

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 10-21
)	(Enforcement-Air)
)	
SEATING CONCEPTS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

To: Jeffrey D. Jeep Esq.
JEEP & BLAZER, LLC
24 North Hillside Avenue
Suite A
Hillside, Illinois 60162

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on this date I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, a STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT, 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: 
ANDREW J. NICHOLAS

Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069
Dated: February 1, 2010

People v. Seating Concepts, Inc.

PCB No. 10-21

CERTIFICATE OF SERVICE

I, ANDREW J. NICHOLAS, an Assistant Attorney General, do certify that I caused to be served on this 1st day of February, 2011, the foregoing Motion for Relief From Hearing Requirement, Stipulation and Proposal for Settlement, and Notice of Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ANDREW J. NICHOLAS

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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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

1. The Complainant and Respondent Seating Concepts, Inc. ("Seating Concepts"), 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. The Complainant and Respondent SEATING CONCEPTS 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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
ANDREW J. NICHOLAS

Environmental Bureau
Assistant Attorney General
69 W. Washington St., Suite 1800
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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 SEATING CONCEPTS, INC., 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.* (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 September 25, 2009, 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. At all times relevant to the Complaint, Respondent owned and operated a furniture manufacturing facility located at 125 Connell Street, Rockdale, Will County, Illinois ("site").

4. On July 31, 2007, the Illinois EPA inspected the Respondent's facility. The inspector observed Respondent operating emission sources without permits issued by the Illinois EPA.

5. On December 12, 2007, the Illinois EPA issued Violation Notice ("VN") A-2007-00186 to the Respondent.

6. The Respondent responded to the VN with a proposed Compliance Commitment Agreement ("CCA") on January 30, 2008.

7. On February 13, 2008, representatives of the Illinois EPA and the Respondent met pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010).

8. On March 5, 2008, the Respondent submitted a revised CCA to the Illinois EPA.

9. On March 26, 2008, the Illinois EPA rejected the Respondent's proposed CCA.

10. On May 5, 2008, the Illinois EPA issued a Notice of Intent to Pursue Legal Action (“NIPLA”) to the Respondent, and thereafter referred the matter to the Attorney General of the State of Illinois.

B. Allegations of Non-Compliance

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

Count I: Construction of Emission Sources Without a Permit

By installing new emission units at its facility without a construction permit, the Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Section 201.142 of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

Count II: Operation of Emission Sources Without a Permit

By operating new emission units at its facility without obtaining an operating permit from the Illinois EPA, the Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Section 201.143 of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 201.143.

Count III: Failure to Pay Construction Permit Fees

By failing to pay construction permit fees to the Illinois EPA prior to construction of new emission units, the Respondent violated Section 9.12(a) and (j) of the Act, 415 ILCS 5/9.12(a) and (j) (2010).

Count IV: Failure to Submit Complete and Timely Annual Emissions Reports

By failing to file Annual Emission Reports (“AERs”) for the years 2001 and 2002, and by failing to timely file AERs by the applicable deadlines for the years 2003 through 2006, the Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), and Section 201.302(a) of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a),

and Sections 254.132(a) and 254.137 of the Illinois EPA's Air Pollution regulations, 35 Ill. Adm. Code 254.132(a) and 254.137.

Count V: Operating a Major Stationary Source Without a CAAPP Permit

By failing to timely apply for a CAAPP permit and by operating a major stationary source without a CAAPP permit, the Respondent violated Sections 39.5(5)(a) and 6(b) of the Act, 415 ILCS 5/39.5(5)(a) and (6)(b) (2010).

Count VI: Violation of New Source Review New Emission Source Standards

By constructing a new major source or major modification to an emission source without first having applied for and obtained a construction permit from the Illinois EPA, the Respondent violated Sections 203.201 and 203.203 of the Board's Major Source Regulations, 35 Ill. Adm. Code 203.201 and 203.203, and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010).

Count VII: Additional Record Keeping and Reporting Violations

By failing to submit required reports and maintain required records for its polyester resin products manufacturing operation, the Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), and Section 218.672(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.672(a).

Count VIII: Violations of Federal NESHAP Standards

By failing to initiate collection of required data in 2006 on its compliance date, and failing to demonstrate compliance one (1) year after its compliance date, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 63.5840 of the Code of Federal Regulations, 40 C.F.R. § 63.5840.

By failing to keep required records of resin and gelcoat use, organic HAP content, and operation where resin is used, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS

5/9.1(d)(1) (2010), and Section 63.5895(c) of the Code of Federal Regulations, 40 C.F.R. § 63.5895(c).

By failing to submit a notice to the Illinois EPA of its intent to construct an affected source and notice of actual dates of startup of affected sources within 15 days of startup, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 63.5905(a) of the Code of Federal Regulations, 40 C.F.R. § 63.5905(a).

By failing to submit semi-annual compliance reports to the Illinois EPA, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 63.5910(a).

By failing to keep copies of notification and reports submitted to the Illinois EPA; records related to startup, shutdown, and malfunction; or records of performance tests, and design and performance evaluations, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5.9.1(d)(1) (2010), and Section 63.5915(a) of the Code of Federal Regulations, 40 C.F.R. § 63.5915(a).

C. Admission of Violations

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

1. On or around February 13, 2008, Respondent submitted an application for a Clean Air Act Permit Program (“CAAPP”) permit to the Illinois EPA which application was deemed administratively complete on February 26, 2008. To date, the Illinois EPA has not issued the CAAPP permit.

2. In March, 2008, Respondent submitted its initial demonstration of compliance with the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Reinforced Composites Production to the Illinois EPA.

3. Beginning on dates best known to Respondent, Respondent began keeping records of resin and gel coat usage, organic hazardous air pollutant (“HAP”) content of coatings, operations, and other required records.

4. On March 19, 2008, Respondent submitted the notice of construction and start-up of affected sources required by the NESHAP for Reinforced Composites Production to the Illinois EPA.

5. On January 30, 2008, Respondent submitted annual emissions reports (“AER”) to the Illinois EPA.

6. On August 18, 2009, Respondent submitted records which demonstrated that for the months of January 2005 through July 2009 (the months for which Respondent has data), the rolling 12 month average total volatile organic material (“VOM”) emissions at the site did not exceed 25 tons per year.

7. Respondent implemented process changes to further reduce monthly VOM emissions at the site by (1) reducing the use of a spray adhesive, and (2) substituting a biodegradable power wash for solvent wipe to prepare metal parts for powder coating.

8. In March 2008, Respondent installed exhaust stacks and additional ventilation stack risers to reduce odor emissions at the site.

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 (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. Human health and the environment were threatened in that the Illinois EPA's information gathering responsibilities were 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. Obtaining permits, compliance with their terms, submission of required reports, recordkeeping, and compliance with the NESHAP and applicable Board regulations is both technically practicable and economically reasonable.

5. Upon contact from the Illinois EPA, the Respondent immediately took measures to bring its site into compliance. On February 13, 2008, the Respondent submitted a CAAPP permit application and is waiting for it to be issued by the Illinois EPA. In addition, the Respondent demonstrated compliance with NESHAP, began keeping all required records, submitted AERs, and implemented process changes to reduce monthly VOM emissions.

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. Beginning in 2001 and continuing to 2007, the Respondent constructed emission units without first obtaining a construction permit from the Illinois EPA. Between 2003 and 2007, the Respondent did not pay construction permit fees and did not demonstrate compliance with the Board's New Source Review ("NSR") regulations. From 2001 and continuing through the present, the Respondent operated emission units without first obtaining an operating permit from the Illinois EPA. Beginning in 2003 and continuing to a date best known by the Respondent, Respondent failed to submit compliance reports required by the NESHAP to the Illinois EPA and failed to keep required records by the NESHAP. Respondent failed to timely submit AERs to the Illinois EPA for calendar years 2001 through 2006.

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

3. The calculated economic benefit to the Respondent is \$40,200.00 representing avoided construction permit and air pollution site fees, which is accounted for in the penalty assessed.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of One Hundred Thirty Nine Thousand Dollars (\$139,000.00), which includes the calculated economic benefit, 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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of One Hundred Thirty Nine Thousand Dollars (\$139,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA as follows:

1. Forty Thousand and Two Hundred Dollars (\$40,200.00) into the Environmental Permit and Inspection Fund.
2. Ninety Eight Thousand and Eight Hundred Dollars (\$98,800.00) 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 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:

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

C. Future Compliance

1. Effective immediately, Respondent shall at all times maintain all records required by the Act, the NESHAP, and applicable Board regulations.

2. Effective immediately, Respondent shall timely submit all AERs and other reports required by the Act and applicable regulations to the Illinois EPA.

3. Respondent shall timely obtain all requisite construction and operating permits from the Illinois EPA in the future. 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).

4. Effective immediately, Respondent shall at all times operate its facility in compliance with the Act and applicable federal and State regulations. Upon issuance of a CAAPP permit to Respondent, Respondent shall comply with the terms and conditions of the CAAPP.

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.

D. Release from Liability

In consideration of the Respondent's payment of the \$139,000.00 penalty, its commitment to cease and desist as contained in Section V.C.7. 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 September 25, 2009. 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.

E. 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 the Complainant

Andrew J. Nicholas
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

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

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

As to the Respondent

Bill Overton
President
Seating Concepts, Inc.
125 Connell Avenue
Rockdale, Illinois 60436

With a copy to:

Jeffery D. Jeep
Jeep & Blazer, LLC
24 N. Hillside Avenue
Hillside, Illinois 60162

F. Enforcement and Modification of Stipulation

1. Upon 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.

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.E. 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.

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.

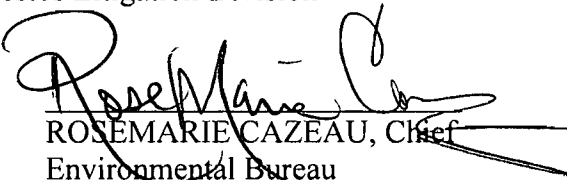
PEOPLE OF THE STATE OF ILLINOIS,
THE ILLINOIS ENVIRONMENTAL

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MAGIGAN
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: 
JOHN J. KIM
Chief Legal Counsel

DATE: 1/28/11

DATE: 1/25/11

SEATING CONCEPTS, INC.

BY: _____
BILL OVERTON, President

DATE: _____

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,
THE ILLINOIS ENVIRONMENTAL

LISA MAGIGAN
Attorney General
State of Illinois

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

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

DATE: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

SEATING CONCEPTS, INC.

BY: *Billy Overton*
BILL OVERTON, President

DATE: 1-26-11