/28/19