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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOV 19 2004

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 V.)
)
 NATIONAL MATERIAL, L.P., an)
 Illinois limited partnership,)
 d/b/a NATIONAL LAMINATION COMPANY,)
 and NM HOLDING, INC., a Nevada)
 corporation,)
)
 Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB 01-02
(Air-Enforcement)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 19th day of November, 2004, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

By: *Paula Becker Wheeler*
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Fl.
Chicago, IL 60601
312/814-1511

DATE: November 19, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Mark Steger
Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603

Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

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**MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On September 5, 2002, a First Amended Complaint was filed with the Pollution Control Board ("Board") in this matter. On November 19, 2004, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) 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). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

3. No hearing is currently scheduled in the instant case.

4. The Complainant requests the relief conferred by Section 31(c) (2) of the Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c) (2) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

By: Paula Becker Wheeler
PAULA BECKER WHEELER
Assistant Attorney General

188 W. Randolph
Chicago, Il 60601
312-814-1511

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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondents, NATIONAL MATERIAL L.P., an Illinois limited partnership, d/b/a NATIONAL LAMINATION COMPANY, and NM HOLDING, INC., a Nevada corporation, do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). 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 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 of this

agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement 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 Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2002).

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.* (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 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 Respondents, and each of them, and on any officer, director, agent, employee or servant of Respondents, as well as Respondents' successors and assigns. The Respondents shall not raise as a defense to any enforcement

action taken pursuant to this settlement the failure of officers, directors, agents, servants, or employees of Respondents to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brought this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, NATIONAL MATERIAL L.P. has been and is an Illinois limited partnership.

4. Respondent, NM HOLDING, INC. ("NM Holding") has been and is the general partner of National Material L.P. NM Holding has been and is qualified to do business in Illinois.

B. Facility Description

Respondents, at all times relevant to the First Amended Complaint in this matter, have owned and operated a manufacturing facility located at 555 Santa Rosa Drive, Des Plaines, Cook County, Illinois, known as National Lamination Company

("facility"). Respondents were in the business of manufacturing laminated parts for electric motors and other electrical equipment. Operations at the facility included stamping and annealing of sheet metal to form laminated parts. The facility operated at its present location since at least April 1972, and ceased operations in March 2004. Its operation of the facility was subject to the Act and the Rules and Regulations promulgated by the Illinois Pollution Control Board ("Board") and the Illinois EPA.

C. Noncompliance

Complainant has alleged the following violations of the Act against the Respondents:

COUNT I: CONSTRUCTING EMISSION SOURCES WITHOUT A PERMIT, violations of 415 ILCS 5/9(b) (2000) and 35 Ill. Adm. Code 201.142;

COUNT II: OPERATING EMISSION SOURCES WITHOUT A PERMIT, violations 415 ILCS 5/9(b) (2000) and 35 Ill. Adm. Code 201.143 and 201.144;

COUNT III: OPERATING A MAJOR STATIONARY SOURCE WITHOUT A CAAPP PERMIT, violations of 415 ILCS 5/39.5(6) (b) (2000) and 35 Ill. Adm. Code 270.301(a);

COUNT IV: FAILURE TO SUBMIT ANNUAL EMISSIONS REPORTS, violations of 415 ILCS 5/9(a) (2000) and 35 Ill. Adm. Code 201.302(a); and

COUNT V: MAJOR MODIFICATION WITHOUT A PERMIT, violations of 415 ILCS 5/9(a) (2000) and 35 Ill. Adm. Code 203.201.

D. Response to allegations

Respondents neither admit nor deny the alleged violations.

V.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

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.

ANALYSIS:

The parties mutually state as follows:

1. *Character and Degree of Injury:*

The impact to the public from the Respondents' noncompliance was that the Illinois EPA and the public were not privy to information that is important to the control of air pollution in Illinois. The permitting process is the only method available for the State to identify possible air pollution sources and

their control.

2. *Social and Economic Benefit:*

The parties agree that Respondents' business was of social and economic value when it was in operation.

3. *Suitability to the Area:*

Operation of Respondents' facility was suitable to the area in which it was located while it was in operation.

4. *Technical Practicability:*

Complying with the requirements of the Act and the Board regulations is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondents have addressed the violations that are the subject of the First Amended Complaint and have subsequently closed the facility.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (eff. 01/01/2004), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (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 respondents 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 respondents because of delay in compliance with requirements, in which case the economic benefit 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 respondents and to otherwise aid in enhancing voluntary compliance with this Act by the respondents 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 respondents;
6. whether the respondents voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and
7. whether the respondents have agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that respondents agree to undertake in settlement of an enforcement action brought under this Act, but which the respondents are not otherwise legally required to perform.

ANALYSIS:

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

1. The violations that are the subject of the First Amended Complaint occurred over approximately a seven year period. The Respondents have operated all of the emission units since at least 1991 through 1998 without the requisite permits.

2. The Respondents were diligent in addressing the violations by submitting an application for a state operating

permit and a CAAPP permit, and eventually ceased operation of the subject equipment to facilitate operating in compliance with the applicable environmental statutes and regulations.

3. Respondents have accrued an economic benefit by avoiding compliance with air emission requirements from at least 1990-1998, the exact amount of which is difficult to determine but the penalty amount of \$50,000 should cover said benefit.

Further, Respondents' failure to obtain the necessary permits prior to constructing and operating emission sources, failure to submit annual emissions reports and having initiated a major modification of an emission source without the necessary permits have all exacerbated this facility's non-compliance. Respondents have avoided paying said permit fees which will be recovered pursuant to this Stipulation.

4. The parties believe that a civil penalty of \$50,000.00 will deter Respondents from committing further violations, and will aid in enhancing voluntary compliance by Respondents and others similarly situated and subject to the Act.

5. The Complainant is not aware of any other adjudicated violations of the Act by Respondents.

6. Self-disclosure pursuant to Section 42(i) of the Act is not an issue in this matter. The parties agree, however, that Complainant was unaware of Respondents' alleged violations until Respondents filed the permit applications referred to in Paragraph

(2) above.

7. No Supplemental Environmental Project is contemplated as part of the Settlement.

VII.

TERMS OF SETTLEMENT

1. The Respondents shall jointly and severally pay a civil penalty of Fifty Thousand Dollars (\$50,000.00) within 30 days of the date the Board issues an Order accepting this Stipulation. Said payment shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund ("EPTF"), and shall be sent by first class mail to:

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

2. Respondents shall also pay avoided permit fees, totaling \$7,750.00, within 30 days after the date on which the Board adopts a final order approving this Stipulation. Said fees are to be paid by certified check or money order, payable to CAAPP 091 Fund, and mailed to the following address:

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

3. Respondents shall write their Federal Employer

Identification Number("FEIN"), 36-3559267, and the case caption and number, on all certified checks or money orders. For issues relating to the payment of the penalty, the Respondents may be reached at the following address:

National Material, L.P. and NM Holding, Inc.
c/o Mark J. Steger
Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603

A copy of the certified check or money order, and all related correspondence, shall be sent by first class mail to:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, Illinois 60601

4. If the Respondents fail to make any payment specified within Section VII of this Stipulation Order on or before the date upon which the payment is due, the Respondents will be in default and the remaining unpaid balance of the penalty or fees, plus any accrued interest, shall be due and owing immediately.

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

6. Respondents also agree to retire all emissions credits associated with this facility as a result of its closing/shutting down, and shall issue such request to the Agency

within 30 days of the Board issuing an Order accepting this Stipulation.

VIII.

INTEREST ON PENALTIES

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any penalty amount owed by the Respondents 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 case caption and number, and the Respondents' Federal Employer Identification Numbers 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:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

IX.
RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondents' facility which is the subject of this Stipulation, 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, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

X.
CEASE AND DESIST

Respondents shall cease and desist from future violations of the Act and Board regulations, including but not limited to, those sections of the Act and Board regulations that were the subject matter of the First Amended Complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

XI.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondents' responsibility to comply with any federal, state or local regulations, including but not limited to the Act and Board regulations.

XII.
RELEASE FROM LIABILITY

In consideration of the Respondents' payments and retirement of offsets as described in paragraph VII above, and the Respondents' commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges the Respondents from any further liability or penalties for violations of the Act and regulations which were the subject matter of the First Amended Complaint herein, upon the payment of all monies owed. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undisclosed violations, or obtain penalties with respect thereto.

(THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK)

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

AGREED:

FOR THE COMPLAINANT:

LISA MADIGAN
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement
Asbestos Litigation Division

By: _____

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____

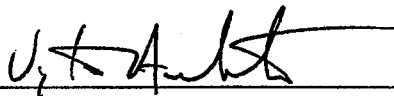
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: _____

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FOR THE RESPONDENTS:

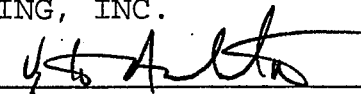
NATIONAL MATERIAL, L.P.

By: 

Title: U.P. / General Counsel

Dated: 10-11-04

NM HOLDING, INC.

By: 

Title: Secretary

Dated: 10-11-04

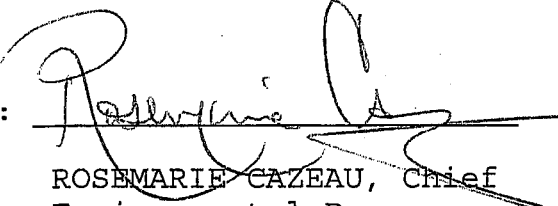
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FOR THE COMPLAINANT:

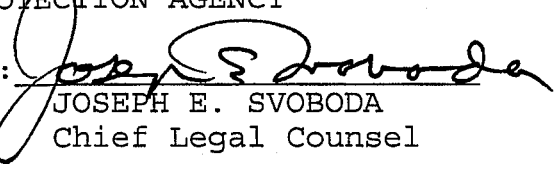
LISA MADIGAN
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement
Asbestos Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 11/18/04

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 11-16-04

FOR THE RESPONDENTS:

NATIONAL MATERIAL, L.P.

By: _____
Title: _____
Dated: _____

NM HOLDING, INC.

By: _____
Title: _____
Dated: _____

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an Assistant Attorney General in this case, do certify that I caused to be served this 19th day of November, 2004, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


PAULA BECKER WHEELER