

SERVICE LIST

Mr. Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

Jon S. Faletto
Hinshaw & Culbertson LLP
416 Main Street - 6th Floor
Peoria, IL 61602

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 currently scheduled in the instant case.

4. Both parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

BY:


LORREN NICHOLE CUNNINGHAM
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-3532

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On September 5, 2008, 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 BEHR ALUMINUM, INC., was an Illinois corporation authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a secondary aluminum smelting facility located at 1100 Seminary Drive, Rockford, Winnebago County, Illinois ("Facility").

B. Allegations of Non-Compliance

In the Complaint, Complainant and the Illinois EPA alleged that the Respondent violated the following provisions of the Act and Board Regulations:

Count I: **AIR POLLUTION** in violation of Section 9(a) of the Act and Sections 201.141 and 212.321 of the Board's Air Pollution Regulations

Count II: **DISCHARGE OF CONTAMINANTS** in violation of Section 9(b) of the Act, Special Condition 2(a) of Respondent's September 2001 Lifetime Operating Permit and Special Condition 3(a) of Respondent's August 2002 Lifetime Operating Permit

Count III: **FAILURE TO TIMELY CONDUCT EMISSIONS TESTING** in violation of Section 9(b) of the Act, Special Condition 5(a) of Respondent's September 2001 Lifetime Operating Permit and Special Condition 6(a) of Respondent's August 2002 Lifetime Operating Permit

- Count IV: **FAILURE TO UTILIZE POLLUTION CONTROL EQUIPMENT** in violation of Section 9(b) of the Act, Special Condition 2(b) of Respondent's September 2001 Lifetime Operating Permit, and Special Condition 3(b) of Respondent's August 2002 Lifetime Operating Permit
- Count V: **FAILURE TO OBTAIN CONSTRUCTION PERMIT** in violation of Section 9(b) of the Act and Section 201.142 of the Board's Air Pollution Regulations
- Count VI: **FAILURE TO MAINTAIN RECORDS** in violation of Section 9(b) of the Act, Special Conditions 9(a), (c) and (g) of Respondent's September 2001 Lifetime Operating Permit, and Special Conditions 10(a), (c) and (g) of Respondent's August 2002 Lifetime Operating Permit
- Count VII: **FAILURE TO TIMELY DEMONSTRATE COMPLIANCE WITH THE NESHAP** in violation of Section 9.1(d)(1) of the Act and Sections 63.1511(a) and (b) and 63.1501(a) of the NESHAP for secondary aluminum production
- Count VIII: **FAILURE TO TIMELY SUBMIT NOTICE OF COMPLIANCE WITH THE NESHAP** in violation of Section 9.1(d)(1) of the Act and Section 63.1515(b) of the NESHAP for secondary aluminum production
- Count IX: **FAILURE TO COMPLY WITH PSD REQUIREMENTS** in violation of Sections 9.1(d)(1) and (2) of the Act, Sections 165(a)(1) and (4) of the federal Clean Air Act, and Sections 52.21(a) and (j) of the federal PSD Regulations
- Count X: **FAILURE TO OBTAIN CAAPP PERMIT** in violation of Section 39.5(6)(b) of the Act

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation solely for the purpose of settling and compromising disputed claims without having to incur the time, effort, and expense of

contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not 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

In September 2004, Respondent conducted stack testing at the Facility. In August 2007, Behr Aluminum ceased all operations at the Facility.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. Complainant asserts that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's alleged violations.
2. There was social and economic benefit to the Facility while it was in operation; however, Respondent made a business decision to close the Facility in August 2007.
3. Operation of the Facility was suitable for the area in which it was located.
4. Compliance with federal and State permit requirements, federal and state emissions limitations and requirements, performance testing and notification requirements prescribed by the NESHAP for secondary aluminum production, recordkeeping requirements prescribed by permit conditions and Board regulations, and the installation and operation of best available control technology consistent with prevention of significant deterioration ("PSD") requirements are all technically practicable and economically reasonable.
5. Respondent subsequently complied with the Act and the Board Regulations, by

conducting required stack testing at the Facility in September 2004 and, in August 2007, terminating operation of its emissions sources and air pollution control equipment that were the subject of Complainant's complaint.

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 parties to this Stipulation state as follows:

1. Complainant asserts that the alleged violations at Respondent's Facility began on or around September 2001, when Respondent modified its Facility without first obtaining a PSD construction permit from the Illinois EPA. The alleged violations have been resolved at various times since September 2001.

2. Since 2005, Respondent has acted diligently in attempting to achieve and maintain compliance with the Act, Board regulations and applicable federal regulations.

3. Complainant asserts that Respondent received an economic benefit from its failure to comply with the Clean Air Act, the Act and State and Federal Air Pollution Regulations, including avoiding installation of best available control technology required to bring the Facility into compliance with PSD regulations. However, the civil penalty obtained in the settlement of this matter exceeds any economic benefit of noncompliance received by Respondent. Furthermore, Respondent has ceased operation of the Facility.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of One Hundred and Forty Thousand Dollars (\$140,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Regulations.

5. The Complainant and the Illinois EPA are unaware of any previously adjudicated violations of the Act by Respondent.

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

7. Respondent has agreed to fund a supplemental environmental project in the amount of

One Hundred Thousand Dollars (\$100,000.00), which will result in reduced emissions generated during diesel engine operations in the State of Illinois, as described in Section V.B herein.

V. TERMS OF SETTLEMENT

A. Civil Penalty Payment

1. The Respondent shall pay a civil penalty of One Hundred and Forty Thousand Dollars (\$140,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

2. The civil penalty payment 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. 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

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
Environmental Bureau
Illinois Attorney General's Office
69 West Washington St., Suite 1800
Chicago, Illinois 60602

B. Supplemental Environmental Project

1. In order to promote the goals of the Act to restore, protect and enhance the quality of

the environment, the Respondent shall perform a supplemental environmental project ("SEP"). The settlement value of the SEP is One Hundred Thousand Dollars (\$100,000.00) and will offset penalties sought by the Complainant and the Illinois EPA in this matter. The parties to this Stipulation agree that this SEP shall consist of the following:

2. The Respondent shall pay the amount of One Hundred Thousand Dollars (\$100,000.00) within thirty (30) days after the date of entry of this Stipulation to the Illinois EPA Special State Projects Trust Fund, to be used for the reduction of diesel emission pollution in Illinois.

3. The payment shall be paid by certified check or money order made payable to the Illinois EPA Special State Projects Trust Fund. The certified check or money order shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

4. 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
Environmental Bureau
Illinois Attorney General's Office
69 West Washington St., Suite 1800
Chicago, Illinois 60602

5. The SEP payment, required by Section V.B.2 above, shall be administered by Illinois

EPA to further diesel emission reduction from existing diesel engines. The Illinois EPA's sponsored program to fund diesel emission reduction activities shall target various diesel engine groups, including heavy duty trucks, marine engines, locomotives, non-road engines and school or transit buses. The Illinois EPA may grant SEP funding for various emission reduction activities, including engine retrofitting, idle reduction, engine upgrades, vehicle or equipment replacements with clean fuel alternatives, and clean fuel usage.

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

7. Any public statement, oral or written, in print, film or other media, made by the Respondent making reference to any SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General and the Illinois EPA for alleged violations of the Illinois Environmental Protection Act and regulations promulgated thereunder."

C. Release from Liability

In consideration of the Respondent's payment of a One Hundred and Forty Thousand Dollar (\$140,000.00) civil penalty and completion of a One Hundred Thousand Dollar (\$100,000.00) SEP, 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. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on September 5, 2008. 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;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. 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 (2006), other than the Respondent.

D. Execution of Stipulation

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 8/27/08

DATE: 8/26/08

BEHR ALUMINUM, INC.

BY: _____

DATE: _____

Name: _____

Title: _____

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____

ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

DATE: _____

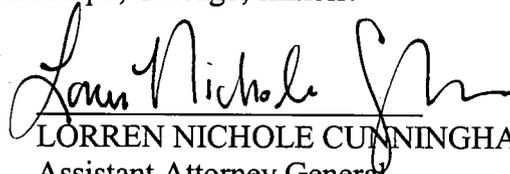
BEHR ALUMINUM, INC.

BY: *Leland R. Foercking*
Name: *Leland R. Foercking*
Title: *Treasurer*

DATE: *Sept. 3, 2008*

CERTIFICATE OF SERVICE

I, Lorren Nichole Cunningham, Assistant Attorney General, do certify that on the 5th day of September, 2008, I caused to be served upon Respondent Behr Aluminum, Inc. the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing by depositing the same at the United States Postal Service facility located at 100 W. Randolph, Chicago, Illinois.



LORREN NICHOLE CUNNINGHAM
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-3532