

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
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MAY 31 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* )  
LISA MADIGAN, Attorney General of )  
the State of Illinois )

Complainant, )

v. )

DUR-O-WAL, INC., an Illinois Corporation, )

Respondent )

PCB No. 04-194  
(Enforcement - Water)

**NOTICE OF FILING**

TO: See Attached Service List.

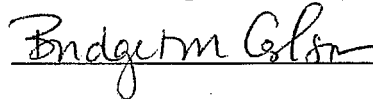
PLEASE TAKE NOTICE that on May 31, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:



BRIDGET M. CARLSON  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-0608

SERVICE LIST

Ms. Jennifer Nijman  
Winston and Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601-9703

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**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: Water Pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2002), and Sections 304.105 and 304.124 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, and 35 Ill. Adm. Code 304.124; Operation of a Facility Causing Water Pollution Without a Permit, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b)(2002), and Section 304.141(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.141(b); and a NPDES Storm Water Permit Violation, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f)(2002), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

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).

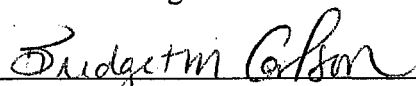
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:



BRIDGET M. CARLSON  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-0608

DATE: May 31, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

MAY 31 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, ex rel. )  
LISA MADIGAN, Attorney General of the State )  
of Illinois )

Complainant, )

v. )

DUR-O-WAL, INC., an Illinois Corporation, )

Respondent )

PCB No. 04-194

(Enforcement - Water)

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois and DUR-O-WAL, INC., a Division of Dayton Superior Corporation, also an Illinois Corporation, ("Respondent"), 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 State of Illinois if a 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 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 Board Order and not to contest their validity in any

subsequent proceeding to implement or enforce their terms.

## I. JURISDICTION

The Board has jurisdiction of 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 and to legally bind them to it.

## III. STATEMENT OF FACTS

### A. Parties

1. On May 6, 2004, 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 pursuant to the terms and provisions of Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondent.

2. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

**B. Site Description**

1. At all times relevant to the Complaint, Respondent owned and operated a wire drawing, fabrication and zinc galvanizing facility located at 625 Crain Street, Aurora, Kane County, Illinois ("Site").

2. Respondent's facility operates under Illinois Environmental Protection Agency ("EPA") general storm water permit No. ILR005451 pursuant to the National Pollutant Discharge Elimination System ("NPDES").

3. The provisions and conditions of Respondent's NPDES Permit No. ILR005451 do not permit Respondent to discharge wastewater that contains lead, zinc, iron, chromium, total suspended solids or low pH levels from its facility to a storm sewer.

4. Complainant alleges that residential properties are present adjacent to the north and west of Respondent's facility. These properties consume groundwater through the operation of residential wells.

5. The processes at Respondent's facility include wire drawing, fabrication, and zinc galvanizing.

6. Respondent utilized a valve pit at its facility in connection with its zinc galvanizing process.

7. On or about March 27, 1998, until at least April 8, 1998, Respondent's valve pit began to fill with wastewater. On or about April 6, 1998, Respondent employed a mobile pump to discharge an unspecified volume of wastewater from its valve pit to a storm sewer located adjacent to its facility.

8. Complainant alleges that on April 8, 1998, a representative of the Fox Metro Water Reclamation District observed Respondent discharging wastewater to the adjacent storm sewer and instructed Respondent to cease discharging. Respondent asserts that it ceased its discharge of wastewater to the storm sewer on the morning of April 8, 1998.

9. On April 7, 1998, prior to ceasing its discharge, Respondent collected a sample of the wastewater present in the valve pit for laboratory analysis. The laboratory analysis detected the presence of lead, zinc, iron, chromium, total suspended solids and low pH levels in the discharged wastewater ("contaminants"). The concentrations of the contaminants of concern at Respondent's site in the wastewater sample collected from the wastewater discharge on April 7, 1998 exceeded limitations of effluent standards as described in Section 304.105, 35 Ill. Adm. Code 304.105.

**C. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), and Sections 304.105 and 304.124 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, and 35 Ill. Adm. Code 304.124.
- Count II: Operation of Facility Causing Water Pollution Without a Permit, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2002), and Section 304.141(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.141(b).



Count III: NPDES Storm Water Permit Violation, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

**D. Admission of Violations**

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

**E. Compliance Activities to Date**

1. Respondent repaired the leak in the valve pit that was the source of the contaminated wastewater discharged to the environment. Respondent disconnected the valve, sealed the outgoing lines with cement, and reconfigured the lines so that process water now flows through overhead lines.

**IV. APPLICABILITY**

This Stipulation 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 the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. 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.

#### **V. 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.

#### **VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED 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 Complainant states the following:

1. Human health and the environment were threatened by the improper release of wastewater to the environment.
2. There is a social and economic value of the pollution source in Kane County, Illinois. The facility is an Illinois corporation in good standing.
3. Operation of the facility was suitable for the area in which it occurred.
4. The emission source at issue was sealed to prevent future releases similar to the release which occurred in this matter. Sealing the source was a technically and economically practical solution.
5. Respondent has subsequently complied with the Act and the Board Regulations. To ensure no further leakage occurred in the process lines entering the valve pit, Respondent reconfigured its pipes so that wastewater would flow through overhead pipes rather than through the valve pit. The valve pit was taken out of service and the associated process lines were sealed with cement.

## VII. 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 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 respondent 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;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
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.

In response to these factors, the Complainant states as follows:

1. The Respondent discharged wastewater contaminants; including zinc, lead, and chromium to a storm sewer without a permit. This wastewater, in turn, discharged to an unknown tributary of the Fox River. The violations began on or around March 27, 1998, and continued until at least April 8, 1998. The gravity of the offense is serious as Respondents caused the unauthorized discharge of wastewater.
2. In improperly discharging wastewater contaminants into a storm sewer without a permit over the course of several days, the Respondent demonstrated an absence of diligence to comply with the Act and Board regulations. Dur-O-Wal did exercise due diligence in returning to compliance by hiring a waste hauler to remove its remaining process wastewater once they were advised to discontinue the release.
3. Due to this violation, the Respondent may have gained financial benefit by not accruing the costs associated with properly transporting and disposing of the wastewater. The civil penalty obtained herein exceeds any financial benefit that Respondent may have accrued.
4. Complainant has determined, and Respondent has agreed, based upon the specific facts of this matter, that a civil penalty will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.
6. The Respondent did not self-disclose the violations.
7. The settlement of this matter does not include a supplemental environmental project.

## VIII. TERMS OF SETTLEMENT

### A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Thirty-Thousand Dollars (\$30,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois Attorney General's Office, designated to the "Illinois Attorney General's State Projects and Court Ordered Distribution Fund" to be used at the discretion of the Illinois Attorney General's Office for the advancement of the environmental protection activities in Illinois and shall be sent overnight mail to:

RoseMarie Cazeau  
Chief, Environmental Bureau  
Illinois Attorney General's Office  
188 West Randolph Street  
20<sup>th</sup> Floor  
Chicago, Illinois 60601

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 31-0676346, shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Ms. Bridget Carlson  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois Attorney General's Office, designated to the Illinois Attorney General's Court Ordered and Voluntary Compliance Payment Projects Fund and delivered to the address and in the manner described above.

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

Ms. Jennifer Nijman  
Winston and Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601-9703

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding initiated within ten (10) years from the date of the Board order accepting this Stipulation as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h)(2002) for a period not to exceed ten (10) years from the date of entry of this stipulation. Further, Respondent agrees to waive any rights to contest, in any such subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**C. Cease and Desist**

1. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (“Allegations of Non-Compliance”) of this Stipulation.

2. Respondent shall abide by all permit provisions as detailed in the NPDES permit issued to the facility by the IEPA, as amended.

**D. Release from Liability**

In consideration of the Respondent's payment of the \$30,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, commitment to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, 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 Complainant's Complaint filed on May 6, 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, or entity other than the Respondent.



**E. 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 Respondent's 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.

**F. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Section VIII.A ("Penalty Payment") of this Stipulation shall be submitted as follows:

As to the Complainant

Ms. Bridget Carlson  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

As to the Respondent

Ms. Jennifer Nijman  
Winston and Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601-9703

**G. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

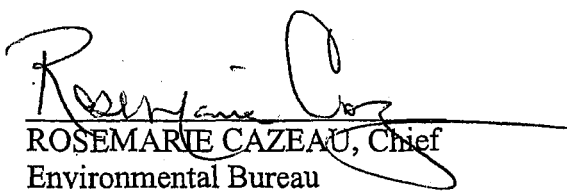
4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal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

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

PEOPLE OF THE STATE OF ILLINOIS,

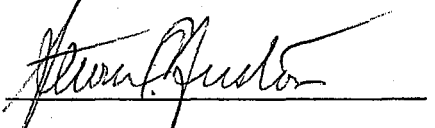
LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 5/26/05

DUR-O-WAL, INC

BY:   
Name: Steven C. Huston  
Title: Corporate Secretary

DATE: May 16, 2005

CERTIFICATE OF SERVICE

I, BRIDGET M. CARLSON, an Assistant Attorney General, certify that on the 31st day of May 2005, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
BRIDGET M. CARLSON