

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 01 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
v.)
)
CONCRETE SPECIALTIES CO., an)
Illinois corporation,)
)
Respondent.)

PCB No. 05-148
(Enforcement - Air)


NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 1, 2005, we filed with the Illinois Pollution Control Board a "Stipulation and Proposal for Settlement" and "Relief from the Hearing Requirement", a true and correct copy of which 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

SERVICE LIST

Maria S. Pugliese
Rick Saines
Baker & McKenzie
One Prudential Plaza, Suite 3500
130 East Randolph Drive
Chicago, Illinois 60601

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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 violation of the Sections 9(a) and (b) and 39.5(6)(b) of the Act, 415 ILCS 5/9 (a) and (b) and 39.5(6)(b) (2002), and Sections 201.142, 201.143, 201.302(a), 203.201, and 254.132(a) of the Board Regulations, 35 Ill. Adm. Code 201.142, 201.143, 201.302(a), 203.201, and 254.132(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

BY:


MITCHELL L. COHEN

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

DATE: July 1, 2005

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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, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, CONCRETE SPECIALTIES CO. ("Concrete Specialties"), an Illinois corporation, have agreed to the making of this 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 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 not to contest its validity in any subsequent proceeding to implement or enforce its 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 February 1, 2005, 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, 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, Concrete Specialties, owned and operated a concrete product manufacturing facility located at 1375 Gifford Road, Elgin, Cook County, Illinois ("facility").

2. Respondent's facility uses mold release compounds that are blends of water, surfactants, and aliphatic hydrocarbons. The compounds are used to prevent adherence of concrete to parts of the mold during curing/drying. Volatile organic material ("VOM") emissions result from evaporation of available hydrocarbons contained in the compounds.

3. Respondent manufactures concrete manholes, pipe, and similar products at its facility and has done so since

approximately 1997, the exact date better known to Respondent. Respondent's storage piles, storage bins, cement bins, conveyors, mixers, mold release compound, and gas steamer at the facility are "emission source(s)" and "new emission source(s)" as those terms are defined in 35 Ill. Adm. Code 201.102.

4. Beginning in April 1996 and continuing to a date better known to Respondent, Respondent commenced and completed construction of the emissions sources at its facility and operated said emission sources without first applying for and obtaining a construction permit(s) and operating permit(s) from the Illinois EPA.

5. Respondent began operation of emissions sources at the Site in 1997, and was required to file a Clean Air Act Permit Program (CAAPP) application or an application for a Federally Enforceable State Operating Permit (FESOP) seeking an exclusion from the CAAPP permit no later than 12 months after beginning operation of the source. However, Respondent did not submit a FESOP application to Illinois EPA until December 9, 2003. The FESOP is currently under review by the Illinois EPA.

6. In April 1996, Respondent commenced construction of emission sources at the Site, a new major source in the Chicago nonattainment area, without first having demonstrated compliance

with the Board's new source review regulations.

7. Respondent failed to timely submit complete and accurate Annual Emissions Reports ("AERs") to the Illinois EPA for calendar years 1997 through 2002. Respondent did not submit AERs containing the required information until December 9, 2003.

C. Allegations of Non-Compliance

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

Count I: Construction of Emission Sources Without a Permit

Violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002) and Section 201.142 of the Board Regulations, 35 Ill. Adm. Code 201.142(2002).

Count II: Operation of Emissions Sources Without a Permit

Violation of Section 9 (b) of the Act, 415 ILCS 5/9 (b) (2002) and Section 201.143 of the Board Regulations, 35 Ill. Adm. Code 201.143(2002).

Count III: Operating a Major Stationary Source Without a CAAPP Permit

Violation of Section 39.5(6) (b) of the Act, 415 ILCS 5/39.5(6) (b) (2002).

Count IV: Violation of New Source Review

Violation of Section 9(a) of the Act, 415 ILCS 9(a) (2002) and Section 203.201 of the Board Regulations, 35 Ill. Adm. Code 203.201(2002).

Count V: Failure to Timely Submit Complete and Accurate Annual Emission Reports

Violation of Section 9(a) of the Act, 415 ILCS 9(a) (2002) and Sections 201.302(a) and 254.132(a) of

the Board Regulations, 35 Ill. Adm. Code 201.302(a) and 254.132(a) (2002).

D. Admission of Violations

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

E. Compliance Activities to Date

The Respondent submitted a FESOP permit application to the Illinois EPA on December 9, 2003, and submitted completed AERs for 1997-2002 on December 9, 2003. The Respondent has submitted all necessary reports and records since that date, including the AER for 2003, which was submitted before May 1, 2004.

IV.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), 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 impact to the public resulting from the alleged violations was that harm to human health and the environment was threatened, and the Illinois EPA's information gathering responsibilities were hindered, by Concrete Specialties's unpermitted construction and operation.

2. The parties agree that Concrete Specialties' facility is of social and economic benefit.

3. When operating in compliance with the Act and Board regulations, the facility is suitable to the area in which it is located.

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

5. Concrete Specialties did subsequently apply for a

FESOP from the Illinois EPA.

V.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2000), 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;
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.

In response to these factors, the parties state:

1. The duration of the violations occurred continuously for a period of at least seven years beginning in April 1996 and continuing to 2004.

2. Concrete Specialties has shown diligence in responding to the Illinois EPA's notice of violations and recommendations.

3. Concrete Specialties has received an economic benefit in the amount of \$600.00, representing air pollution site fees it would have paid had it timely obtained the required permits.

4. Complainant has determined, in this instance, that a penalty of Thirty Two Thousand Five Hundred Dollars (\$32,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent has no previously adjudicated violations of the Act.

6. On its own initiative, Respondent retained outside

consultants to review the status of its environmental permits and thereby became aware that it did not hold a required operating permit from the Illinois EPA. Thereupon, Respondent applied for the necessary permit on December 9, 2003. In response to such application, the Illinois EPA advised Respondent that it was in violation of the Act and its regulations for failure to hold such permit, and further for other violations of the Act and its regulations.

7. No supplemental environmental project has been proposed by Respondent.

VI.

APPLICABILITY

A. 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, 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.

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. The Respondent shall pay a civil penalty in the sum of Thirty Two Thousand Five Hundred Dollars (\$32,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days

from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, with Thirty One Thousand Nine Hundred Dollars (\$31,900.00) designated to the Illinois Environmental Protection Trust Fund and with Six Hundred Dollars (\$600.00) designated to the Environmental Inspection And Permit Fund, both payments submitted to:

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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 99-9003233, 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:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

And

Maureen Wozniak
Assistant Counsel
Illinois Environmental Protection Agency

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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 EPA, designated to the Illinois Environmental Protection Trust 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:

Maria S. Pugliese
Baker & McKenzie
One Prudential Plaza, Suite 3500
130 East Randolph Drive
Chicago, Illinois 60601

And

Concrete Specialties Company

James Nondorf, President
1375 Gifford Road
Elgin, Illinois 60120

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. Compliance Plan

Respondents shall operate the facility with all the appropriate permits upon issuance by the Illinois EPA of their FESOP, and shall at all times comply with the terms and conditions therein.

C. Future Use

Notwithstanding any other language in this Stipulation to the contrary; and in consideration of the mutual promises and conditions contained in the Stipulation, including the release from liability contained in Section VIII F below, Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of a violation of the Act and the Board Regulations promulgated thereunder, for

purposes of Section 39(a) and (i) and/or 42 (h) of the Act, 414 ILCS 5/39(a) and (i) and/or 5/42 (h) (2002). Further, Respondent agrees to waive, in any enforcement action, any right to contest whether those alleged violations were adjudicated.

D. 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.

E. 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

III.C. of this Stipulation.

F. Release from Liability

In consideration of the Respondent's payment of a \$32,500.00 penalty and any specified costs and accrued interest, and to cease and desist as contained in Section VIII E above, 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 Notice of Violations and the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in the Notice of Violation dated September 15, 2003, and Complainant's Complaint filed on February 1, 2005. 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 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 3.26 of the Act, 415 ILCS 5/3.26 (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 as such 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

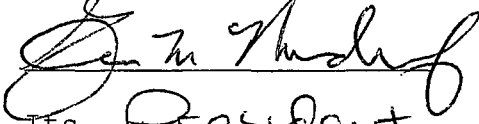
BY: _____
William Ingersoll
Acting Chief Legal Counsel

DATE: _____

DATE: _____

FOR THE RESPONDENT:

CONCRETE SPECIALTIES CO.

BY: 
Its President

DATE: 5-27-05

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
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: William D. Ingersoll
William D. Ingersoll
Acting Chief Legal Counsel

DATE: 6/24/05

DATE: June 21, 2005

FOR THE RESPONDENT:

CONCRETE SPECIALTIES CO.

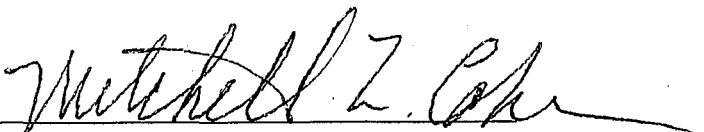
BY: _____

Its _____

DATE: _____

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 1st day of July, 2005, I caused to be served by First Class Mail the foregoing "Stipulation and Proposal for Settlement" and "Relief from the 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.


MITCHELL L. COHEN