



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FEB 11 2009
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

February 9, 2009

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

Re: ***People v. Chemetco, Inc.***
PCB No. 96-76

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion to Accept Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,


James L. Morgan
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JLM/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
CHEMETCO, INC., a Delaware corp.)
)
Respondent.)

PCB No. 96-76
(Enforcement-Land)

NOTICE OF FILING

RECEIVED
CLERK'S OFFICE
FEB 11 2009
STATE OF ILLINOIS
Pollution Control Board

To: Penni S. Livingston
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208

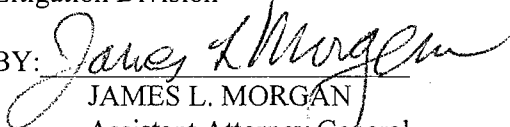
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois a Motion to Accept Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement, copies of which are attached 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: 
JAMES L. MORGAN
Assistant Attorney General
Environmental Bureau

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

CERTIFICATE OF SERVICE

I hereby certify that I did on the 9th day of February, 2009, send a true and correct copy of the Motion for Relief from Hearing Requirement, Motion to Accept Stipulation and Proposal for Settlement by First Class Mail, with postage thereon fully prepaid, by depositing at a United States Post Office in Springfield, Illinois,

To:

Penni S. Livingston, #06196480
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9276

and the Original and ten copies to:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Centert
100 W. Randolph St., Suite 11-500
Chicago, IL 60601



James L. Morgan
Senior Assistant Attorney General

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
MADISON COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN,)
Attorney General)
of the State of Illinois,)
Complainant,)
)
vs.)
)
CHEMETCO, INC.)
Respondent.)

PCB No. 96-**RECEIVED**
CLERK'S OFFICE
FEB 11 2009

**STATE OF ILLINOIS
Pollution Control Board**

MOTION TO ACCEPT STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois ("People"), and the Respondent, Chemetco, Inc., by LAURA GRANDY, Bankruptcy Trustee for the Estate of Chemetco, Inc. ("Chemetco Estate"), and moves that the Illinois Pollution Control Board grant the parties' motion to accept their Stipulation and Proposal for Settlement in the above-captioned matter. In support of this Motion, the parties state as follows:

1. On October 10, 1996, a Complaint was filed on behalf of the People of the State of Illinois by the Attorney General of the State of Illinois pursuant to Section 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d) and (e)(2002), against the Respondent.
2. On February 19, 1998, the Pollution Control Board issued an Interim Opinion and Order, which found certain facts to be undisputed and that those undisputed facts established that

Respondent had violated certain provisions of the Act and Board Regulations as alleged in the People's Complaint.

3. On November 13, 2001, Respondent filed a voluntary petition under Chapter 7 of the Bankruptcy Code, wherein Laura K. Grandy was appointed to take control of the bankruptcy estate and has proceeded with the liquidation of Chemetco, Inc.

4. Since then, the People and the Chemetco Estate have diligently worked together to perform the necessary cleanup of the former Chemetco, Inc. property pursuant to the Act and its promulgated regulations.

5. On September 16, 2008, the People and the Chemetco Estate entered into an Interim Order in the companion federal court case, wherein the past violations of Respondent are being dealt with accordingly.

6. The parties, having reached agreement on all outstanding issues in this matter, have prepared a Stipulation and Proposal for Settlement that provides resolution to this case consistent with the purposes of the Act.

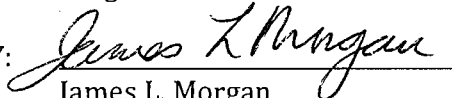
WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, and the Respondent, Chemetco, Inc., hereby request that the Board grant this motion to accept their Stipulation and Proposal for Settlement and cause notice of the stipulation, proposal and request for relief to be published pursuant to 415 ILCS 5/31(c)(1) and (2) (2008) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

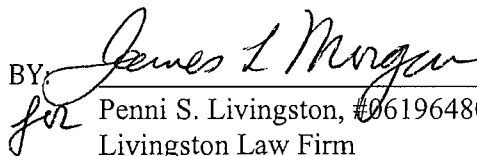
BY:



James L. Morgan
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

CHEMETCO, INC,
LAURA GRANDY
BANKRUPTCY TRUSTEE

BY:



for Penni S. Livingston, #06196480
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208
(618) 628-7700

Dated: 2/19/19

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MADISON COUNTY, ILLINOIS

RECEIVED
CLERK'S OFFICE

FEB 11 2009

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN,)
 Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 vs.)
)
 CHEMETCO, INC.)
)
 Respondent.)

PCB No. 96-76

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and the Respondent, Chemetco, Inc., by LAURA GRANDY, Bankruptcy Trustee for the Estate of Chemetco, Inc., and, pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2008), 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) (1998). In support of this motion, the parties state 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. The 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) (2008).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, and the Respondent, Chemetco, Inc., hereby request 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) (1998).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

James L. Morgan
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

CHEMETCO, INC,
LAURA GRANDY
BANKRUPTCY TRUSTEE

BY: 

for Penni S. Livingston, #06196480
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208
(618) 628-7700

Dated: 2/9/9

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
MADISON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB 96-76
)	(Enforcement-Land)
CHEMETCO, INC., a Delaware corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISAM. MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), Respondent Chemetco, Inc. (“Chemetco” or “Respondent”), and the Bankruptcy Estate of Chemetco (the “Estate” or the “Estate of Estate”), have agreed to the making of this Stipulation and Proposal for Settlement and submit it to the Illinois Pollution Control Board (“Board”) for approval so that the Complainant’s claims for penalties and attorneys fees may be fixed for purposes of 11 U.S.C. 726. The Complainant and Chemetco agree that the statement of additional facts contained herein represents a fair summary of the evidence and testimony which would be introduced if a hearing were held. If the Board approves and enters this Stipulation, Respondent shall be bound by the Stipulation and shall not 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 October 10, 1986, a Complaint was filed on behalf of the People of the State of Illinois by the Attorney General of the State of Illinois pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e)(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 a Delaware corporation that is authorized to transact business in the State of Illinois. On November 7, 2001, Respondent filed for Chapter 7 Bankruptcy. Laura K. Grandy was appointed as Bankruptcy Trustee for Respondent's Bankruptcy Estate by the Bankruptcy Court for the Southern District of Illinois (hereafter "Trustee").

B. Partial Summary Judgment and Adjudication of Non-Compliance

1. On February 19, 1998, the Pollution Control Board issued an Interim Opinion and Order, attached hereto as Appendix A, which found certain facts to be undisputed and that those undisputed facts established that Respondent had violated certain provisions of the Act and Board Regulations as alleged in the State's Complaint. The factual findings of the Interim Opinion and Order are incorporated herein by reference.

2. In the Interim Opinion and Order, the Pollution Control Board found that Respondent had violated:

- a. For the period between April 19, 1991, through May 1992, 35 Ill. Adm. Code 725.190(b), 725.192(a), 725.213(b)(1997) and 415 ILCS 5/21(f)(2)(1996) (*i.e.*, quarterly groundwater sampling requirements);
- b. For calendar year 1991, 35 Ill. Adm. Code 725.175, 725.194(a)(2)(B), 725.213(b)(1997) and 415 ILCS 5/21(f)(2)(1996) (*i.e.*, Annual Report requirements);
- c. For the period between April 19, 1981, through May 1992, 35 Ill. Adm. Code 725.213(1997) and 415 ILCS 5/21(f)(2)(1996) (*i.e.*, requirements to determine groundwater flow rate and direction);
- d. For the period since 1986, 35 Ill. Adm. Code 725.243(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2)(1996) (regarding financial assurance for closure);
- e. For the period since 1986, 35 Ill. Adm. Code 725.245(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2)(1996) (regarding financial assurance for post-closure); and
- f. For the period since 1986, 35 Ill. Adm. Code 725.247(a) and (b) (1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2)(1996) (liability assurance for bodily injury and property damage to third parties caused by sudden and nonsudden accidental occurrences arising from operations of the facility).

3. In its order, the Board directed the parties to proceed to hearing on the issue of whether Respondent violated 35 Ill. Adm. Code 725.242(a) by failing to provide detailed written closure cost estimates fully satisfying the requirements of that provision.

4. The violations of 35 Ill. Adm. Code 725.243, 725.245, and 725.247(a) (1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996) were not corrected before Respondent ceased operations and filed for Chapter 7 bankruptcy.

C. Additional Violations

1. On April 6, 1998, the State amended its complaint to allege that
 - a) Respondent had violated 35 Ill. Adm. Code 725.242(b) and (c), and 725.244(a)-(c) (1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996), by failing to maintain a written estimate, in current dollars, of the cost of its hazardous waste management unit post-closure plans or to annually update its cost estimates for inflation or for modification of its hazardous

waste management unit closure and post-closure plans.

- b) During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not have a detailed written cost estimates for its hazardous waste management unit closure plans that met the requirements of 35 Ill. Adm. Code 725.242(a)(1997), thereby violating that provision and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996).
- c) During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not annually update its cost estimates for its hazardous waste management unit closure plans for inflation in violation of 35 Ill. Adm. Code 725.242(b)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996).
- d) During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not annually update its cost estimates for its hazardous waste management unit post-closure plans for inflation in violation of 35 Ill. Adm. Code 725.244(b)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996).
- e) During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not update its cost estimates for its hazardous waste management unit closure plans to reflect modifications of those plans in violation of 35 Ill. Adm. Code 725.242(c)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996).
- f) During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not annually update its cost estimates for its hazardous waste management unit post-closure plans to reflect modifications of those plans in violation of 35 Ill. Adm. Code 725.244(c)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996).
- g) During the period of 1988 until Respondent ceased operations and filed for Chapter 7

bankruptcy, Respondent did not prepare written cost estimates for its hazardous waste management unit post-closure plans in violation of 35 Ill. Adm. Code 725.244(a)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996).

D. Admission of Violations

The Trustee represents that she has entered into this Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. The Estate of Chemetco and the Respondent do not contest any of the findings of violation entered by the Pollution Control Board in its Interim Opinion and Order and agree they shall become final upon entry of the Order approving this Stipulation and Proposal for Settlement. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Estate of Chemetco does not affirmatively admit any of the additional allegations of violation within the original Complaint or the First Amended Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Estate, and the Respondent, and any officer or agent 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 or agents 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)(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 parties state the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. While the facility was operating, the social and economic benefit attributable to the facility was seriously undermined by Respondent's failure to fulfill its responsibilities under the Act and Board Regulations.
3. Operation of the facility may have adversely affected the area immediately adjacent to the facility.
4. Compliance with the terms of the Act and Board Regulations violated by Respondent was both technically practicable and economically reasonable.
5. Respondent never complied with the majority of the provisions of the Act and Board Regulations it was found to have violated and only subsequently complied with certain of the groundwater sampling and monitoring requirements and liability assurance obligations prior to its cessation of operations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2006)¹, 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; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

¹ With regard to economic benefit, Section 42(h) of the Act, 415 ILCS 5/42(h) (2004), now 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:

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;

* * *

In determining the appropriate civil penalty to be imposed under * * * this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in arbitrary or unreasonable financial hardship. * * *

The Board has elected not to apply this revised provision in cases filed before its effective date (People v. Millenium Recycling & Solid Waste Consultants, Inc., et al, PCB 02-77 (February 19, 2004)). While not mandatory, this case presents circumstances where the penalty must be at least as great as the economic benefit to assure that the Respondent does not profit from its extensive noncompliance.

In response to these factors, the parties state as follows:

1. Respondent never complied with the majority of the provisions of the Act and Board Regulations it was found to have violated and only subsequently complied with certain of the groundwater sampling and monitoring requirements and liability assurance obligations prior to its cessation of operations.

2. Respondent was not 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. By refusing to comply with the closure and post-closure financial assurance requirements, Respondent left unfunded closure and post-closure obligations it had previously estimated in 1991 would cost at least \$7,400,000.00 and \$1,800,000, respectively. While Respondent prepared subsequent closure/post-closure plans that had lower cost estimates, it did not address Illinois EPA comments or modifications and never obtained final approval by Illinois EPA.

3. Respondent realized a significant economic benefit from its noncompliance.

a. Respondent avoided costs in excess of \$90,000 by evading its groundwater sampling and monitoring obligations from April 19, 1991 through May, 1992.

b. By refusing to comply with the closure and post-closure financial assurance requirements, Respondent avoided significant annual expenses. Based upon its approved 1988 and 1991 closure and post-closure costs estimate of approximately \$4,000,000.00 and \$6,000,000.00, Respondent avoided annual costs of \$80,000 to \$120,000 (based on the cost of obtaining a letter of credit of 2% of the amount of credit to cover the balance between the amount in its Closure Trust Fund and the estimated closure costs) during the period of 1986 to November 1, 2002) a minimum economic benefit of \$1,600,000.

c. By refusing to comply with the liability assurance requirements, Respondent avoided costs in excess of \$261,000.00.

The total economic benefit would be about \$1,951,000.00. Imposing a penalty at least as great as the

economic benefit would not be an arbitrary or unreasonable hardship because, pursuant to 11 U.S.C. 726(a)(4), the only priority for payments from liquidation of the bankruptcy estate lower than that for such penalty claims would be payments to the Respondent itself and that the Respondent is not expected to be recommencing operations. The Bankruptcy Trustee has expended well in excess of \$2 Million involving environmental issues at the facility since the filing of bankruptcy.

4. A joint federal/State enforcement action seeking additional relief, including cleanup of the facility is currently pending in federal court. The governments and the Estate are engaged in negotiations to resolve that case and facilitate restoration of the site. In the event these efforts are unsuccessful and the Bankruptcy Court approves abandonment of the Facility by the Trustee, the property would revert to the Respondent as though the bankruptcy petition were never filed.

5. Pursuant to a Consent Order entered June 30, 1988, in the case of People v. Chemetco, Inc., 88-CH-200, Respondent paid a civil penalty of \$80,000 to resolve violations of the Act and Air Pollution and Hazardous Waste regulations. In subsequent proceedings under that order, Respondent paid additional penalties of \$50,000.00 and \$175,000.00. Respondent pled guilty and was convicted of criminal violations of the Clean Water Act. See United States v. Chemetco, Inc., 274 F.3d 1154. A penalty of \$4,500,000 was imposed in that case.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. A penalty in the sum of Two Million Dollars (\$2,000,000.00) shall be imposed upon the Respondent. The time and manner of payment of this penalty shall be determined in Respondent's Bankruptcy proceeding where it shall be treated as an unsecured claim pursuant to 11 U.S.C. 726(a)(4). When paid, the penalty shall be paid by United States Trustee check(s) 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 shall appear on the check. A copy of the United States Trustee check and the transmittal letter shall be sent to:

James L. Morgan
Assistant Attorney General
Attorney General's Office
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, this Stipulation may be used against the Respondent and any officer or agent of the Respondent in any subsequent enforcement action as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Section 39(i) and/or 42(h) of the Act; 415 ILCS 5/39(i) and/or 5/42(h) (2002).

C. 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.

D. Cease and Desist

To the extent possible given that this matter is affected by the filing of Bankruptcy, 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. However, no affirmative duty exists to require the Trustee to fund the

closure requirements or to cure any of the additional violations set forth in Section III of this Stipulation.

E. Reservation

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 violation of state, federal, local, and common laws and/or regulations occurring after November 7, 2001;
- c. liability for releases or threatened releases of hazardous substances at or from the facility;
- d. liability for natural resources damage arising out of the alleged violations or from releases or threatened releases of hazardous substances at or from the facility; and
- e. 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 3.26 of the Act, 415 ILCS 5/3.26, or entity other than the Estate of Respondent.

F. Enforcement of Stipulation

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. Notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail.

3. 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, the Respondent, and the Estate 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.

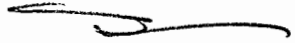
WHEREFORE, Complainant, the Respondent, and the Estate of Chemetco request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:

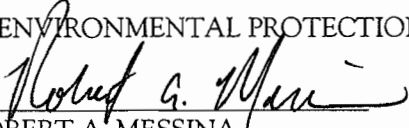

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

2/05/09

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY:


ROBERT A. MESSINA
Chief Legal Counsel

DATE:

2/4/09

RESPONDENT
CHEMETCO, INC.

BY:

LAURA K. GRANDY
Trustee, Bankruptcy Estate of Chemetco, Inc.

DATE: _____

4. It is the intent of the Complainant, the Respondent, and the Estate 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, the Respondent, and the Estate of Chemetco 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: _____
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

RESPONDENT
CHEMETCO, INC.

BY:  _____, Trustee
LAURA K. GRANDY
Trustee, Bankruptcy Estate of Chemetco, Inc.

DATE: JAN 5, 2009

