

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

SURFACE MANUFACTURING COMPANY,)
an Illinois corporation,)

Respondent.)

No.

(Enforcement - Water)

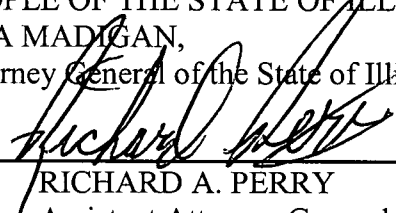
NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the following Stipulation, a copy of which is attached and hereby served on you.

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

By:



RICHARD A. PERRY
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-3776

SERVICE LIST

Surface Manufacturing Company
c/o Patrick Bryan, Registered Agent
135 S. 4th Street
Capron, Illinois 61012

Surface Manufacturing Company
c/o Patrick Bryan, President
W5608 Stateline Road
Walworth, WI 53184

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
SURFACE MANUFACTURING COMPANY,)	
an Illinois corporation,)	
)	
Respondent.)	

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 SURFACE MANUFACTURING COMPANY ("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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On May 26, 2008, 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 (2006), 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 (2006).

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. At all times relevant to the Complaint, Respondent owned and operated a metal finishing facility located at 135 South 4th Street, Village of Capron, Boone County, Illinois ("site").

4. On March 18, 2003, the Illinois EPA issued to the Respondent permit number 2003-EO-2930 to operate its pre-treatment system (the "Permit"). The Permit is still in effect.

5. The Permit provided the daily limit for the concentration of chromium in the Wastewater, which is 2.77 milligrams of chromium per liter of wastewater.

6. The Illinois EPA received information from the Village of Capron in January 2007 indicating that the Respondent had discharged excessive chromium in its wastewater. The Illinois EPA inspected the site on February 8, 2007.

7. During a period of time beginning no later than March 2, 2006, and continuing until at least December 24, 2006, and on other dates better known to the Respondent, SMC

discharged pretreated wastewater from its metal finishing processes (the "Wastewater") into a sewer, which conveyed the Wastewater into the Village of Capron's publicly owned treatment works (the "Capron POTW"). On at least fifteen (15) separate dates between March 2, 2006 and December 24, 2006, and on other dates better known to the Respondent, the Respondent discharged into the Capron POTW Wastewater with a concentration of chromium that exceeded 2.77 milligrams per liter.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), discharge of contaminants so as to cause or tend to cause water pollution.

C. Admission of Violations

The Respondent admits to the violation alleged in the Complaint filed in this matter and referenced within Section III.C herein.

D. Compliance Activities to Date

The Respondent has ceased all discharges of process wastewater to the Capron POTW.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA 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. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 to this Stipulation state the following:

1. Human health and the environment were threatened by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Complying with the Permit would have been both technically practicable and economically reasonable for the Respondent.
5. Respondent has subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

1. The Respondent discharged chromium in excess of the limit established by its Permit, and thereby threatened to cause water pollution, on at least fifteen (15) occasions between March 2, 2006 and December 24, 2006.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.
3. By delaying making the repairs to its facility that were needed to avoid discharging excess chromium in its wastewater, the Respondent received a minimal economic benefit. The penalty of Twelve Thousand Dollars (\$12,000.00) exceeds any economic benefit obtained by the Respondent.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twelve Thousand Dollars (\$12,000.00) 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. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Twelve Thousand Dollars (\$12,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. 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.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. If the Respondent resumes discharges to the Capron POTW at any time in the future, the Respondent shall operate its facility in compliance with all applicable state and local law, rules, ordinances, regulations, and permits.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees 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 conducting inspections and evaluating compliance status. 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.

3. 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.

4. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$12,000.00 penalty, commitment to cease and desist as contained in Section V.D.4 above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 Complaint filed on May 26, 2008. 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.

F. Enforcement and Modification of Stipulation

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

G. Execution of Stipulation

The undersigned representatives for each party to this Stipulation 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.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

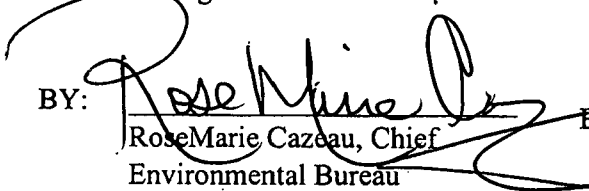
PEOPLE OF THE STATE OF ILLINOIS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

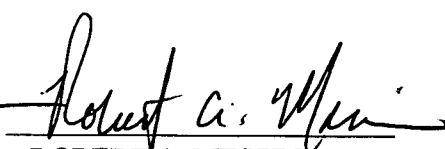
DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY:


RoseMarie Cazeau, Chief
Environmental Bureau

BY:


ROBERT A. MESSINA
Chief Legal Counsel

DATE: 7/10/08

DATE: 7/9/08

SURFACE MANUFACTURING
COMPANY

BY: _____

DATE: _____

Name:
(Print) _____

Title: _____

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.
Environmental Enforcement/
Asbestos Litigation Division

BY: _____
RoseMarie Cazeau, Chief
Environmental Bureau

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

DATE: _____

SURFACE MANUFACTURING
COMPANY

BY: Pat Bryan

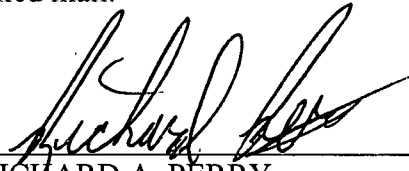
DATE: June 26, 2008

Name:
(Print) PAT BRYAN

Title: President

CERTIFICATE OF SERVICE

I, RICHARD A. PERRY, an Assistant Attorney General, do certify that I caused to be mailed this 14th day of July, 2008, the foregoing Stipulation and Notice of Filing upon the persons listed on said notice, by certified mail.



RICHARD A. PERRY
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, IL 60602
312-814-2069