

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney General )  
of the State of Illinois, )  
Complainant, )  
v. )  
DUPAGE MACHINE PRODUCTS, INC., )  
a Delaware corporation, )  
Respondent. )

RECEIVED  
CLERK'S OFFICE

OCT 25 2004

STATE OF ILLINOIS  
Pollution Control Board  
PCB NO. 04 - 101  
(Enforcement - Air)

NOTICE OF FILING

TO: Rick Saines  
Baker & McKenzie  
One Prudential Plaza  
130 East Randolph Drive  
Chicago, IL 60601

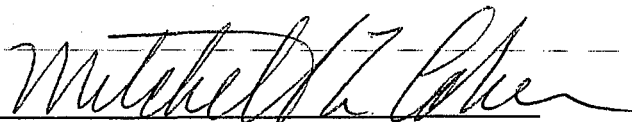
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Bd.  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601

PLEASE TAKE NOTICE that on October 25, 2004, the Office of the Illinois Attorney General filed with the Illinois Pollution Control Board a Motion for Relief from Hearing Requirement and a Stipulation and Proposal for Settlement, a true and correct copy of each is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



MITCHELL L. COHEN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-5282

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Complainant, )  
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 v. )  
 )  
 DUPAGE MACHINE PRODUCTS, INC., a )  
 Delaware corporation, )  
 )  
 Respondent. )

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CLERK'S OFFICE

OCT 25 2004

No. PCB 04 - 101 STATE OF ILLINOIS  
(Enforcement - Air Pollution Control Board)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, 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) (2002), 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) (2002). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violation of the Sections 9(a), 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(a), (b), and 9.1(d) (2002).
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
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 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) (2002).

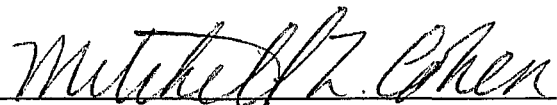
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

  
MITCHELL L. COHEN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-5282

DATE: October 21, 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

OCT 25 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney )  
General of the State of Illinois, )  
 )  
Complainant, )  
 )  
v. )  
 )  
DUPAGE MACHINE PRODUCTS, INC., a )  
Delaware corporation, )  
 )  
Respondent. )

PCB No. 04-101  
(Enforcement - Air)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, DUPAGE MACHINE PRODUCTS, INC. ("DuPage"), an Illinois Corporation, 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. 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 trial were held. 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 any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be

bound by the Stipulation and not to contest its validity in any subsequent proceeding to implement or enforce its terms. Insolvency of the Respondent by filing a petition for bankruptcy shall not be deemed a proceeding to contest the validity of this Stipulation.

I.

JURISDICTION

The Board has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2002).

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 Agreement and to legally bind them to it.

III.

STATEMENT OF FACTS

A. Parties

1. On December 23<sup>rd</sup>, 2003, 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 (2002), 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 (2002).

3. At all times relevant to the Complaint, including June 3, 2002, Respondent, DuPage, was and is a Delaware Corporation.

**B. Business and Site Description**

1. At all times relevant to this Complaint, Respondent DuPage was and is the owner and operator of a plant that manufactures screw products located at 99 International Boulevard, Glendale Heights, DuPage County, Illinois ("facility").

2. During the manufacturing process, cutting oil is applied to the screw products. The oil is rinsed from the various screws in a vapor degreaser.

3. DuPage was issued a Federally Enforceable State Operating Permit ("FESOP") no 97050122 on December 22, 1997. The FESOP was issued based on DuPage's use of a hazardous air pollutant ("HAP") in its vapor degreaser, which is subject to the United States Environmental Protection Agency's National Emission Standards For Hazardous Air Pollutants for Source Categories for Halogenated Solvent Cleaning ("USEPA NESHAP Regulations"). FESOP No. 97050122 expired on December 22, 2002. DuPage filed another FESOP application, and the Illinois EPA granted the new permit

March 31, 2003.

4. On March 28, 2002, the Illinois EPA's Field Operations Section inspected DuPage's facility. During the inspection, the inspector noted certain apparent violations of the USEPA NESHAP Regulations.

5. After another inspection on June 3, 2002, the Illinois EPA issued Violation Notice ("VN") A-2002-00152 to DuPage for failure to maintain records of degreaser solvent usage, failure to submit both annual and semi-annual reports for the degreaser for the calendar years 1993 through 2001, and failure to submit Annual Emissions Reports ("AERs") for the calendar years 1997 through 2001.

**C. Allegations of Non-Compliance**

1. Complainant contends that the Respondent has violated the following provisions of the Act, Board, and USEPA NESHAP Regulations:

Count I: FAILURE TO MAINTAIN RECORDS in violation of Sections 9(b) and 9.1 (d) (2) of the Act, 415 ILCS 5/9(b) and 9.1 (d) (2) (2002), Section 63.467(b) of the USEPA NESHAP Regulations, 40 C.F.R. 63.467(b) (2003), and conditions 6(b) (v) (A) and (B) of FESOP no. 97050122.

Count II: FAILURE TO SUBMIT ANNUAL REPORT in violation of Sections 9(b) and 9.1(d) (2) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2) (2002), Section 63.468(f) of the USEPA NESHAP Regulations, 40 C.F.R. 63.468(f) (2003), and condition 7(b) of FESOP no. 97050122.

Count III: FAILURE TO SUBMIT SEMI-ANNUAL REPORTS in violation of Sections 9(b) and 9.1(d) (2) of the Act,

415 ILCS 5/9(b) and 9.1(d)(2)(2002), Section 63.468(h) of the USEPA NESHAP Regulations, 40 C.F.R. 63.468(h)(2003), and condition 7(c) of FESOP no. 97050122.

Count IV: FAILURE TO TIMELY SUBMIT COMPLETE AND ACCURATE ANNUAL EMISSION REPORTS in violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Sections 201.302(a), 254.132(a), and 254.137(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), 254.132(a), and 254.137(a).

**D. Admission of Violations**

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

**E. Compliance Activities to Date**

1. DuPage is now in compliance. It provided the following documents to the Illinois EPA: MSDS for methylene chloride, Annual Reports for 1997 through 2001, Semi-Annual Reports for 1997 through the first half of 2002, and monthly and annual solvent usage records in pounds or tons.

**IV.**

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

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 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:

1. The Parties state that the impact to the public resulting from Respondent's non-compliance was that, while no harm resulted, harm to human health and the environment was threatened by Respondent's failure to maintain records and failure to submit timely and accurate annual, semi-annual, and emissions reports.

2. The Parties agree that Respondent's business is of social and economic benefit.

3. The Parties agree that the suitability of location is not an issue when Respondent is in compliance.

4. The parties agree that complying with the requirements of the Act and relevant regulations is both technically practicable and economically reasonable.

5. Since the violations alleged in the Complaint,

Respondents have come into compliance.

-v.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2004)<sup>1</sup>, provides as follows:

In determining the appropriate civil penalty to be imposed . . . 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 violator 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; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

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<sup>1</sup>The Complaint was filed in December, 2003; Section 42(h) of the Act was amended effective January 1, 2004. It is not clear whether the amended Section 42(h) factors apply to this case. Regardless, factors 6 and 7 are included in the analysis and are not at issue.

6. whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means and 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.

In response to these factors, the parties state:

1. The Parties agree that the duration of the violation of the USEPA NESHAP Regulations for halogenated solvent cleaning lasted for almost five years, from 1997 through 2001. In addition, Respondent's failed to file timely and accurate AERs for nine years, from 1993 through 2001.

2. The Parties agree that Respondents lacked due diligence with regard to their NESHAP reporting requirements during the time period of the violations and during the Section 31 process.

3. The parties agree that Respondent has earned an economic benefit by failing to comply with the NESHAP reporting requirements, however, an exact amount has not been determined, but this factor was taken into consideration by the Parties in reaching a settlement amount for a civil penalty.

4. The Parties agree that the appropriate civil penalty which will serve to deter future violations of the Act and enhance voluntary compliance by Respondent and others similarly

subject to the Act is \$37,500.00.

5. The Parties agree that Respondents have no prior adjudications for violations of the Act.

6. The Parties agree that Respondents did not self-disclose the non-compliance to the Agency.

7. The Parties agree that Respondents are not undertaking a supplemental environmental project as part of the settlement of this enforcement action.

## VI.

### APPLICABILITY

A. This Stipulation Agreement shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation Agreement the failure of any of its officers, directors, agents, or employees to take such actions as shall be required to comply with the provisions of this Stipulation.

B. 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 of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

C. Severability: It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement shall be severable, and should any provision be declared by a court of a competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

#### VII.

##### COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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, 35 Ill. Adm. Code, Subtitles A through H.

#### VIII.

##### TERMS OF SETTLEMENT

###### A. Penalty

1. a. The Respondent shall pay a civil penalty of Thirty-Seven Thousand Five Hundred dollars (\$37,500.00), and said penalty shall be due within thirty (30) days after the date on which the Board adopts a final order approving this Stipulation. Payment shall be made as follows:

b. Payment shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and 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, IL 62794-9276

c. The name, case number, and the Respondent's Federal Employer Identification Number ("FEIN"), 36 - 2681281, shall appear on the face of the certified checks or money orders. A copy of the certified checks or money orders and the transmittal letter shall be sent to:

Mitchell L. Cohen  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph, Suite 2001  
Chicago, Illinois 60601

3. The Respondent's attorney may be reached at the following address:

Rick Saines  
Baker & McKenzie LLP  
One Prudential Plaza  
130 E. Randolph Dr.  
Suite 3500  
Chicago, Illinois 60601

4. For purposes of payment and collection, Respondent may be reached at the following addresses:

DuPage Machine Product, Inc.  
c/o David R. Knuepfer, President  
99 International Blvd.  
Glendale Heights, Illinois 60139-2092

5. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable

attorney's fees.

**B. Interest on Penalties**

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42 (g) (2002), interest shall accrue on any penalty amount owed by the Respondent 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) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. 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.

4. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Mitchell L. Cohen  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph St., Suite 2001  
Chicago, Illinois 60601

**C. Future Use**

Notwithstanding any other language in this Stipulation

Agreement to the contrary, this Stipulation may be used in any subsequent enforcement action or permit proceeding against the Respondent as evidence of a past adjudication of alleged violation of the Act and the Board Regulations promulgated thereunder, for purposes of Sections 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42 (h) (2002).

**D. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, his agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Consent Order, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives may take photographs, samples, and collect information, as they deem necessary; understanding and taking into consideration those protections afforded Respondent pursuant to Section 7 of the Act, 415 ILCS 5/7 (2002), related to trade secrets, secret manufacturing processes, and confidential data, or information.

**E. Cease and Desist**

The Respondent shall cease and desist from all future violations of the Act and Board Regulations, including, but not limited to those violations alleged and outlined in Section



III.C. of this Stipulation.

**F. Release from Liability**

In consideration of the Respondents' payment of a \$37,500.00 penalty, the Complainant releases, waives and discharges the Respondent from further liability or penalties for any alleged 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 December 23, 2003. 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 resource 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 Agreement.

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 or the

Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), or entity other than the Respondent.

**G. Retention of Jurisdiction**

The Board shall retain jurisdiction of this matter for the purpose of interpreting and enforcing the terms and conditions of the Stipulation.

**H. Enforcement of Stipulation**

1. Upon the entry of this Stipulation, any party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing the terms and conditions of this Stipulation. This Stipulation is a binding and enforceable order of the Board and may be enforced by the Illinois Circuit Court through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce this Stipulation may be made by mail and waives any requirement of service of process.

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

AGREED:

FOR THE COMPLAINANT:

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

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

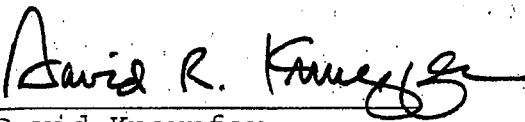
BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
JOSEPH E. SVOBODA  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR THE RESPONDENT:  
DUPAGE MACHINE PRODUCTS, INC. 36-2681281

BY:   
David Kneupfer  
Its President

DATE: September 17, 2004

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

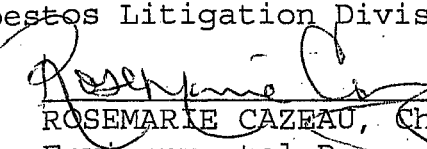
AGREED:

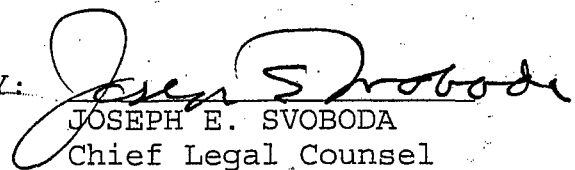
FOR THE COMPLAINANT:

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Attorney General of the  
State of Illinois

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Environmental Enforcement/  
Asbestos Litigation Division

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOSEPH E. SVOBODA  
Chief Legal Counsel

DATE: 9/27/04

DATE: 9-22-04

FOR THE RESPONDENT:  
DUPAGE MACHINE PRODUCTS, INC.

BY: \_\_\_\_\_  
David Kneupfer  
Its President

DATE: \_\_\_\_\_

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 2th day of October, 2004, I caused to be mailed by First Class Mail the foregoing Motion for Relief from Hearing Requirement and a Stipulation and Proposal for Settlement to the parties named on the Notice of Filing, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
MITCHELL L. COHEN

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THIS IS SUBMITTED ON RECYCLED PAPER