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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY 26 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
MECALUX ILLINOIS, INC., a Delaware)
corporation,)
)
Respondent.)

No. PCB 03-222
(Enforcement)

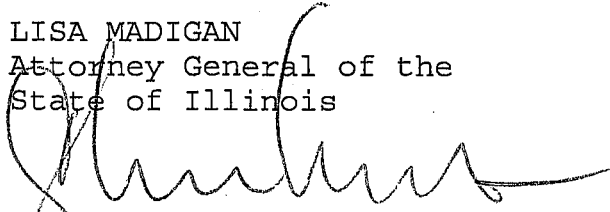
NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, May 26, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine of the Stipulation and Proposal for Settlement, and Motion to Waive the Requirement of a Hearing, copies of which are attached herewith.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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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 requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a Stipulation and Proposal for Settlement executed between Complainant and Respondent, MECALUX ILLINOIS, INC.

2. Section 31 of the Act, 415 ILCS 5/31 (2002), provides, in pertinent part, as follows:

* * *

(c) (2) 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 now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby 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
by LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 

CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., #2001
Chicago, Illinois 60601
(312) 814-5388

("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 the Respondent, and each of them, and on any officer, director, agent, employee or servant of the 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 settlement the failure of officers, directors, agents, servants, or employees of the

Respondent 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 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, MECALUX ILLINOIS, INC., is a Delaware corporation, duly authorized to transact business in the State of Illinois.

B. Facility Description

The Respondent owns and operates a manufacturing facility located at 1600 North 25th Avenue, Melrose Park, Cook County Illinois ("Site"). At the Site the Respondent manufactures and coats metal storage system components.

C. Noncompliance

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

COUNT I: VIOLATION OF VOM STANDARDS, violation of 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code Sections 218.204 and 201.141;

COUNT II: CONSTRUCTION WITHOUT A PERMIT, violation of 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.142;

COUNT III: VIOLATION OF LIFETIME OPERATING PERMIT CONDITION, violation of 415 ILCS 5/9(b) (2002);

COUNT IV: VIOLATION OF FESOP PERMIT CONDITION, violation of 415 ILCS 5/9(b) (2002).

D. Response to allegations

The Respondent neither admits nor denies the allegations in the Amended Complaint.

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 violations alleged in Counts I, III, and IV would be the discharge of excess volatile organic material into the Chicago ozone non-attainment area.

The impact to the public from the violations alleged in Count II would be to prevent Illinois EPA from reviewing plans for conformance with Board and Illinois EPA engineering requirements, and monitoring construction of a new emission source through spot inspections.

2. *Social and Economic Benefit:*

The parties agree that construction and operation of Respondent's coating lines, if done in conformance with the Act, Board regulations, and Respondent's permits, is of social and economic benefit.

3. *Suitability to the Area:*

Respondent's facility is suitable to the Site and the surrounding area.

4. *Technical Practicability:*

Obtaining Illinois EPA permits prior to construction and operation, using compliant coatings at the Site, and operation

within the limits of Respondent's permits, is technically practicable and economically reasonable.

5. *Subsequent Compliance:*

The Respondent obtained a combined construction and operating permit covering its hydro-soluble and cataphoresis coating lines on August 14, 2001, and has agreed to use only compliant coatings. Respondent is preparing an application to modify its FESOP Permit to reflect actual VOM emissions.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

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

In determining the appropriate civil penalty to be imposed under . . . 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.

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 an 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.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

COUNT I: Complainant has alleged that the violations continued from approximately May 25, 2001 until August 14, 2001, resulting in the use of 537 gallons of noncompliant coatings, and slightly excessive emissions of VOM to the atmosphere for a period of 81 days.

COUNT II: Complainant has alleged that the construction permit violations continued from approximately November 21, 2000 until August 14, 2001, and operating permit violations from May 25, 2001, until August 14, 2001. The result of the alleged violations would be unpermitted construction, and unpermitted operation of an emission source for period of 81 days.

COUNT III: Complainant has alleged that the violations continued from August 14, 2001 until April 1, 2003, when Respondent's Lifetime Operating Permit was superceded by its FESOP permit, resulting in emission of VOM exceeding permitted

levels during this period.

COUNT IV: Complainant has alleged that the violations continued from April 1, 2003 until the date of filing this Stipulation, resulting in emissions of VOM exceeding permitted levels.

2. *Diligence of Respondent:*

The Respondent was diligent in obtaining an 'as built' combined construction and operating permit for its hydro-soluble and cataphoresis coating lines.

3. *Economic Benefit of Noncompliance:*

Although Complainant alleges that the Respondent failed to timely obtain construction and operating permits for its facility, the Respondent did eventually apply for and obtain these permits, and thus did not avoid related costs. Also, the Respondent did not avoid any emission-control related expenditures. The Parties believe that the proposed penalty more than recovers any economic benefit derived by the Respondent from the alleged noncompliance.

4. *Deterrence:*

A penalty of Forty Five Thousand Dollars (\$45,000.00) against the Respondent will deter future noncompliance by the Respondent and others.

5. *Compliance History:*

The Respondent has no previously adjudicated violations of

the Act and/or Board Regulations.

6. *Voluntary self-disclosure:*

Self-disclosure is not at issue in this matter.

7. *Supplemental Environmental Project*

No SEP has been proposed by the Respondent.

VII.

TERMS OF SETTLEMENT

A. Civil Penalty

1. The Respondent shall pay a penalty of Forty Five Thousand Dollars (\$45,000.00) within thirty (30) days after the date on which the 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 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. The Respondent's Federal Employer Identification Number ("FEIN") shall be written on the face of each certified check or money order. For issues relating to the payment of the penalty, the Respondent may be reached at the following address:

c/o Richard Saines
Baker & McKenzie LLP
One Prudential Plaza, Suite 3500

130 East Randolph Drive
Chicago, Illinois 60601

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

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

3. 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).

4. 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.

5. 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.

6. 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:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

B. Future Compliance

1. No later than 30 days after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement, the Respondent shall submit to Illinois EPA its application for a modified FESOP to ensure that permitted emissions from the facility are representative of current coating usage and material specifications. Upon request, the Respondent shall provide any and all additional information required by Illinois EPA for the purpose of evaluating Respondent's application.

C. Stipulated Penalties

1. If the Respondent fails to complete any activity by the dates specified in Section VII.B. of this Stipulation and Proposal for Settlement by the date set forth therein, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and Proposal for Settlement. In addition, the Respondent shall pay to the Complainant, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of Two Hundred Fifty Dollars (\$250.00) until such time that compliance is achieved.

2. Following the Complainant's determination that, pursuant to Section VII.B, the Respondent has failed to complete performance of any task or other portion of work, or failed to provide a required submittal, including any report or notification, Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with Section VII.B of this Stipulation and Proposal for Settlement. Failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties.

3. All penalties owed the Complainant under this section of this Stipulation and Proposal for Settlement that have not been paid shall be payable within thirty (30) days of the date the Respondent knows or should have known of its noncompliance with any provision of Section VII.B of this Stipulation and Proposal for Settlement.

4. a. All stipulated penalties shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF and delivered to:

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

b. The name and number of the case and the Respondent's FEIN number shall appear on the face of the check. A copy of the check(s) and the transmittal letter shall be sent

to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

5. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation and Proposal for Settlement.

VIII.
CEASE AND DESIST

The Respondent 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 complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

IX.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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

X.
RELEASE FROM LIABILITY

In consideration of the Respondent's payment of a Forty Five Thousand Dollar (\$45,000.00) penalty, its compliance with the

provisions listed in Section VII.B, and its commitment to cease and desist from future violations, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 the Amended Complaint filed on October 18, 2004. 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 resources 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.

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.

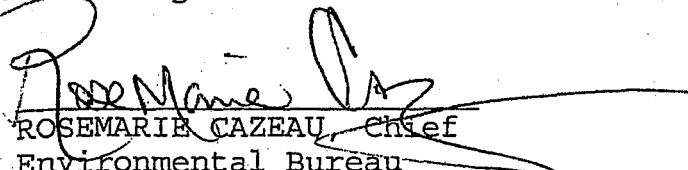
WHEREFORE, Complainant and the Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT:

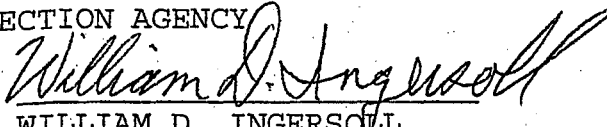
LISA MADIGAN
Attorney General of
the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
~~ROSEMARIE CAZEAU, Chief~~
~~Environmental Bureau~~
Assistant Attorney General

Dated: 4/27/05

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
WILLIAM D. INGERSOLL,
Acting Chief Legal Counsel

Dated: April 25, 2005

the Respondent.

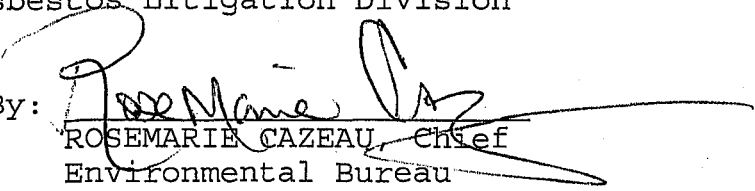
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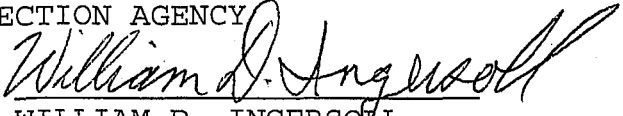
LISA MADIGAN
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By: 
~~ROSEMARIE CAZEAU, Chief~~
Environmental Bureau
Assistant Attorney General

Dated: 4/27/05

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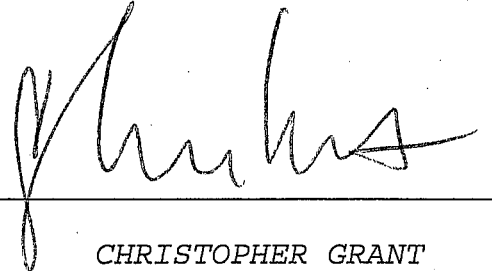
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MECALUX ILLINOIS, INC., a Delaware)
corporation,)
)
Respondent.)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 26th day of May, 2005, the Stipulation and Proposal for Settlement and Motion to Waive the Requirement of Hearing upon the persons listed below, by first class mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois and addressed to:



CHRISTOPHER GRANT

Service List:
Mr. Richard Saines
Baker & McKenzie LLP
130 East Randolph Drive
Chicago, IL 60601

Hearing Officer Bradley P. Halloran
Illinois Pollution Control Board [hand delivery]