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JAN 13 2009

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2009

John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Vertellus Specialties, Inc.***
PCB No. 03-182

Dear Clerk:

Enclosed for filing please find the original and 10 copies of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Davis", is written over a horizontal line.

Thomas Davis, Bureau Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
REILLY INDUSTRIES, INC.,)
an Indiana corporation,)
)
Respondent.)

PCB No. 03-182
(Enforcement)

NOTICE OF FILING

To: Edward W. Dwyer
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

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STATE OF ILLINOIS
Pollution Control Board


PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 9, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on January 9, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT


To: Edward W. Dwyer
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

a copy was also sent to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
Springfield, IL 62794



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
REILLY INDUSTRIES, INC.,)
an Indiana corporation,)
)
Respondents.)

PCB No. 03-182
(Enforcement)

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MOTION FOR RELIEF FROM HEARING REQUIREMENT

STATE OF ILLINOIS
Pollution Control Board

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) (2006), moves that the Illinois Pollution Control 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) (2006). In support of this motion, Complainant states as follows:

1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. 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) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

THOMAS DAVIS, Bureau Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 9, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
VERTELLUS SPECIALTIES, INC.,)
an Indiana corporation,)
)
Respondent.)

PCB NO. 03-182
(Enforcement)

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JAN 13 2009

STATE OF ILLINOIS
Pollution Control Board

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 VERTELLUS SPECIALTIES, INC., formerly known as Reilly Industries, Inc., ("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

1. On February 3, 2005, a Second Supplemental 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 Indiana corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a coal tar distillation process plant at 1450 Edwardsville Road, Granite City, Madison County, Illinois ("facility"). In January 1996, Respondent ceased production of coal tar products. The facility was converted to a terminal that transferred coal tar products from rail cars to tanker trucks.

B. Allegations of Non-Compliance

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

Count I: The Respondent operated its batch stills with less than the requisite efficiency required by 35 Ill. Adm. Code 219.501(a) and thereby violated Section 9(a) of the Act.

Count II: The Respondent failed to comply Condition 2(d) of its construction permit and thereby violated Section 9(b) of the Act.

Count III: The Respondent operated the stills and scrubbers after the expiration of the 270-day operating period without first obtaining an operating permit as required by 35 Ill. Adm. Code 201.143 and thereby violated Section 9(a) of the Act.

Count IV: The Respondent in June and July 2000 allowed roll-off boxes to leak hazardous waste upon the ground at a disposal site or facility which did not meet the requirements of the Act and of the associated regulations and thereby violated Section 21(e) of the Act.

Count V: The Respondent, by land disposing hazardous waste at the facility in June and July 2000, operated a hazardous waste facility without a permit issued by the Illinois EPA, thereby violated Section 21(f) of the Act and 35 Ill. Adm. Code 703.121(a).

Count VI: The Respondent, by failing to maintain and operate the facility in June and July 2000 in a manner to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste to the soil or air which would threaten human health or the environment, thereby violated Section 21(f) of the Act and 35 Ill. Adm. Code 725.131.

Count VII: The Respondent, by failing to follow its contingency plan by not reporting the release of hazardous waste in June and July 2000 to the proper authorities within 24 hours after the reportable quantity was exceeded and to submit a written report to the Illinois EPA 15 days after the implementation of the contingency plan, thereby violated Section 21(f) of the Act and 35 Ill. Adm. Code 725.151(b) and 725.156(j).

Count VIII: The Respondent, by failing to manage hazardous waste in July 2000 in a closed container during storage, thereby violated Section 21(f) of the Act and 35 Ill. Adm. Code 725.273(a).

Count IX: The Respondent, by failing to timely send a copy of a manifest in June 2000 to the Illinois EPA, thereby violated Section 21(f) of the Act and 35 Ill. Adm. Code 722.123(a).

Count X: The Respondent, by allowing releases of approximately 200 pounds of electro binder pitch in August 2000, approximately 500 gallons of crude coal tar in September 2000, and approximately 1,500 gallons of creosote in November 2000, allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to groundwater and thereby violated Section 12(d) of the Act.

Count XI: The Respondent, by allowing the release approximately 1,500 gallons of creosote in November 2000, caused, threatened or allowed the emission of contaminants so as to cause or tend to cause air pollution and thereby Section 9(a) of the Act.

Count XII: This allegation is withdrawn.

Count XIII: The Respondent, by allowing the release of approximately 16,000 gallons of crude coal tar in July 2003, failed to maintain and operate the facility in a manner to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste to the soil or air which would threaten human health or the environment, and thereby violated Section 21(f) of the Act and 35 Ill. Adm. Code 725.131.

Count XIII: The Respondent, by allowing a still to explode in January 2004, and the resulting fire to emit particulate matter, volatile organic material and carbon monoxide, caused, threatened or allowed the emission of contaminants so as to cause or tend to cause air pollution and thereby Section 9(a) of the Act.

C. 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 does not affirmatively admit 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.

D. Compliance Activities to Date

The Respondent has cleaned up the waste resulting from the releases and corrected the permit deficiencies.

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.

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 Complainant states 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. As to the air pollution and RCRA counts, obtaining a permit and compliance with its terms are both technically practicable and economically reasonable. As to the releases, prevention measures are also both technically practicable and economically reasonable.
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 Complainant states as follows:

1. The noncompliance as to the air pollution counts lasted from September 30, 2000, to May 1, 2004. The impacts of the RCRA violations and the releases and explosion were remedied shortly after the incidents.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.
3. Respondent accrued an economic benefit of \$58,648.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of \$140,000 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent has been previously adjudicated to be in violation of the Act in PCB 00-31 and paid a penalty of \$20,000.
6. Self-disclosure, except for the timely notification of certain releases as required by law, is not at issue in this matter.
7. The settlement of this matter does include a supplemental environmental project with expenditures of at least \$25,000.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of One Hundred and Forty Thousand Dollars (\$140,000.00) 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

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.

E. Supplemental Environmental Project

1. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, the Respondent shall perform the following supplemental environmental project ("SEP"). The settlement value of the SEP is at least Twenty-Five Thousand Dollars (\$25,000.00) and will offset penalties sought by the Complainant in this matter. The parties to this Stipulation agree that this SEP shall consist of the following: To enhance and facilitate an ongoing pump and treat system, the Respondent will modify some of the groundwater extraction

wells for injecting food-grade oil or air sparging. The anticipated result is a demonstration that when the effectiveness of pumping and treating of contaminated groundwater decreases, the corrective action may be supplemented by these additional measures.

2. The Respondent shall complete the SEP no later than December 31, 2010, and, within 30 days thereafter, shall submit a project completion report, including a summary of all expenditures, to the contact persons identified in Section V.G, for review and confirmation that the SEP was performed pursuant to this Stipulation. The project completion report shall include the following certification by a responsible corporate official of the Respondent:

I certify under penalty of law that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted based on my inquiry of those persons directly responsible for gathering the information, and that the information submitted in or accompanying this notification of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and or imprisonment for knowing violations.

In the event that the SEP cannot be completed, the Respondent shall pay the settlement value of the SEP (\$25,000.00) as an additional penalty pursuant to the procedures of Section V.A no later than the date by which the SEP should have been completed.

3. By signature on this Stipulation, the Respondent certifies that, as of the date of entry of this Order, it is not required to perform or develop the foregoing SEP by any federal, state or local law or regulation, nor is it required to perform or develop the SEP by agreement or injunctive relief in any other case. The Respondent further certifies that it has not received, and is not presently negotiating to receive credit for, the SEP in any other enforcement action.

4. Any public statement, oral or written, in print, film or other media, made by the Respondent making reference to any SEP shall include the following language: "This project

was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General and the Illinois EPA for alleged violations of the Illinois Environmental Protection Act and regulations promulgated thereunder.”

F. Release from Liability

In consideration of the Respondent’s payment of the \$140,000.00 penalty, timely performance of the SEP, 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 February 3, 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.

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.

G. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Thomas Davis, Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

William Ingersoll, Enforcement Manager
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

LaDonna Driver, Attorney at Law
Hodge Dwyer Zeman
Post Office Box 5776
Springfield, Illinois 62705-5776

H. 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.

2. The Complainant, in consultation with the Illinois EPA, and the Respondent 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 V.G. 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 to this Stipulation.

I. 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.

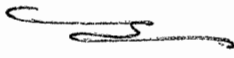
WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

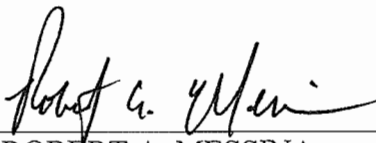
PEOPLE OF THE STATE OF ILLINOIS, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

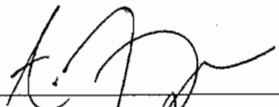
BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 1/08/09

DATE: 1/6/09

VERTELLUS SPECIALTIES, INC.

BY: 
Name: Anne M. Frye
Title: Vice President

DATE: 10/31/08