

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
GOLDEN BAG COMPANY,)
an Illinois corporation,)
)
Respondent.)

PCB No. 06-144
(Enforcement - Air)

NOTICE OF FILING

To: Charles T. Wehland
Jones Day
77 W. Wacker Drive
Chicago, Illinois 60601-1692



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, 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:  
L. NICHOLE CUNNINGHAM
Assistant Attorney General
Environmental Bureau

69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-3532
Dated: August 21, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 06-144
)	(Enforcement – Air)
GOLDEN BAG COMPANY,)	
an Illinois corporation,)	
)	
Respondent.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (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) (2008). 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) (2008).

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) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
L. NICHOLE CUNNINGHAM
Environmental Bureau
Assistant Attorney General

69 W. Washington St., Suite 1800
Chicago, Illinois 60602
217/782-9031
Dated: August 21, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, by)	
LISA MADIGAN, Attorney General of the State)	
of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB 06-144
)	(Enforcement - Air)
)	
GOLDEN BAG 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 GOLDEN BAG COMPANY, an Illinois corporation (“Respondent”), (“Parties to the Stipulation”), 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 the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On March 10, 2006, 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 and that owned and operated a plastic bag manufacturing facility, located at 290 Illinois Street, Dundee, Kane County, Illinois ("site" or "facility").

4. From 1999 to the present, Golden Bag Company has operated extruders and flexographic printing presses at the facility. The presses and extruders are emissions sources of volatile organic materials ("VOM").

B. Allegations of Non-Compliance

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

Count I: **Causing, Threatening or Allowing Air Pollution, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and 35 Ill. Adm. Code 201.141.**

Count II: **Failure to Obtain Construction Permit, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2006), and 35 Ill. Adm. Code 201.142.**

- Count III:** Failure to Obtain Operating Permit, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2006), and 35 Ill. Adm. Code 201.143.
- Count IV:** Operating a Major Source Without a CAAPP Permit, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2006).
- Count V:** Failure to Comply with New Source Review Requirements, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and 35 Ill. Adm. Code 203.201.
- Count VI:** Failure to Submit Complete and Accurate Annual Emissions Reports, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and 35 Ill. Adm. Code 201.302(a), 254.132(a) and 254.137(a).
- Count VII:** Failure to Demonstrate Compliance with Standards and Requirements for Flexographic Printing Operations, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and 35 Ill. Adm. Code 218.401(a) and (c).
- Count VIII:** Failure to Comply with the Board's Requirements to Certify Compliance and to Collect Records, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and 35 Ill. Adm. Code 218.404.

C. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

1. On or around January 27, 2004, Golden Bag submitted an initial application for an operating permit to the Illinois EPA, and thereafter submitted supplemental information related to the permit application. On or around March 6, 2004, Golden Bag submitted an application for a Federally Enforceable State Operating Permit ("FESOP") to the Illinois EPA on Clean Air Act Permit Program ("CAAPP") permit application forms. On or around March 17, 2009, Golden Bag provided the Illinois EPA with information required to complete its application for a FESOP.

2. In June 2006, Golden Bag submitted to the Illinois EPA Annual Emission Reports (“AERs”) for years 2003 and 2004. On May 1, 2006, Golden Bag submitted an AER to the Illinois EPA for 2005; Respondent has submitted AERs to the Illinois EPA by May 1st each year since May 2006 through the date of filing of this Consent Order.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, 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).

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall

continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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 and the Illinois EPA's information gathering responsibilities hindered 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. The compliance requirements for Respondent are both technically practicable and economically reasonable. Specifically, Respondent was and is able to obtain permits prior to the construction and operation of emission sources at the facility, to comply with the terms of such permits, and to comply with all recordkeeping and reporting requirements in the Act and Board Regulations.

5. Respondent has taken steps to comply with the Act and the Board Regulations. Specifically, Respondent will supplement its application for an operating permit and is currently complying with all applicable recordkeeping and reporting requirements in the Act and 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. Respondent's facility emitted VOM into the atmosphere in an area designated as severe nonattainment for ozone at the time of the alleged violations. In 1999, Golden Bag constructed and began to operate VOM emission sources at its facility without obtaining construction and operating permits from the Illinois EPA. Golden Bag submitted its first application for an operating permit in January 2004; from 1999 to the present, Golden Bag has continued to operate its facility in Illinois without the requisite permit from the Illinois EPA. Respondent is unable to produce any emissions records for calendar year 1999 and failed to comply with annual emissions reporting requirements until June 2006.

2. Respondent was reasonably diligent in attempting to come back into compliance with the Act and Board regulations after the Illinois EPA notified it of its noncompliance.

3. The economic benefit of non-compliance to Golden Bag is \$3,200.00, representing avoided operating permit fees from 1999 through 2009.

4. Complainant has determined, taking into consideration Golden Bag's financial ability, that a penalty of Twenty Thousand Dollars (\$20,000.00) 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 Twenty Thousand Dollars (\$20,000.00), Three Thousand Two Hundred Dollars (\$3,200.00) of which represents avoided operating permit fees which amount has already been tendered to the Illinois EPA Permit and Inspection Fund. Sixteen Thousand Eight Hundred Dollars (\$16,800.00) shall be paid within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Sixteen Thousand Eight Hundred Dollars (\$16,800.00) shall be paid as directed in section V.C herein.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$150.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. 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.

3. 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

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA. One payment of \$16,800.00 shall be directed for deposit into the Environmental Protection Trust Fund ("EPTF").

2. Payment 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

3. 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:

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall timely respond to any Illinois EPA requests for additional information necessary to determine the completeness of Respondent's application or for issuance of a permit in accordance with any time frame contained in any Illinois EPA request(s). Upon issuance of a FESOP, Respondent shall comply with the terms and conditions of the FESOP.

2. Respondent may continue to operate the facility in compliance with the Act and Board regulations prior to the issuance of a FESOP.

3. Respondent shall timely obtain all necessary construction permits for future equipment additions and/or replacements.

4. Respondent shall timely submit to the Illinois EPA all AERs.

5. Respondent shall at all times operate its facility in compliance with the Act and applicable Board Regulations.

6. 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.

7. 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.

8. 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 \$20,000.00 penalty, its commitment to cease and desist as contained in Section V.D. 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 Complainant's Complaint filed on March 10, 2006. 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 violations 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 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. 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 Complainant

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

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

As to Respondent

Charles T. Wehland
Jones Day
77 West Wacker
Chicago, Illinois 60601-1692

G. Enforcement and Modification of Stipulation

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

2. The Parties to the Stipulation 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.I. 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 the Parties to the Stipulation.

H. Execution of Stipulation

The undersigned representatives for the Parties to the 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 the Stipulation 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

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

GOLDEN BAG COMPANY

BY: _____
Name: _____
Title: President

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

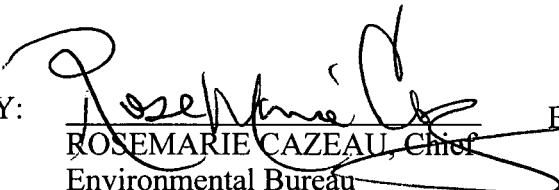
PEOPLE OF THE STATE OF ILLINOIS,


LISA MADIGAN
Attorney General, State of Illinois

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 8/20/09

DATE: 8/18/09

GOLDEN BAG COMPANY

BY: _____

Name: _____

Title: _____

CERTIFICATE OF SERVICE

I hereby certify that I did on August 21, 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: Charles T. Wehland
Jones Day
77 West Wacker
Chicago, Illinois 60601-1692

and the same foregoing instrument(s) sent electronically:

To: John T. Therrault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, 11th Floor
Chicago, IL 60601


L. NICHOLE CUNNINGHAM
Assistant Attorney General 

This filing is submitted on recycled paper.