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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
ECONOMY PLATING, INC., an Illinois)
corporation,)
)
Respondent.)

PCB 97-69
(Enforcement - Air)

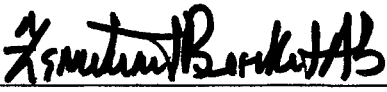
NOTICE OF FILING

TO: Mr. Victor J. Koerner
President
Economy Plating, Inc.
2350 North Elston
Chicago, Illinois 60614

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control
Board, Suite 11-500
James R. Thompson Center
100 W. Randolph Street
Chicago, Illinois 60601

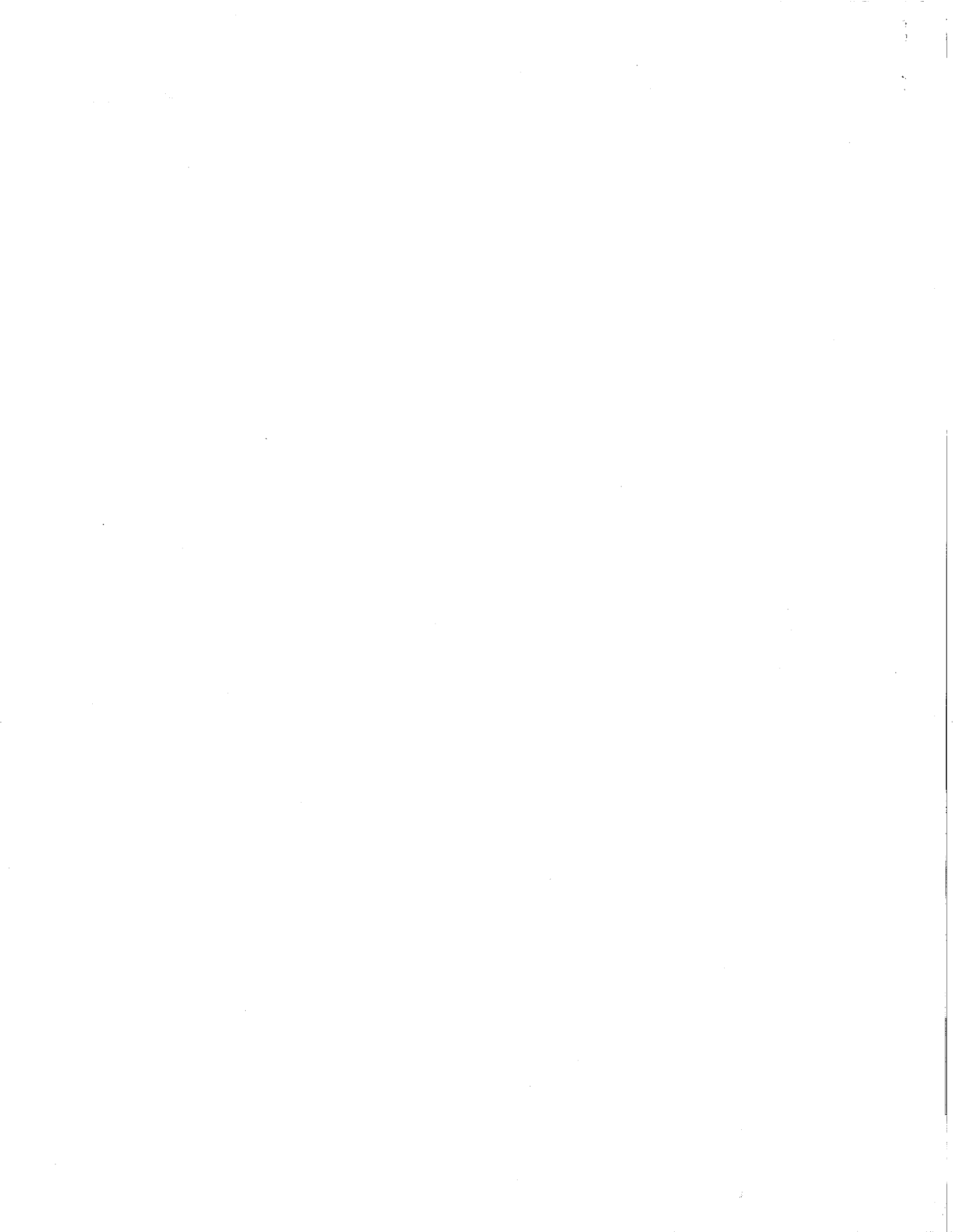
PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board the Complainant's Brief in Support of a Remedy, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

LISA MADIGAN
Attorney General
State of Illinois

BY: 
Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-3816

DATE: December 5, 2003

THIS FILING IS SUBMITTED ON RECYCLED PAPER



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 Illinois corporation,)
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 Respondent.)

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COMPLAINANT'S BRIEF IN SUPPORT OF A REMEDY

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, moves the Pollution Control Board ("Board") for the entry of an order granting Complainant's request for a remedy in the above-referenced enforcement matter.

In support of its motion, Complainant states as follows:

1. On August 21, 2003, the Board entered an order finding "...Economy Plating violated Sections 9(a), (b), and 9.1(d)(1) of the Act and Sections 201.142, 201.143, 201.302, 201.144, 254.102(c), and 254.402 of the Board air pollution regulations as alleged in the People's five-count amended complaint." (See p. 6 of the Board's August 21, 2003, Order).
2. Further the Board ordered the parties to either go to a hearing or present their remedy analysis in briefs using Section 33(c) and 42(h) factors. Complainant does not believe a

hearing on the issue of remedy is necessary, and instead prefers to present its remedy analysis in the form of this brief.

3. Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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 areas 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, Complainant states as follows:

1. Complainant maintains that the impact on the public resulting from Economy Plating's failure to comply with the Act and Board regulations was that the Agency and the public were not privy to information that is important to the monitoring and

control of air pollution sources and their control equipment. In addition, Cook County is a non-attainment area for ozone. Furthermore, hard chrome plating is a carcinogen and therefore could be dangerous to human health, general welfare and physical property of the people.

2. The facility had fewer than five employees and therefore has limited social and economic value.

3. The source is located in an industrial area and therefore is suited to the area.

4. It is technically practicable and economically reasonable for the source to reduce or eliminate its emissions as other sources similarly situated have accomplished same. The hexavalent chromium emissions from this facility are extremely toxic and carcinogenic to human health.

5. As there exists a threat to human health it is imperative that Economy Plating cease and desist operations until such time as its hard chrome plating process can show compliance with 40 CFR 63, Subpart N.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002) provides:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), or (b)(3) or (b)(5) 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 Complainant states as follows:

1. From March 7, 1983, to November 30, 1995, for more than twelve years, Economy Plating operated six (6) hard chrome electroplating tanks, six (6) fume scrubbers and/or centrifugal mist eliminators, one (1) polishing lathe and a gas-fired boiler without the required permit from the Illinois EPA. From sometime in May 1973, the exact date better known to Respondent, until November 30, 1995, Economy Plating installed and commenced operation of the seventh hard chrome electroplating tank with the seventh fume scrubber and the glass bead blasting operation with baghouse without the required permit from the Illinois EPA. Economy Plating has been out of compliance for more than 12 and 20 years respectively. Further Economy Plating is still not in compliance with 40 CFR 63, Subpart N.

2. Economy Plating did not show due diligence in complying with the permitting requirements of the Act and is presently out of compliance with the established procedures for stack testing.

3. Economy Plating received an economic benefit by reason of non-compliance in that it has saved the cost and expense of obtaining an operating permit for substantial periods of time.

4. A civil penalty of Five Thousand (\$5,000.00) dollars will serve to deter further violations and will aid in future voluntary compliance with the Act and Board regulations.

5. Complainant's records do not reflect previously adjudicated violations of the Act or Board regulations by the Respondent.

ANALYSIS ON PENALTY

It is Complainant's belief that a true penalty calculation cannot be completed until Economy Plating achieves compliance with 40 CFR 63, Subpart N as fully detailed in Complainant's Second Amended Complaint. Further, Economy Plating claims that it has been losing in excess of \$26,000.00 each year for each year of operation with the loss increasing. (See Exhibit A). By letter dated June 2, 2003, Respondent has asked to be given a period of one year within which to close the plating operation in accordance with applicable regulation. (See Exhibit B).

A penalty calculation made in accordance with Section 42(h) of the act could amount to a multimillion dollar penalty. However, given Respondent's dwindling business and its inability to come into compliance with 40 CFR 63, Subpart N, Complainant seeks only a nominal penalty of \$5,000.00 (Five Thousand Dollars) and an order requiring Economy Plating, Inc. to cease and desist from conducting plating operations and close the facility by June, 2004.

Respectfully submitted,



ZEMEHERET BEREKET-AB
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CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General in this case, do certify that on this 5th day of December 2003, I caused to be mailed via certified mail the foregoing Complainant's Brief in Support of a Remedy, Notice of Filing, and a Certificate of Service upon the persons listed on the Notice of Filing by placing same in an envelope, postage prepaid, and depositing same with the United State Postal Service at 100 West Randolph Street, Chicago, Illinois.


ZEMEHERET BEREKET-AB

