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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 21 2001

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

TOYAL AMERICA, Inc. formerly)
known as ALCAN-TOYAL AMERICA, INC.,)
a foreign corporation,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 00-211

(Enforcement)

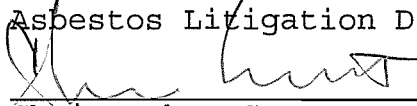
NOTICE OF FILING

PLEASE TAKE NOTICE that on the 21st day of June, 2001, the Complainant filed its Motion to Request Relief From Hearing Requirement, and Stipulation and Proposal for Partial Settlement in the above referenced matter, true and correct copies of which are attached hereto and herewith served upon you.

PEOPLE OF THE STATE OF
ILLINOIS, *ex rel.* JAMES E.
RYAN, Attorney General of
State of Illinois

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

By:


Christopher Grant
Assistant Attorney General
188 W. Randolph, 20th floor
Chicago Illinois, 60601
(312) 814-5388
Attorney No. 99000

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MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above captioned matter. In support thereof, the Complainant states as follows:

1. On May 31, 2000, Complainant filed a Seven Count complaint against respondents, alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2000) ("Act"), and regulations promulgated by the Illinois Pollution Control Board ("Board").

2. On June 21, 2001, a Stipulation and Proposal for Partial Settlement, covering the violations alleged in Counts III through VII of the complaint, was filed before the Board.

3. Section 31 Act, 415 ILCS 5/31 (2000), 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).

* * *

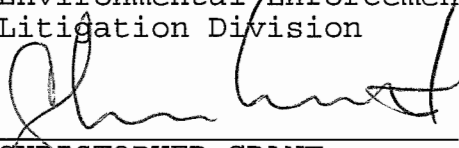
4. No hearing is scheduled in the instant case.
5. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c) (2) (2000).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by JAMES E. RYAN,
Attorney General of the
State of Illinois

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

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,)

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TOYAL AMERICA, Inc. formerly)
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Respondent.)

PCB No. 00-21 STATE OF ILLINOIS
(Enforcement) Pollution Control Board

STIPULATION AND PROPOSAL FOR PARTIAL SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, TOYAL AMERICA, INC., a foreign corporation, do hereby agree to this Stipulation and Proposal for Partial Settlement. 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 full hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of partial 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 this or any other proceeding except to enforce the terms of this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Partial Settlement and any Illinois Pollution Control Board ("Board")

order accepting same may be used in any future enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Section 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2000). This agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2000).

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 Proposal for Partial Settlement and to legally bind them to it.

III.

COVERED MATTER

This Stipulation and Proposal for Partial Settlement is limited to Counts III, IV, V, VI and VII of the Complaint. Counts I and II, in which Complainant alleges, *inter alia*, violations of Section 9(a) of the Act, 35 Ill. Adm. Code 201.141,

and 35 Ill. Adm. Code 218.986(a), are not covered by this Stipulation and Proposal for Partial Settlement, and remain the subject of an ongoing enforcement action before the Board.

IV.

APPLICABILITY

This Stipulation and Proposal for Partial Settlement shall apply to and be binding upon the Complainant and Respondent, and each of them and on any officer, director, agent, employee or servant of Respondent, as well as Respondent's successors and assigns. Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of it's officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

V.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brings this action on his own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in him under Section 31 of the Act, 415 ILCS 5/31 (2000).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2000), which is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, Toyal America, Inc., is a corporation organized under the laws of the State of Delaware.

B. Facility Description

Since at least March 15, 1995, Respondent has operated an aluminum products manufacturing facility at 17401 South Broadway, Lockport, Will County, Illinois.

C. Noncompliance

Complainant has alleged, in pertinent part:

COUNT III: RCRA VIOLATION-OPERATING WITHOUT A PERMIT:

Violation of Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2000), and Section 703.121 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121;

COUNT IV: RCRA VIOLATION-INADEQUATE AISLE SPACE:

Violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2000), and Section 725.135 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.135;

COUNT V: RCRA VIOLATION-FAILURE TO AMEND CONTINGENCY PLAN:

Violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2000), and Section 725.154(d) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.154(d);

COUNT VI: RCRA VIOLATION-TANK SYSTEM: SECONDARY CONFINEMENT:

Violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2000), and Section 725.293(e)(2)(D) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.293(e)(2)(D);

COUNT VII: RCRA VIOLATION-TANK SYSTEM: INSPECTION DOCUMENTATION:

Violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2000), and Section 725.295(c) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.295(c).

VI.

EXPLANATION OF PAST FAILURES TO COMPLY WITH THE ACT

Respondent states that its waste handling system was being updated and reviewed at the time of the Illinois EPA inspection that lead to the filing of Counts III through VII of the Complaint. Respondent also states that unexpected delays in the issuance of Will County and municipal construction permits contributed to the conditions leading to the filing of Counts III through VII.

VII.

FUTURE PLANS OF COMPLIANCE

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 Counts III, IV, V, VI and VII of the Complaint as outlined in Section V.C. of this Stipulation and Proposal for Partial Settlement.

VIII.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), 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.

ANALYSIS:

Although Toyal does not admit the alleged violations of the Act and Pertinent Board Regulations, the parties mutually state as follows:

1. Character and Degree of Injury:

The impact to the public from Toyal's alleged violations of the Act would be an increased risk of the discharge of hazardous waste into the environment. In addition, Illinois EPA and the public were not privy to information that is important to the control of pollution in Illinois. The RCRA permit process, and maintenance of an updated contingency plan are important tools in responding to emergencies which may threaten the release of hazardous waste into the environment.

2. Social and Economic Benefit:

The parties agree that Toyal's operations are of social and economic benefit.

3. *Suitability to Area:*

The facility that generates hazardous waste is suitable to its location provided it operates in compliance with the Act and Board Regulations.

4. *Technical Practicability:*

Complying with the relevant sections of the Act and Board Regulations is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Since the time of the alleged violations, Toyal has come into compliance with the pertinent sections of the Act and Board Regulations.

IX.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2000), 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.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

The initial inspection occurred on February 23, 1999. It is uncertain how long hazardous waste was stored without a permit, but the State alleges that at least a portion was accumulated for more than 90 days. The State also alleges that hazardous waste was improperly labeled.

2. *Diligence of Defendant:*

Respondent has shown diligence in addressing the violations. It is believed that Toyal's facility is now in compliance on the issues raised by Counts III through VII of the complaint.

3. *Economic Benefit of noncompliance:*

Respondent received a minimal economic benefit in cost savings from noncompliance with the statutes and regulations covered by this Partial Settlement.

3. *Deterrence:*

A penalty of Thirty One Thousand Five Hundred Dollars (\$31,500) will serve to deter future noncompliance by the

Respondent.

4. *Compliance History:*

Respondent has no previous adjudicated violations of the pertinent sections of the Act and Board Regulations.

X.

TERMS OF SETTLEMENT

1. Respondent, TOYAL AMERICA, INC., does not admit violations of:

- (a) Section 21(f)(1) of the Act and 35 Ill. Adm. Code 703.121, as alleged by Complainant in Count III;
- (b) Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.135, as alleged by Complainant in Count IV;
- (c) Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.154(d), as alleged by Complainant in Count V;
- (d) Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.293(e)(2)(D), as alleged in by Complainant in Count VI.
- (e) Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.295(c), as alleged by Complainant in Count VII.

2. Respondent shall pay a penalty of Thirty One Thousand Five Hundred Dollars (\$31,500.00) within Thirty (30) days after the date on which the Board adopts a final order approving this Stipulation and Proposal for Partial Settlement. Payment shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund, and 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

A copy of the certified check or money order, and all related correspondence, shall be sent by first class mail to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

3. Respondent's Federal Employees Identification Number ("FEIN")/Social Security number is 36-352-14-82. The FEIN/Social Security number must be on the certified check or money order. For issues relating to the payment of the penalty, Respondent may be reached at the following address:

Toyal America, Inc.
17401 South Broadway
Lockport, Illinois 60441

XI.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Partial Settlement in no way affects the Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and Board regulations.

XII.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its

employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have right of entry to Respondent's facility at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of Respondent's facility, the Illinois EPA, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples as they deem necessary in order to conduct their inspection.

XIII.

RELEASE FROM LIABILITY FOR COUNTS III, IV, V, VI AND VII ONLY

In consideration of Respondent's payment of a \$31,500.00 penalty and its commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges Respondent from any further liability or penalties for violations of the Act and regulations which were the subject matter of Counts III, IV, V, VI, and VII of the complaint herein, upon the completion of all activities required hereunder and the payment of all monies owed. However, nothing in this Stipulation and Proposal for Partial Settlement, shall be construed as a waiver by Complainant of the right to seek redress for the violations alleged in Counts I and II of the Complaint herein, or obtain penalties with respect thereto, and Complainant's enforcement activities as to these Counts continue before the Board. Further, nothing in this Stipulation and Proposal for Partial Settlement shall be construed as a waiver of Complainant's rights regarding full enforcement of future

violations.

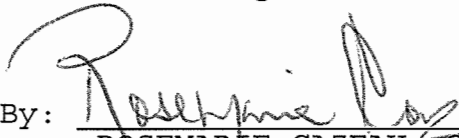
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT

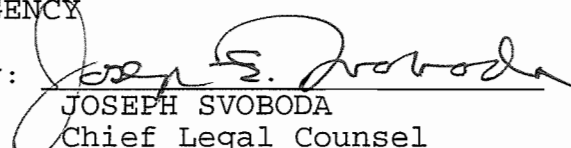
JAMES E. RYAN
Attorney General
of the State of Illinois

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

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau, Chicago
Assistant Attorney General

DATE: 6/18/01

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
JOSEPH SVOBODA
Chief Legal Counsel

DATE: 6-14-01

FOR THE RESPONDENT

TOYAL AMERICA, INC.,
a Delaware corporation,

By: _____

Its: _____

FEIN: 36-352-14-82

violations.

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

AGREED:

FOR THE COMPLAINANT

JAMES E. RYAN
Attorney General
of the State of Illinois

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

By: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau, Chicago
Assistant Attorney General

DATE: _____

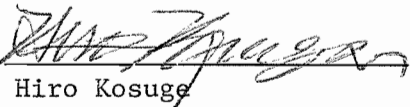
ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: _____
JOSEPH SVOBODA
Chief Legal Counsel

DATE: _____

FOR THE RESPONDENT

TOYAL AMERICA, INC.,
a Delaware corporation,

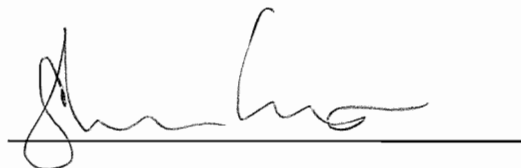
By: 
Hiro Kosuge

Its: President

FEIN: 36-352-14-82

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 21st day of June, 2001, the foregoing Motion to Request Relief from Hearing Requirement and Stipulation and Proposal for Partial Settlement upon the person listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.

A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a solid horizontal line.

CHRISTOPHER GRANT

Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford, Illinois 61101