

ILLINOIS POLLUTION CONTROL BOARD

February 15, 1996

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 95-124
	)	(Enforcement - Air)
LEBANON CHEMICAL CORPORATION,	)	
a foreign corporation,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

This matter comes before the Board upon a two-count complaint filed April 5, 1995, by the Attorney General of the State of Illinois, on behalf of the Illinois Environmental Protection Agency and the People of the State of Illinois, against Lebanon Chemical Corporation (Lebanon), a foreign corporation, located on West Ross Lane, Danville, Vermilion County, Illinois. The complaint alleges that Lebanon has violated Sections 9(a) and 9(b) of the Illinois Environmental Protection Act (Act), (415 ILCS 5/9(a), 5/9(b)) and 35 Ill. Adm. Code 201.141 and 201.143 by causing or allowing the discharge or emission of hydrogen sulfide vapors and odors into the environment and by constructing and operating emission sources without the proper permits.

Pursuant to 415 ILCS 5/31(a)(2), the parties filed a joint motion requesting relief from the Act's hearing requirement on January 16, 1996. The Board published a notice of the waiver on January 18, 1996; no objection to the granting of the waiver was received. Waiver of hearing is hereby granted.

The parties filed a Stipulation and Settlement Agreement on January 16, 1996. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. Lebanon neither admits nor denies the alleged violations and agrees to pay a civil penalty of ten thousand five hundred dollars (\$10,500.00).

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. This settlement agreement in no way affects respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and the Board's pollution control regulations.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1) The Board hereby accepts the Stipulation and Settlement Agreement executed by the People of the State of Illinois and Lebanon Chemical Corporation, a foreign corporation, located on West Ross Lane, Danville, Vermilion County, Illinois. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) Lebanon shall pay the sum of ten thousand five hundred dollars (\$10,500.00) within 30 days of the date of this Order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency  
 Fiscal Services Division  
 2200 Churchill Road  
 P.O. Box 19276  
 Springfield, IL 62794-9276

The certified check or money order shall clearly indicate on its face, Lebanon's Federal Employer Identification Number 23-1296267 and that payment is directed to the Environmental Protection Trust Fund.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

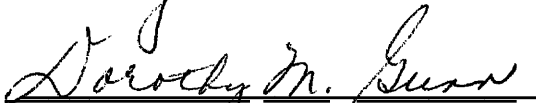
- 3) Lebanon shall cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act(415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15<sup>th</sup> day of February, 1996, by a vote of

7-0.



Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board

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 STATE OF ILLINOIS  
 POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Complainant, )  
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 v. ) PCB 95-124  
 ) (Enforcement)  
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 LEBANON CHEMICAL CORPORATION, )  
 )  
 a foreign corporation, )  
 )  
 )  
 Respondent. )

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by their attorney, JAMES E. RYAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency ("Agency"), and Respondent, LEBANON CHEMICAL CORPORATION, by its attorney, JOHN B. JENKINS of GUNN & HICKMAN, P.C., do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties have decided to forego a determination of whether Respondent is liable for the alleged violations in the interest of avoiding the expense and uncertainty of litigation. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only, and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the

parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Pollution Control Board ("Board") Order accepting same may be used in any future enforcement action as evidence of a past adjudication of violation of the Act for purposes of Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (1994). The agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

**I.**  
**JURISDICTION**

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq (1994).

**II.**  
**AUTHORIZATION**

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal For Settlement, and to legally bind them to it.

**III.**  
**APPLICABILITY**

This Stipulation and Proposal For Settlement shall apply to, and be binding upon, the Complainant and Respondent, as well as, the successors and assignees of each and any officer, director, agent, employee or servant of Respondent. The Respondent shall not raise as a defense, to any enforcement action taken pursuant

to this Settlement, the failure of its agents, servants or employees to take such action as shall be required to comply with the provisions of this Settlement.

IV.  
STATEMENT OF FACTS

1. The Agency is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (1994), and charged, *inter alia*, with the duty of enforcing the Act.

2. Respondent, LEBANON CHEMICAL CORPORATION ("Lebanon"), is a foreign corporation doing business in Illinois. At all times relevant to the Complaint, Lebanon has owned and operated a facility located on West Ross Lane, Danville, Vermilion County, Illinois. At this facility, Lebanon formulates herbicides and operates a lawn and garden fertilizer mixing and blending process.

3. Sections 3.02 and 3.06 of the Act, 415 ILCS 5/3.02 and 3.06 (1994), provide the following definitions:

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

"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.

4. Section 9(a) of the Act, 415 ILCS 5/9(a) (1994), 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.

5. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

Section 201.141 Prohibition of Air Pollution

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

6. On or about March 4, 1991, Lebanon caused and/or allowed the discharge or emission of a contaminant(s) into the environment of the State of Illinois, to wit: hydrogen sulfide-type odors, so as to cause, or tend to cause air pollution in Illinois. As a result of this emission, three nearby residents went to the emergency room and were treated and released.

7. Lebanon investigated the cause of this emission. It was determined that a product called Betasan was being heated for spraying onto a fertilizer for crabgrass control. The Betasan gives off hydrogen sulfide-type odors when heated. On March 4, 1991, the Betasan was heated beyond the usual temperature, resulting in severe odors. Doors at the facility were opened and an exhaust fan was used to dissipate the odors from within the facility to the atmosphere.

8. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Air Contaminant": any solid, liquid or gaseous matter, any odor or any form of energy, that is capable of being released into the atmosphere from an emission source.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations.

9. Section 9(b) of the Act, 415 ILCS 5/9(b) (1994), provides as follows:

No person shall:

- b. Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

10. Section 201.143 of the Board's Air Pollution regulations, 35 Ill. Adm. Code 201.143, provides as follows:

**Section 201.143            Operating Permits for New Sources**

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except by such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to

the information required by Section 201.157) as shall be specified by the construction permit.

11. At its facility, Lebanon operates a Burton double drum mixer and two vertical mixing tanks. This equipment emits, or is capable of emitting, a specified air contaminant, to wit: particulate matter. The equipment was constructed after April 14, 1972, and constitutes new emission sources, as that term is defined in 35 Ill. Adm. Code 201.102, and requires an Agency operating permit.

12. From at least March 6, 1991, until November 5, 1991, Lebanon operated all of the equipment listed in Paragraph 11 at its facility, without the required Agency operating permit.

13. On November 5, 1991, the Agency issued an operating permit for the equipment listed in Paragraph 11, with an expiration date of December 31, 1993. On October 5, 1994, the Agency issued a revised operating permit for smaller source, which included the same equipment. The expiration date for this permit is "180 days after the Agency sends a written request for the renewal of this Permit, unless the Permit is withdrawn or is superseded by a revised Permit".

#### V.

#### NATURE OF RESPONDENT'S OPERATIONS AND CONTROL EQUIPMENT

Lebanon produces lawn and turf products, including impregnated fertilizers for golf courses and lawn and garden centers. The process consists of bulk loading and unloading, the north bagging line, the south bagging line, and the small package bagging line.



The bulk loading process consists of a loading spout that can move vertically and horizontally to load material into a truck or rail car. The bulk unloading process consists of an open receiving pit, where material is stored for use in fertilizer or pesticides. Materials stored in this process are potash, urea and minerals. Pesticides are dumped into a dump station which breaks up any large lumps and sends the pesticide to holding vats. These vats are tanks which have hot water tubes circulating to heat the materials.

The north bagging line consists of three pesticide holding/mixing vats, two Continental mixers with charge hoppers, an Inglett & Corley weigh hopper/bagger, bag sealer and miscellaneous conveyors. The vats, mixers and weigh hopper/bagger are controlled by a Wheel-a-brator baghouse. Bulk material is placed in the mixers and weighed. Pesticide is weighed and sprayed into the mixers to impregnate the material. The impregnated materials are sent to the weigh hopper/bagger to be bagged. The bags are sealed and are stored for shipment.

The south bagging line consists of a cluster hopper, Burton mixer, Inglett & Corley weigh hopper/bagger, bag sealer and miscellaneous conveyors. Bulk material is placed in the Burton mixer to make fertilizer and is then weighed. It is mixed and sent to the weigh hopper/bagger. Bags are then sealed and stored for shipment.

The small package bagging line consists of four bulk storage tanks and an Express scale weigher/packer. The bulk material

(pesticide) is mixed at the north bagging line and sent to the storage tanks. Each tank has a ten ton capacity. The product is taken from the storage tanks and packed into plastic containers. The weigher/packer fills the plastic containers, which are then moved by conveyor to be sealed and packed for storage.

## VI.

### EXPLANATION OF PAST FAILURES TO COMPLY WITH THE ACT

1. On March 4, 1991, at about 8:00 p.m., Lebanon was in the process of making a fertilizer for crabgrass control. The product in use at that time was Betasan, which produces a hydrogen sulfide odor when heated. The Betasan needs to be heated to change it to a liquid state so that it can be sprayed onto the fertilizer mix. On this occasion, the Betasan was heated to a higher temperature than normal, such that excess fumes and odors were generated inside the facility. Two doors of the facility were opened and an exhaust fan was used to dissipate the odors from inside the facility.

2. Six residences in Tilton, Illinois, located within 1/2 mile to the north and east of the facility, were affected. All of these residents complained of heavy smells within their homes. Three people went to the emergency room, where they were treated and released. One family vacated their home for 24 hours.

3. On March 6, 1991, the Agency investigated the emission in response to notification by the Vermilion County Emergency Services and Disaster Agency. The emission occurred at the north

bagging line, where Lebanon was making a fertilizer with crabgrass control. Betasan was heated to achieve the liquid state necessary to impregnate the fertilizer, and normally this gives off an obnoxious odor. Because it is an odorous process, Lebanon only fills its orders once a year and tries to wait until the wind is blowing in a southwesterly direction, away from the city of Tilton. During the time these orders were being filled, the wind shifted, carrying the odors to the northeast and the affected residences. Lebanon acknowledged that two doors at the facility were opened and a wall-mounted exhaust fan was used to dissipate odors from inside the facility. During this inspection, it was also determined that Lebanon lacked Agency permits for the Burton mixer and two new vertical mixing tanks.

4. On March 12, 1991, the Agency declared the March 4, 1991, release significant and mailed notice of such determination to Lebanon. On April 5, 1991, Lebanon responded with its required report on the incident and a copy of its Chemical Safety Contingency Plan.

5. On August 12, 1991, the Agency received a permit application for the Burton mixer, two vertical mix tanks and bagging line. This application was denied. On October 1, 1991, a second permit application was submitted which was granted on November 5, 1991, with an expiration date of December 31, 1993 (See Exhibit A)

6. Lebanon filed a timely renewal permit application and was granted a revised operating permit for smaller source on October 5, 1994. This permit covers all emission sources and air pollution control equipment at its facility. This permit, according to Special Condition 1 "shall expire 180 days after the Agency sends a written request for the renewal of this Permit, unless the Permit is withdrawn or is superseded by a revised Permit" (See Exhibit B).

**VII.**  
**FUTURE PLANS OF COMPLIANCE**

Respondent, Lebanon, shall diligently conform to the Board's permit regulations and emission prohibitions and shall cease and desist from further violations of the Act and the regulations promulgated thereunder.

**VIII.**  
**IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c) (1994), 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 state as follows:

1. Impact to the public resulting from Lebanon's noncompliance was that hydrogen sulfide-type odor emissions on March 4, 1991, resulted in three people going to the emergency room and being treated and released. Additionally, the Agency and the public were not privy to information that is important to the control of air pollution in the State of Illinois. The permit process is the only method available for the State to identify possible air pollution sources and their control.

2. The parties agree that Lebanon's facility is of social and economic benefit, which is undermined by noncompliance with the Act and regulations.

3. The parties agree that Lebanon is located in a suitable area.

4. The People state that it was practicable and economically reasonable for Lebanon to ensure that the Betasan was properly heated on March 4, 1991, and to obtain the appropriate Agency permits.

5. Lebanon did conduct an investigation of the source of the emission on March 4, 1991, and subsequently discontinued use of, a particular product, Betasan. Lebanon also did obtain the necessary operating permits

IX.  
CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(1994), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), or (b)(3) of 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 violator 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 violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

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

1. Lebanon's hydrogen sulfide-type odor emissions lasted less than 6 hours, but did cause three people to seek emergency room treatment. Lebanon operated three pieces of equipment without a permit at its facility from at least March 6, 1991, until November 5, 1991.

2. Lebanon did subsequently comply with air pollution control requirements by obtaining the necessary operating permits,

which were issued by the Agency on November 5, 1991, and October 5, 1994. In addition, Lebanon discontinued use of the product which was the source of the hydrogen sulfide-type odor emission shortly after the incident.

3. Lebanon received an economic benefit by reason of non-compliance in that it deferred the cost and expenses of obtaining an operating permit. Lebanon did reimburse the three persons for their medical expenses as a result of the emission.

4. Ten thousand five hundred dollars (\$10,500.00) is a reasonable penalty based on the above stated violations and will aid in enhancing voluntary compliance with the Act.

5. Lebanon has no history of prior adjudicated violations with the Agency.

**X.**  
**TERMS OF SETTLEMENT**

A. Respondent, Lebanon, neither admits nor denies the violations of Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b) (1994), and 35 Ill. Adm. Code 201.141 and 201.143.

B. Respondent, Lebanon, shall pay a penalty of TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal For Settlement. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, number of the case, and Respondent's Federal Employer Identification Number shall be written upon the certified check or money order. Lebanon's FEIN is 23-1296267.

C. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g)(1994), interest shall accrue on any penalty amount not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a)(1994):

1. Interest on unpaid penalties shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received;
2. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing;
3. All interest on penalties owed Complainant, shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered to:



Illinois Environmental Protection  
Agency  
Fiscal Services Division  
2200 Churchill Road  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and number of the case and Lebanon's Federal Employer Identification Number ("FEIN") shall appear on the face of the check. Lebanon's FEIN is 23-1296267.

D. Respondent, Lebanon, shall cease and desist from further violations of the Act and regulations promulgated thereunder.

E. Respondent, Lebanon, shall cease and desist from further violations of Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b) (1994), and 35 Ill. Adm. Code 201.141 and 201.143.

**XI.**

**COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This settlement agreement in no way affects Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to, the Act, 415 ILCS 5/1 et seq (1994), and the Illinois Pollution Control Board's Air Pollution Control regulations.

**XII.**

**RIGHT OF ENTRY**

In addition to any other authority, the Agency, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have right of entry to Lebanon's facility at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of Lebanon's facility, the Agency, its employees and representatives,

and the Attorney General, his agents and representatives, may take any photographs or samples as they deem necessary in order to conduct their inspection.

**XIII.**  
**RELEASE FROM LIABILITY**

In consideration of Respondent's payment of a TEN THOUSAND FIVE HUNDRED DOLLAR (\$10,500.00) penalty, discontinuation of the use of Betasan, compliance with permitting requirements and commitment to refrain from further violations of the Act, the Agency shall release, waive and discharge Respondent from any further liability or penalties from violations of the Act which were specifically alleged in the Complaint, upon compliance by Complainant of all requirements set forth in Section X. of this Stipulation and Proposal for Settlement. However, nothing in this Settlement Agreement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

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

AGREED:

FOR THE COMPLAINANT:

FOR THE RESPONDENT:

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LEBANON CHEMICAL CORPORATION

By: 

JOSEPH E. SVOBODA  
General Counsel  
Division of Legal Counsel

By: 

ITL Attorney

Dated: 1/5/96

Dated: 12/13/95

JAMES E. RYAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

By: 

WILLIAM D. SEITH, Chief  
Environmental Bureau  
Assistant Attorney General

Dated: 1/11/96

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