

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-202
)	(Enforcement- Air)
PHOENIX FINISHING, INC.,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on September 25, 2007, we electronically filed with the Illinois Pollution Control Board a MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT and a STIPULATION AND PROPOSAL FOR SETTLEMENT, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General of the State of Illinois

By: 
L. Nichole Cunningham

Assistant Attorney General
Environmental Bureau North
69 W. Washington, Suite 1800
Chicago, Illinois 60602
Tel: 312.814.3532

SERVICE LIST

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

Mr. Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, RC
500 Skokie Boulevard, Suite 510
Northbrook, IL 60062

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant)
)
 v.) PCB 05-202
) (Enforcement- Air)
)
 PHOENIX FINISHING, INC., an Illinois)
 corporation,)
)
 Respondent.)

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

Now comes the 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 Stipulation and Proposal for Settlement executed between Complainant and Respondent, PHOENIX FINISHING, INC.
2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), provides as follows:

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).

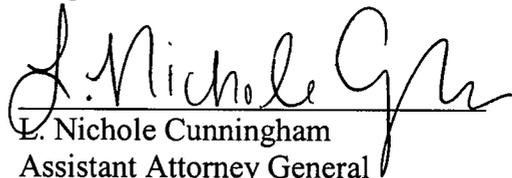
3. No hearing is now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2006).

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

By:



L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Tel: (312) 814-3532

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	
)	
v.)	PCB 05-202
)	(Enforcement - Air)
)	
PHOENIX FINISHING, INC., 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 PHOENIX FINISHING, INC., an Illinois corporation ("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. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation,

Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their 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.* (2004).

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 June 3, 2005, 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(2004), 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 (2004), and charged, *inter alia*, with the duty of enforcing the Act.

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.

B. Site Description

1. At all times relevant to the Complaint, Respondent operated a metal finishing facility located at 1090 Industrial Drive, Bensenville, DuPage County, Illinois ("site"). As part of its process, Respondent conducts parts coating and silk screening operations.

2. The Illinois EPA conducted an inspection of the site in response to citizen complaints about paint spot damage on automobiles parked nearby. Inspectors found liquid coating, powder coating and silk screening operations on site.

3. Illinois EPA investigators found that the liquid coating, powder coating and silk screen operations on site vented to the atmosphere. Emission units at the facility have included up to three (3) coating spray booths, three (3) ovens, and silk screening operations.

4. The liquid coating and silk screen operations utilize coating materials that contain, have the potential to emit, and do emit, volatile organic materials ("VOM") such as inks, dilutents and cleaning agents.

5. At various times relevant to the Complaint, Respondent was required to obtain a permit for any emission sources from the Illinois EPA and failed to do so.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board Air Pollution Regulations:

COUNT I: Failure to Obtain Air Pollution Permits
Violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2004), and 35 Ill. Adm. Code 201.143.

COUNT II: Failure to Comply with Emission Limitation Standards
Violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and
35 Ill. Adm. Code 218.204(j).

COUNT III: Failure to File an Annual Emissions Report (AER)
Violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2004), and
35 Ill. Adm. Code 201.302(a) and 254.132(a).

D. Admission of Violations

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

E. Compliance Activities to Date

1. On or around June 23, 2006, Respondent submitted a Compliance Certification, showing compliance with the Board's daily-weighted average limitations in Section 218.205 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.205, by manually measuring the volume of paint used in each coating booth and calculating the daily-weighted average based on volume and the VOM content of the paints.

2. On or around April 29, 2005, Respondent submitted an application for a Federally Enforceable State Operating Permit (FESOP) to the Illinois EPA. Respondent has supplemented its FESOP application, providing all requested materials to the Illinois EPA.

3. On or around June 23, 2006, at the Illinois EPA's direction, Respondent submitted calculations to the Illinois EPA documenting its "potential to emit" (PTE) of VOM, using the method required by the Illinois EPA.

4. On or around June 23, 2006, Respondent certified to the Illinois EPA that it is in compliance with the Board's coating regulations.

5. Respondent submitted AERs for calendar years 2003 through 2005.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant 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.

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) (2004), 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 were hindered, by Respondent's violations.
2. There is social and economic benefit to the facility.
3. Proper operation of the facility is suitable for the area in which it is located.
4. Obtaining a permit and complying with its terms, complying with the Board's coating regulations, and submitting AERs when required are technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations regarding coating operations. Respondent has committed to comply with the requirement to obtain a permit and to submit all future required AERs.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), provides, in pertinent part, 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 state as follows:

1. Since at least 2003, Respondent has conducted liquid coating, powder coating and silk screening operations without a permit. From 1996 until 2004, Respondent used some non-compliant coatings. Respondent failed to submit an annual emissions report ("AER") to the Illinois EPA in 2003, when the facility's increase in PTE triggered the permitting requirements and this reporting requirement. Permitting and reporting requirements, as well as the Board's paper coating regulations, are of programmatic significance to the Illinois EPA.

2. Since notified of its violations, Respondent has been diligent in complying with the permitting and coating regulations. Respondent has committed to timely submit all future required AERs.

3. Respondent received an economic benefit of Fifteen Hundred Dollars (\$1,500.00) from avoided permit fees as a result of its noncompliance with the Act and Board Regulations.

4. A penalty of Two Thousand Dollars (\$2,000.00), representing the maximum amount that Phoenix Finishing is able to pay, will serve to deter further violations by the Respondent of the Act and Board Air Pollution Regulations.

5. Respondent does not have any previously adjudicated violations of the Act and Board Air Pollution Regulations.

6. Self-disclosure is not at issue in this matter.

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Two Thousand Dollars (\$2,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check or money order payable to the Illinois EPA. Fifteen Hundred Dollars (\$1,500.00), representing avoided permit fees, shall be designated to the Environmental Protection Permit and Inspection Fund, and Five Hundred Dollars (\$500.00), representing duration and gravity, shall be designated to the Environmental Protection Trust Fund ("EPTF"). All payments shall be 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 and Respondent's Federal Employer Identification Number ("FEIN") shall appear on 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
100 W. Randolph St.
Chicago, Illinois 60601

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

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check or money order, payable to the Illinois EPA, designated to the EPTF and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondent may be reached at the following address:

Joel Aronson
Phoenix Finishing, Inc.
1090 Industrial Drive
Bensenville, IL 60106

Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, P.C.
500 Skokie Boulevard, Suite 510
Northbrook, IL 60062

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Compliance Plan

1. Respondent shall timely submit all future required AERs.
2. Within 30 days of receiving any request from the Illinois EPA to supplement its pending FESOP application, Respondent shall submit the requested materials to the Illinois EPA. Effective immediately upon issuance of the FESOP, Respondent shall comply with its terms and conditions.
3. Respondent shall comply with the Act and applicable Board Air Pollution Regulations.

C. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.E below, the Respondent hereby agrees that 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 promulgated thereunder for all violations alleged in

the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h) (2004). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

D. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (“Allegations of Non-Compliance”) of this Stipulation.

E. Release from Liability

In consideration of the Respondent’s payment of the \$2,000.00 penalty and agreement to Cease and Desist, as contained in Section VIII.D herein, and upon the Pollution Control Board’s acceptance and approval of the terms of this Stipulation, 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 referenced herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant’s Complaint filed on June 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 (2004), 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 payments pursuant to Section VIII.A ("Penalty Payment") of this Stipulation shall be submitted as follows:

As to the Complainant

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
69 W. Washington, 18th flr.
Chicago, Illinois 60602

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

Manager
Compliance Unit
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Joel Aronson
Phoenix Finishing, Inc.
1090 Industrial Drive
Bensenville, IL 60106

Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, P.C.
500 Skokie Boulevard, Suite 510
Northbrook, IL 60062

G. Modification of Stipulation

The parties may, by mutual written consent, agree to 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 VIII.F. 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, and then accompany a joint motion to the Illinois Pollution Control Board to approve and accept the Stipulation as amended.

H. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation, 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. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and any Board Order accepting and approving such shall be severable. 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 and Respondent request that the Board adopt and accept the foregoing Stipulation as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

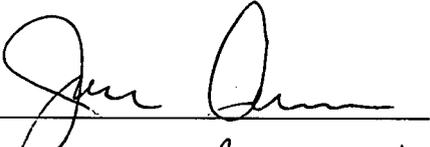
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY:  DATE: 8/15/07
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

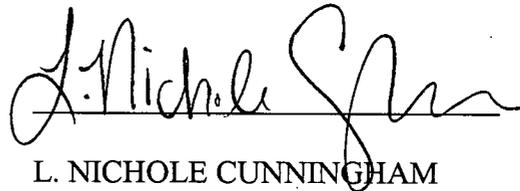
BY:  DATE: 8/10/07
ROBERT A. MESSINA
Chief Legal Counsel

PHOENIX FINISHING, INC.

BY:  DATE: 9/12/07
Name: JOE ARZONSON
Title: PRES

CERTIFICATE OF SERVICE

I, LORREN NICHOLE CUNNINGHAM, an Assistant Attorney General for the State of Illinois, certify that on the 25th day of September, 2007, I caused to be served by U.S. Mail the foregoing MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT to the parties named on the attached service list, by depositing the same in postage prepared envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

A handwritten signature in cursive script, reading "L. Nichole Cunningham", written over a horizontal line.

L. NICHOLE CUNNINGHAM