

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB 05-98

Complainant,)

(Enforcement - Air)

vs.)

OASIS INDUSTRIES, INC.,)
an Illinois corporation,)

VIA ELECTRONIC FILING

Respondent.)

NOTICE OF FILING

TO: Heidi E. Hanson, Esq.
4721 Franklin Avenue, Suite 1500
Western Springs, Illinois 60558-1720

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-3816

DATE: June 29, 2007

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
ex rel. LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
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OASIS INDUSTRIES, INC.,)	
an Illinois corporation,)	
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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 OASIS INDUSTRIES, INC., 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 represent a 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, the parties agree 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. (2004).

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 November 22, 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 and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2004), 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 (2004).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation in good standing.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a plant that manufactures fiberglass bathtubs and shower stalls located at 1600 Mountain Road, Aurora, Kane County, Illinois (Facility).

2. Respondent uses spray booths to apply polyester resins and other raw materials in the manufacture of the desired products. Emission units at the Facility include, gelcoat spray booths, skincoat spray booths, and final coat spray booths.

C. Allegations of Non-Compliance

Count I: Operating a Major Source Without a CAAPP Permit: a violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2004);

Count II: Construction of a Major Source in Violation of New Source Review: a violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2004), and 35 Ill. Adm. Code 203.201;

Count III: Failure to Meet with the Lowest Achievable Emission Rate (LAER) Requirements: a violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2004), and 35 Ill. Adm. Code 203.301(b), and (d)(1)(2)(3) and 203.302 (a)(1)(D);

Count IV: Failure to Timely Submit an Emissions Reduction Market System (ERMS) Application: a violation of Section 9.8(b) of the Act, 415 ILCS 5/9.8(b)(2004), and 35 Ill. Adm. Code 205.310(a)(2);

Count V: Exceeding Permit Limits: violation of Section 9(b) of the Act, 415 ILCS 5/9(b)(2004), and Condition 1 of Joint Construction and Operating Permit No. 98020084;

Count VI: Failure to File Accurate and Complete Annual Emissions Reports: a violation of Section 9(a) of the 415 ILCS 5/9(a)(2004), and 35 Ill. Adm. Code 201.302(a) and 254.132(a).

D. Compliance Status

On November 26, 2003, IEPA issued to Respondent a CAAPP permit. Currently, Respondent is in compliance.

E. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent denies, except as set forth in the Answer and Affirmative Defenses, the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

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.

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)(2004), 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 agree as follows:

1. The impact to the public from the alleged violations of the Act would be the actual and threatened air pollution to the environment of the State of Illinois. The parties acknowledge the programmatic significance of the air pollution control regulations including the permit program, ERMs and New Source Review, to the State of Illinois and agree that failure to comply with those requirements would constitute an injury.

2. There is social and economic benefit to Respondent's manufacturing facility.

3. Operation of Respondent's facility is suitable for the area in which it is located.

4. Complainant asserts compliance with the Act, applicable regulations, and permit requirements was both technically practicable and economically reasonable. Respondent disagrees, citing the emission factor issue set forth more fully in Section VII(1) below.

5. Respondent has returned to compliance with the requirements of the Act and Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), 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 parties state as follows:

1. Complainant alleges that Respondent has been noncompliant with its emission limits since at least 2001 and possibly earlier. Further, Respondent failed to timely submit the

required CAAPP permit and ERMs baseline applications, and failed to accurately report its emissions to the Illinois EPA on its Annual Emissions Report (AERs).

Respondent, on the other hand, alleges that it timely applied for the CAAPP permit and that any violations relating to emissions or reporting of emissions were caused or aggravated by the confusion surrounding the USEPA's March 18, 1998 repudiation of the AP-42 emission factor commonly used in Oasis industry and which had been referenced in Oasis 1997 permit. No alternative emission factor was provided and eventually Oasis undertook to develop its own emission factor which was written into its permit in 2003. In the intervening years there was no officially approved method for it to use to determine its emissions.

2. Respondent timely responded to the Violation Notice and has submitted additional information to the Illinois EPA as required.

3. The \$40,000.00 (Forty Thousand Dollars) civil penalty agreed to herein, negates any economic benefits accrued by the Respondent by its alleged failure to comply with the requirements of the Act.

4. Based upon the specific facts of this matter, a penalty of Forty Thousand Dollars (\$40,000.00) will serve to deter further violations and aid in future voluntary compliance with the requirements of the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

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 Forty Thousand Dollars (\$40,000.00) 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 or money order made payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and 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") shall appear on the certified check or money order. A copy of the certified check or money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

B. Interest

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), 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 (2004). 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 or money order payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

2. For purposes of payment and collection, correspondence to Respondent shall be copied to the addresses listed in Section VIII.F.

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

C. 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.E, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations admitted in the Answer and Affirmative Defenses in this matter, for purposes of Section 39(a) and/or 42(h) of the Act, 415 ILCS 5/39(a) and/or 5/42(h)(2004).

D. Cease and Desist

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.

E. Release from Liability

In consideration of the Respondent's payment of the \$40,000.00 (Forty Thousand Dollars) penalty and any specified costs and accrued interest, its commitment to Cease and Desist as contained in Section VIII.D. 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, officers, directors, agents, or employees of Respondent, as well as any successors or assigns of 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 November 22, 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.

Except as set forth above, 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 (2004), or entity other than the Respondent.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A.1. (Penalty Payment) of this Stipulation shall be submitted as follows:

As to the Complainant

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Maureen Wozniak
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Manager
Compliance and Enforcement Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Mr. William Jahnke
Oasis Industries, Inc.
1600 Mountain Street
Aurora, Illinois 60505

Mr. Kent A. Gaertner
Springer, Brown, Covey, Gaertner and Davis, LLC
Wheaton Executive Center
400 South County Farm Road, Suite 330
Wheaton, Illinois 60187

G. Modification of Stipulation

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

H. 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 to the contacts shown for Respondent in VIII.F. and does not hereby waive any requirement of service of process.

I. Effective Date of Settlement

The parties agree that the Stipulation and Proposal for settlement shall become effective and binding only when executed by all parties and each and every one of the terms and conditions of the settlement set forth herein are approved by the Illinois Pollution Control Board as written.

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

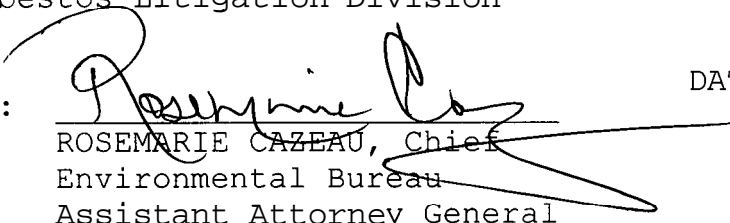
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PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:

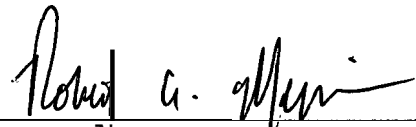

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE:

6/27/07

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY:



ROBERT A. MESSINA
Chief Legal Counsel

DATE:

6/25/07

OASIS INDUSTRIES, INC.

BY:


WILLIAM JAHNKE
President

DATE:

03.27.2007

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
ex <i>rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
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OASIS INDUSTRIES, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

AGREED MOTION TO REQUEST RELIEF
'FROM THE RING RE

In support of this Motion, the parties state as follows:

1. Today, the People of the State of Illinois, filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2006) 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). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2006).

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,


PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:

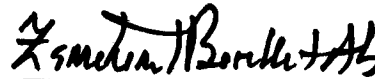


ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-3816

DATE: June 29,2007

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 29th day of June, 2007, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the person listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB