

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB NO. 2012-27  
) (Enforcement – Land)  
)  
INDUSTRIAL ENCLOSURE )  
CORPORATION, an Illinois corporation, )  
) **VIA ELECTRONIC FILING**  
Respondent. )

**NOTICE OF FILING**

TO: Adam M. Meek, Esq. Clerk  
Brown Udell Pomerantz & Delrahim, Ltd. Illinois Pollution Control Board  
Attorneys and Counselors at Law James R. Thompson Center  
1332 North Halsted Street, Suite 100 100 W. Randolph Street, Ste. 11-500  
Chicago, Illinois 60642 Chicago, Illinois 60601

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board ("Board") pursuant to Section 103.300(a) of the Board Procedural Rules, a Stipulation and Proposal for Settlement, an Agreed Motion for Relief from

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**


the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



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ZEMEHERET BEREKET-AB  
Environmental Bureau  
Assistant Attorney General  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-3816

DATE: February 6, 2012

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	)	<b><u>VIA ELECTRONIC FILING</u></b>
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**AGREED MOTION TO REQUEST RELIEF  
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the parties filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2010) provides:  

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). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2010).

WHEREFORE, Complainant and Respondent, request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:



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ZEMEHERET BEREKET-AB  
Environmental Bureau  
Assistant Attorneys General  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-3094

DATE: February 6, 2012

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
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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 Industrial Enclosure 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 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 August 16, 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, Industrial Enclosure Corporation ("Respondent") is an Illinois corporation in good standing with the Illinois Secretary of State. Respondent manufactures steel and aluminum boxes of various sizes for use as electrical enclosures at its manufacturing facility located at 619 N. Loucks, Aurora, Kane County, Illinois ("Facility"). Respondent has been in business at the Facility since 1977.

4. At the Facility, steel is received in the form of sheets and undergoes the fabrication process of cutting, forming, drilling, tapping, and grinding. After welding, the majority of the fabricated steel boxes are manually cleaned and then finished with a powder coating applied in a spray booth and cured in an oven. A small portion of the steel boxes are finished with a liquid coat of paint.

5. Three waste streams are generated at the facility. The first two waste streams are generated from Respondent's liquid spray painting operations as spray gun operators clean the guns and as excess paint is being accumulated. The third waste stream is generated when spent filters from the liquid spray booth are dried in the ovens associated with the powder coating process and are then placed in the dumpster for disposal.

6. Respondent is currently regulated as a small quantity generator of hazardous waste and generates approximately 110 gallons per month of spray paint-related waste from the

cleaning of its spray painting equipment and the disposal of excess paint. The hazardous waste manifests used for shipping the waste off-site list waste codes D007, D008, F003, and F005.

7. On June 17, 2010, the Illinois EPA, Rockford Regional Office conducted an unannounced Resource Conservation and Recovery Act ("RCRA") Compliance Evaluation Inspection of Respondent and observed several alleged violations of the Act and Board Waste Disposal Regulations.

8. On July 20, 2010, pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1) (2010), the Illinois EPA issued a Violation Notice to Respondent.

9. On February 23, 2011, the Illinois EPA and Respondent met to discuss the alleged violations and future compliance measures.

**B. Allegations of Non-Compliance**

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

Count I: Conducting a Hazardous Waste Storage Operation Without a RCRA Permit: violation of Section 21(f) (1) and (2) of the Act, 415 ILCS 5/21(f)(1) and (2) (2010), and 35 Ill. Adm. Code 703.121(a)(1);

Count II: Failure to Properly Prepare the Hazardous Waste Manifests: violation of Section 21(f) (2) of the Act, 415 ILCS 5/21(f) (2) (2010), and 35 Ill. Adm. Code 722.120(a);

Count III: Failure to Properly Designate One Receiving Facility in the Hazardous Waste Manifests: violation of Section 21(f) (2) of the Act, 415 ILCS 5/21(f) (2) (2010), and 35 Ill. Adm. Code 722.120(b);

- Count IV: Failure to Maintain a Copy of the Hazardous Waste Annual Report: violation of Section 21(f) (2) of the Act, 415 ILCS 5/21(f) (2) (2010), and 35 Ill. Adm. Code 722.140(b);
- Count V: Failure to Conduct a Hazardous Waste Determination: violation of Section 21(f) (2) of the Act, 415 ILCS 5/21(f) (2) (2010), and 35 Ill. Adm. Code 722.111(a) (b);
- Count VI: Failure to Make a Special Waste Determination: violation of Section 21(f) (2) of the Act, 415 ILCS 5/21(f) (2) (2010), and 35 Ill. Adm. Code 808.121(a);
- Count VII: Failure to Prepare a Generator Non-Special Waste Determination: violation of Section 21(f) (2) of the Act, 415 ILCS 5/21(f) (2) (2010), and 35 Ill. Adm. Code 808.121(b) (3).

**C. Non-Admission of Violations**

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

**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, managers, 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)(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, Complainant states as follows:

1. Respondent's waste handling practices have not resulted in any release of hazardous waste.
2. There is social and economic benefit to the Facility if properly maintained.
3. Operation of the Facility was suitable for the area in which it occurred.
4. Labeling the waste drums with hazardous waste labels, putting accumulation dates on the drums, keeping copies of reports, posting emergency contact information and inspecting the drums in the accumulation area is both technically practicable and economically reasonable.
5. Respondent has returned to compliance.

#### **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, Complainant states as follows:

1. Respondent's alleged improper waste handling practices were corrected in less than a year after they were first discovered.
2. Respondent was diligent in responding and correcting the alleged violations.
3. Due to financial hardships claimed and documented by Respondent, no economic benefit analysis was factored into the penalty calculation in this case. The \$7,500.00 (Seven Thousand Five Hundred Dollars) penalty agreed herein addresses only the duration and gravity of the alleged violation.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) 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.

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

#### **V. TERMS OF SETTLEMENT**

##### **A. Penalty Payment**

1. Effective immediately, Respondent shall at all times operate its Facility in full compliance with the requirements of the Act and Board Waste Disposal Regulations.

2. The Respondent shall pay a civil penalty in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

##### **B. Stipulated Penalties, 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, 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.

3. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

**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 name and case 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:

Zemeheret Bereket-Ab  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. 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 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.

2. 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.

3. 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 \$7,500.00 penalty, its commitment to cease and desist as contained in Section V.D.3. 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 alleged 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 August 16, 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 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, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: Matthew J. Dunn  
MATTHEW J. DUNN, Chief

BY: [Signature]  
JOHN J. KIM, Interim Director

DATE: 1/23/12

DATE: 1/18/12

INDUSTRIAL ENCLOSURE CORPORATION,

BY: [Signature]  
John F. Palmer, President

**JAN 27 2012**  
DATE: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 6<sup>th</sup> day of February, 2012, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, 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.

  
\_\_\_\_\_  
ZEMEHERET BEREKET-AB