

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
 -vs-) PCB No. 12-60
)
WAHL CLIPPER CORPORATION,)
an Illinois corporation,)
)
Respondent.)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, November 14, 2011, filed the Stipulation and Proposal for Settlement, and Motion for Relief from Requirement of a Hearing, with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. True and accurate copies of the documents so filed are attached herewith and served upon you.

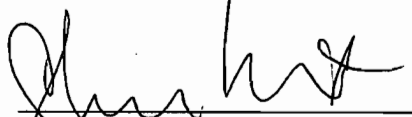
RESPECTFULLY SUBMITTED,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau North

BY: 
CHRISTOPHER GRANT
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, Illinois 60602
(312) 814-5388

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Complainant,)	
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-vs-)	PCB No. 12-60
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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and WAHL CLIPPER CORPORATION ("Respondent or WCC") ("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.* (2010), 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 November 14, 2011, 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 (2010), 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 (2010).

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.

4. At all times relevant to the Complaint, Respondent owned and operated an appliance manufacturing facility located at 2900 North Locust, Sterling, Whiteside County, Illinois ("Site").

B. Allegations of Non-Compliance

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

Count I: STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT, violation of 415 ILCS 5/21(f) (2010), and 35 Ill. Adm. Code 703.121;

Count II: VIOLATION OF HAZARDOUS WASTE MANIFEST REGULATIONS, violation of 415 ILCS 5/21(f) (2010), and 35 Ill. Adm. Code 722.142;

Count III: IMPROPER STORAGE OF USED OIL, violation of 35 Ill. Adm. Code 739.122(c)(1);

Count IV: FAILURE TO PERFORM A SPECIAL WASTE DETERMINATION, violation of 415 ILCS 5/21(d)(2) (2010), and 35 Ill. Adm. Code 808.121;

Count V: FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION, violation of 415 ILCS 5/21(f)(2) (2010), and 35 Ill. Adm. Code 722.111.

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 I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

Following Illinois EPA's June 24, 2010 inspection, the Respondent took corrective action in response to the alleged violations. On October 12, 2010, Respondent demonstrated to Illinois EPA that it had properly labeled all hazardous waste and used oil containers, performed all appropriate special and hazardous waste determinations on its waste streams, and corrected the alleged waste manifest deficiencies.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 5/42 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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 the Stipulation state the following:

1. The alleged failure to test and label waste at the Site, and the failure to provide notated copies of manifests to Illinois EPA, interfered with Illinois EPA's hazardous waste oversight responsibilities.
2. There is social and economic benefit to Respondent's manufacturing business at the Site, provided it operates in compliance with state and federal waste storage and waste disposal regulations.
3. Operation of Respondent's manufacturing business is suitable for the area in which it is located.
4. As shown by Respondent's subsequent compliance, testing, labeling and documenting Respondent's waste streams in accordance with the Act and Board regulations are technically practical and economically reasonable.
5. Respondent has corrected the alleged violations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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 the Stipulation state as follows:

1. Complainant alleges that the labeling and waste storage violations occurred on at least June 24, 2010. Complainant alleges that the waste manifest violations lasted from at least July 21, 2009 to at least June 24, 2010, a period of 307 days.

2. Respondent was not diligent in ensuring complete compliance with the Board's waste handling requirements.

3. Respondent may have realized an economic benefit from a delay in testing the Metal Grinding Waste, as defined in the Complaint. However, the potential value of this benefit would have been small. Complainant believes that assessment of a civil penalty of \$15,000.00 will more than recover any potential economic benefit realized by the Respondent for the alleged violations.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of \$15,000.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent has no previously adjudicated violations of the Act.

6. Respondent did not self-disclose the alleged violations.

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 Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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, 415 ILCS 5/42(g) (2010), 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 case name, case number and 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:

Christopher J. Grant
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall henceforth label all hazardous waste storage containers at its facility in accordance with the requirements of 35 Ill. Adm. Code, Part 722, Subpart C.

2. Respondent shall henceforth provide notice to Illinois EPA for all shipments of hazardous waste where it does not receive a signed manifest from the receiving facility. Notice shall be provided in accordance with the provisions of 35 Ill. Adm. Code 722.142(b).

3. Respondent shall maintain all hazardous waste manifests and related records at its facility in accordance with the requirements of 35 Ill. Adm. Code, Part 722, Subpart B. All manifests and records required under this Subpart shall be made available to an authorized representative of Illinois EPA immediately upon request.

4. Respondent shall henceforth label or clearly mark all used oil containers and storage tanks at its facility in accordance with the requirements of 35 Ill. Adm. Code 739.122.

5. 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.

6. 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.

7. 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 \$15,000.00 penalty, its commitment to cease and desist as contained in Section V.D. above, 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 November 14, 2011. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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 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.

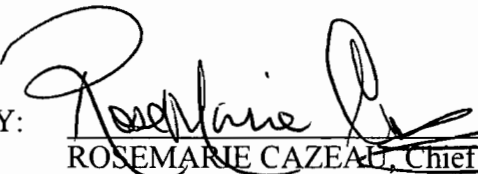
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JOHN J. KIM, Interim Director

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM

DATE: 11/9/11

DATE: 11/7/11

RESPONDENT WAHL CLIPPER
CORPORATION

BY: William Sampson

TITLE: Director of HR & Risk Management

DATE: 10/28/11

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WAHL CLIPPER CORPORATION,)	
an Illinois corporation,)	
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MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a Complaint and Stipulation and Proposal for Settlement executed between Complainant and Respondent Wahl Clipper Corporation.

2. Section 31 of the Act, 415 ILCS 5/31 (2010), provides, in pertinent part, as follows:

* * *

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for

hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

* * *

3. No hearing is now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2010).

Respectfully submitted,

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

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 

CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
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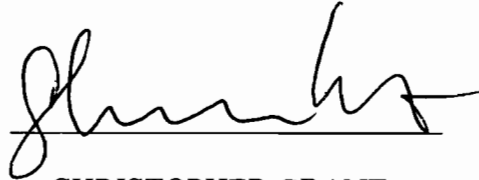
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 14th day of November, 2011, the foregoing Stipulation and Proposal for Settlement, and Motion for Relief from Requirement of Hearing, upon the persons listed below by first class mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List:

Mr. John Therriault, Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph, Chicago, Illinois 60601 (by electronic filing)

Mr. Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, Chicago, Illinois 60601 (by hand delivery)

Mr. Scott C. Sullivan
Attorney at Law
Williams McCarthy LLP
P.O. Box 219
120 W. State Street
Rockford, Illinois 61105-0219
Attorney for Respondent