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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
JAMES E. RYAN, Attorney General)
of the State of Illinois,)
Complainant,)
vs.)
HOMIN LEE d/b/a MEISEL PLATING,)
Respondent.)

PCB No. 97-113
(Enforcement - Land)

NOTICE OF FILING

TO: Joseph A. Strubbe
Vedder, Price, Kaufman & Kammholz
222 North LaSalle Street
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, a Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Flr.
Chicago, IL 60601
312/814-3816

Date: AUGUST 7, 2002

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 7th day of August 2002, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the person listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB

AUG - 7 2002

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
JAMES E. RYAN, Attorney General)
of the State of Illinois,)
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Complainant,)
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vs.)
HOMIN LEE d/b/a MEISEL PLATING,)
)
Respondent.)

PCB No. 97-113
(Enforcement -Land)

AGREED MOTION TO REQUEST RELIEF FROM THE HEARING REQUIREMENT

In support of this Motion, the parties state as follows:

1. Today, the People of the State of Illinois, simultaneously filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2)(2002) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). . . .

3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2002).

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,


PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
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DATE: AUGUST 7, 2002

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
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-v-) PCB 97-113
) (Enforcement)
HOMIN LEE d/b/a MEISEL PLATING,)
)
Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") and Respondent, HOMIN LEE d/b/a MEISEL PLATING ("Homin Lee"), by its attorneys Vedder, Price, Kaufman & Kammholz do hereby submit this Stipulation and Proposal for Settlement ("Stipulation"). The parties agree that the statement of facts contained herein is agreed to only for purposes of settlement. The parties further state that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose 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 any Illinois 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

Illinois Environmental Protection Act ("Act"), for purposes of Section 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2000).

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2000).

II.

AUTHORIZATION

The undersigned representative for each party certifies that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Stipulation and to legally bind the party he/she represents to this Stipulation.

III.

APPLICABILITY

This Stipulation shall apply to, and be binding upon the Complainant and Respondent, and any agent, employee or servant of Respondent, as well as the Respondent's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of its agents, servants or employees to take such action as shall be required to comply with the provisions of this Stipulation.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois, JAMES E. RYAN, on his own motion and at the request of the Illinois EPA, filed a Complaint in this matter pursuant to the terms and provisions of Section 31 of the Act, 415 ILCS 5/31(2000).

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4(2000), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to the Complaint, Respondent, HOMIN LEE d/b/a MEISEL PLATING ("Homin Lee") is the sole proprietor and owner of Meisel Plating. The business is not a corporation and is not registered under an assumed name with the Cook County Clerk nor is it registered with the Illinois Secretary of State.

B. Site Description

1. At all times relevant to the Complaint, Homin Lee operated Meisel Plating, a small metal plating business located at 2037 West Division Street, Chicago, Cook County, Illinois ("Facility").

2. On February 17, 1999, the Facility was shut down pursuant to a Court order in 99 CH 2414 for discharging process

waste into the Greater Chicago Metropolitan Water Reclamation District's sanitary sewer system.

C. Allegations of Non-Compliance

1. The Complaint filed against Homin Lee alleges the following violations of the Act, 415 ILCS 5/1 et. seq. (2000) and the Board Waste Disposal Regulations, 35 Ill. Adm. Code, Subtitle G, and are outlined as follows:

COUNT I FAILURE TO PERFORM HAZARDOUS WASTE
DETERMINATION: Violation of Section 21(f)(2)
of the Act, 415 ILCS 5/21(f)(2)(2000), and 35
Ill. Adm. Code Section 722.111;

COUNT II FAILURE TO OBTAIN A RCRA PERMIT: Violation
of Section 21(f)(1) of the Act, 415 ILCS
5/21(f)(1)(2000) and 35 Ill. Adm. Code
703.121(a)(1);

COUNT III FAILURE TO KEEP RECORDS: Violation of
Section 21(f)(2) of the Act, 415 ILCS
5/21(f)(2)(2000), and 35 Ill. Adm. Code
722.140(a) and (c);

COUNT IV FAILURE TO RETAIN ON-SITE COPIES OF LAND
DISPOSAL RESTRICTION NOTICES: Violation of
Section 21(f)(2) of the Act, 415 ILCS
5/21(f)(2)(2000), and 35 Ill. Adm. Code
728.107(a)(f).

D. Admission of Violations

Homin Lee neither admits nor denies that his acts and/or omissions constituted violations of the Act as alleged in the Complaint.

V.

NATURE OF RESPONDENT'S OPERATIONS

At the Facility, Homin Lee conducted a metal plating operation.

VI.

EXPLANATION OF ALLEGED FAILURES TO COMPLY WITH THE ACT

Complainant maintains that Homin Lee's violations were due to Homin Lee's failure to adhere to the requirements of the Act and the Board Waste Disposal regulations.

VII.

FUTURE PLANS OF COMPLIANCE

Homin Lee shall comply with all requirements of the Act and the Board Regulations regarding the management and disposal of special and hazardous wastes.

VIII.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), provides as follows:

- c. 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:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. 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;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance.

In response to these factors the parties state as follows;

1. Failure to comply with RCRA regulations increases the likelihood that hazardous wastes will cause air, water or soil contamination. As a small quantity generator, Mr. Lee had failed to comply with the RCRA regulations applicable to small quantity generators.

2. The facility provided service to its customers and had economic value.

3. There is no study made to indicate the suitability or unsuitability of Homin Lee's metal plating activity at the present location.

4. Complainant believes that it was technically practicable and economically reasonable for Homin Lee to make a

waste determination of the wastes and to properly close, label, and write on the drums the accumulation start dates of the wastes.

5. Respondent has not come into compliance. On February 17, 1999, the Meisel Plating operation was shut down pursuant to a Court order in 99 CH 2414 for discharging plating wastes into the Water Reclamation District of Greater Chicago's sanitary sewage system.

IX.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2000), provides as follows:

- h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2), (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 the 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. From 1994 until February 1999 when the facility was closed down, Homin Lee did not comply with the applicable RCRA regulations for small quantity generators.
2. Homin Lee did not show any due diligence in complying with the applicable requirements of the Act and the Board RCRA regulations. In 1993, during a pre-enforcement conference with the Illinois EPA, Mr. Lee committed to compliance but never implemented his commitment.
3. Homin Lee has realized an economic benefit from non-compliance with the applicable RCRA regulations by not shipping the wastes off-site within 180 days of generation and by not making a hazardous waste determination of the waste. However, Homin Lee will disgorge any such economic benefit by the proper disposal of the waste and the site remediation required under this Stipulation.
4. A payment of Five Thousand Five Hundred Dollars (\$5,500.00) will serve to deter any violations of the Act and Board regulations adopted thereunder, and will enhance voluntary compliance with the law.
5. Complainant's records do not reflect the existence of previously adjudicated violations of the Act by Homin Lee or Meisel Plating.

X.

TERMS OF SETTLEMENT

A. CIVIL PENALTY

1. Homin Lee d/b/a Meisel Plating shall pay a civil penalty of Five Thousand Five Hundred Dollars (\$5,500.00). This penalty amount shall be paid within thirty (30) days from the date the Board adopts a final opinion and order approving this Stipulation. Payment shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency designating it for deposit into the Illinois Environmental Protection Trust Fund, and sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

A copy of the check shall be sent to:

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601

The name and number of the case and Homin Lee's social security number 379-62-3837 shall appear on the face of the certified check or money order.

2. For purposes of payment and collection, Homin Lee may be reached at the following address:

Homin Lee
8140 North Osceola
Niles, IL 60714

3. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2000), 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) (2000).

a. 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.

b. 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.

c. All interest on penalties owed the Plaintiff, shall be paid in the same manner as described in Section X herein.

B. TECHNICAL COMPLIANCE

1. Within 60 days of the date of entry of this Stipulation, Respondent shall remove all wastes from the site utilizing permitted waste disposal companies. Respondent shall maintain records of all shipments of waste as required by the Act, 415 ILCS 5/1 et seq. (2000), and Pollution Control Board regulations. Copies of all receipts and manifests or the shipments shall be submitted to the Illinois EPA within 90 days of the date of entry of this Stipulation.

2. Within 30 days of the entry of this Stipulation, Respondent shall submit to the Illinois EPA copies of all bills

of lading and receipts documenting the return of the all unused raw materials to its suppliers. Any unused raw materials that are not returned within this 30-day period shall be removed as wastes within the 60-day period contained in paragraph 1, above.

3. Within six (6) months after the entry of this stipulation, the Respondent shall remove the concrete floor in the production and storage area of the Meisel Plating building (approximately 50 feet by 55 feet) and all contaminated soils and environmental media beneath the concrete floor shall be excavated as appropriate, consistent with the requirements in the Tiered Approach to Corrective Action Objectives ("TACO") set forth in Part 742 of the Board Regulations (35 Ill. Adm. Code Part 742), and provide for the implementation of any needed institutional controls and engineered barriers under Part 742.

4. After the Respondent has demonstrated that it has met the requirements set forth in Part 742, Respondent shall backfill the excavation with clean soil or gravel and cover the backfill material with concrete. The concrete shall be installed in conformance with all local building code requirements. All excavation and backfilling activities shall be completed within nine (9) months of the entry of this Stipulation and Proposal for Settlement.

5. Within thirty (30) days of the completion of the excavation of the contaminated soils, the backfilling of the excavated area, and the installation of the concrete over the

backfill material, Respondent shall submit a Project Completion Report to the Illinois EPA for review and approval. The Project Completion Report shall include documentation of the removal and disposal of the contaminated soils, including copies of all manifests, load tickets, and receipts for the disposal of the contaminated soils.

XI.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Homin Lee's responsibility to comply with any federal, state or local laws and regulations, including but not limited to the Act, 415 ILCS 5/1(2000) et seq., and Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

XII.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have a right of entry to Homin Lee d/b/a Meisel Plating's facility at all reasonable times, for the purposes of conducting investigations to determine compliance with the Act, Board regulations, and the terms and conditions of this Stipulation. In conducting any inspection of Homin Lee's facility, the Illinois EPA, 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 investigation.

XIII.

RELEASE FROM LIABILITY

In consideration of Homin Lee's payment of Five Thousand Five Hundred Dollars (\$5,500.00), commitment to comply with the Act and Board regulations promulgated thereunder, performance of all the obligations outlined in Section X.B. of this Stipulation and the completion of all requirements listed in Section X.B. herein, the Complainant releases, waives and discharges Respondent and his employees, agents, successors and assigns from any further liability or penalties from claimed violations of the Act and regulations which were the subject matter of the Complaint herein upon receipt by Complainant of the payment required by this Stipulation and upon completion of all requirements listed in Section X.B herein. However, nothing in this Stipulation shall be construed as a waiver by Complainant of the right to redress heretofore future or undiscovered violations of the Act and/or Board regulations or to obtain penalties with respect thereto.

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

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:

Rose Marie Cazeau *RM*

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

By:

Joseph E. Svobeda

JOSEPH E. SVOBODA
Chief Legal Counsel

Dated:

8/1/02

Dated:

7/26/02

FOR THE RESPONDENT:

HOMIN LEE d/b/a
MEISEL PLATING

BY:

Homin Lee

DATED:

May 31, 2002

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