

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 12-112
)	(Enforcement – Air)
BERTEAU-LOWELL PLATING)	
WORKS, INC.,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

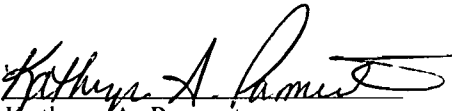
TO: Berteau-Lowell Plating Works, Inc.	Bradley P. Halloran
c/o Mr. James Elies, Registered Agent	Hearing Officer
2320 W. Fullerton Avenue	Illinois Pollution Control Board
Chicago, IL 60647	James R. Thompson Center, Suite 11-500
	100 W. Randolph Street
	Chicago, IL 60601

PLEASE TAKE NOTICE that we have today, April 10, 2012, filed the Stipulation and Proposal for Settlement (“Stipulation”) and a Motion for Relief from Hearing Requirement (“Motion”) in this matter with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A true and accurate copy of the Stipulation and the Motion are attached hereto and hereby served upon you.

RESPECTUFLY SUBMITTED,

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

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

BY: 
Kathryn A. Pamerter
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, Illinois 60602
(312) 814-0608

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by LISA MADIGAN, Attorney)	
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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 (“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. On February 17, 2012, Complainant filed its Complaint against Respondent, Berteau-Lowell Plating Works, Inc.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.
4. All parties 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
ex rel. LISA MADIGAN
Attorney General of the State of Illinois

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

BY: 
Kathryn A. Pamerter
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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 BERTEAU-LOWELL PLATING WORKS, INC. (“Respondent”), (collectively “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), federal regulations 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 February 17, 2012, 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, the Respondent owned and operated an electroplating facility located at 2320 W. Fullerton Avenue, Chicago, Cook County, Illinois ("Facility" or "Site").

4. The Respondent's operation of the Facility is subject to the Act and the Board's air pollution rules and regulations, which are found in Title 35, Subtitle B, Chapter II of the Illinois Administrative Code.

5. Pursuant to the provisions of the Act and pertinent regulations, the Respondent is required to operate pursuant to an Illinois EPA-issued permit, regulating its emissions at the Facility.

6. Since June 1, 2004, the Respondent has owned and operated a decorative chrome electroplating operation, non-cyanide nickel plating tanks, a cadmium plating tank and an open top batch vapor degreaser at the Facility, all of which constitute emission sources at the Facility.

7. On September 28, 2004, the Illinois EPA issued Federally Enforceable State Operating Permit (FESOP) Permit No. 73070088 ("FESOP No. 73070088") to the Respondent for its decorative chrome electroplating operation and open top batch vapor degreaser at the Facility, which had an expiration date of September 28, 2009. On or around May 4, 2009, the Respondent filed a permit renewal application with the Illinois EPA.

B. Allegations of Non-Compliance

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

- Count I: Failure to Prepare an Annual Compliance Certification and Demonstrate Continuous Compliance with Applicable Management Practices and Equipment Standards for Plating and Polishing Operations: Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Sections 63.11508(d)(2), (d)(3)(i), (d)(3)(ii)(A), (d)(3)(ii)(B) and (d)(3)(iii) of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) regulations, 40 C.F.R. §§ 63.11508(d)(2), (d)(3)(i), (d)(3)(ii)(A), (d)(3)(ii)(B) and (d)(3)(iii);
- Count II: Failure to Prepare an Annual Certification of Compliance Report for Plating and Polishing Operations: Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 63.11509(c)(1) of the NESHAP regulations, 40 C.F.R. § 63.11509(c)(1);
- Count III: Failure to Maintain Records Supporting Notification of Compliance Standards for Plating and Polishing Operations: Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 63.11509(e) of the NESHAP regulations, 40 C.F.R. § 63.11509(e);
- Count IV: Failure to Monitor and Record Actual Dwell Time on a Monthly Basis for Open Top Batch Vapor Degreaser: Sections 9(b) and 9.1(d)(1) of the Act, 415 ILCS 5/9(b) and 9.1(d)(1) (2010), Section 63.466(b)(2) of the NESHAP regulations, 40 C.F.R. § 63.466(b)(2), and conditions 7(c) and 8(a)(i) of FESOP No. 73070088;
- Count V: Failure to Maintain Records of Actual Dwell Time for Open Top Batch Vapor Degreaser: Sections 9(b) and 9.1(d)(1) of the Act, 415 ILCS 5/9(b) and 9.1(d)(1) (2010), Section 63.467(b)(1) of the NESHAP regulations, 40 C.F.R. § 63.467(b)(1), and condition 9(b)(i) of FESOP No. 73070088;
- Count VI: Failure to Develop and Maintain an Operations and Maintenance Plan for Decorative Chromium Electroplating Tank: Sections 9(b) and 9.1(d)(1) of the Act, 415 ILCS 5/9(b) and 9.1(d)(1) (2010), Section 63.342(f)(3)(i) of the NESHAP regulations, 40 C.F.R. § 63.342(f)(3)(i), and condition 13(a) of FESOP No. 73070088;

Count VII: Failure to Maintain a Maintenance Record for Scrubber: Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and standard condition 8 of FESOP No. 73070088.

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violations 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

On or about January 5, 2012, the Respondent submitted to the Illinois EPA:

(a) its annual compliance certification and wetting agent/fume suppressant records for its non-cyanide nickel electroplating and cadmium electroplating tanks;

(b) records supporting its Notification of Compliance Status;

(c) records of the occurrence and duration of each startup or shutdown causing an exceedance of applicable emissions standards;

(d) records of the occurrence and duration of each malfunction of the operation or air pollution control and monitoring equipment;

(e) records of all maintenance performed on air pollution control and monitoring equipment;

(f) records required to show continuous compliance with each management practice and equipment standard pursuant to Section 63.11508(d) of the NESHAP regulations, 40 C.F.R. § 63.11508(d), including the addition of the wetting agent/fume suppressant to the Facility's non-cyanide and cadmium electroplating tanks;

(g) records of actual dwell time on a monthly basis for its open top batch vapor degreaser;

(h) its operations and maintenance plan for its decorative chrome electroplating tank; and

- (i) maintenance records for its scrubber.

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, 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 violations of the Act, the Board regulations and the NESHAP 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. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility is suitable for the area in which it is located.
4. Compliance with permit terms and applicable regulations is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board regulations.

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; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Since at least July 1, 2010, the Respondent failed to comply with monitoring, recordkeeping and reporting requirements of the Act, the NESHAP regulations and FESOP No. 73070088. The violations were resolved on or before January 5, 2012.
2. The Respondent was diligent in attempting to come back into compliance with the Act, the Board regulations, the NESHAP regulations and FESOP No. 73070088, once the Illinois EPA notified it of its noncompliance.
3. The Illinois EPA has determined that no calculable economic benefit was derived from the Respondent’s failure to comply with the monitoring, recordkeeping and reporting requirements of the Act, the Board regulations, the NESHAP regulations and FESOP No. 73070088.
4. Based upon the specific facts of this matter and the Respondent’s financial condition, the Complainant has determined that a penalty of One Thousand Dollars (\$1,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act, the Board regulations, the NESHAP regulations and FESOP No. 73070088.
5. To the Complainant's knowledge, the 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.

8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

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

B. 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.

C. Payment Procedures

1. 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, Illinois 62794-9276

2. The case name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order.
3. A copy of the certified check or money order and any transmittal letter shall be sent to:

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

D. Future Compliance

1. The Respondent shall comply with all terms and conditions of FESOP No. 73070088 issued to the Respondent by the Illinois EPA. Upon issuance of a renewal FESOP, the Respondent shall comply with all terms and conditions of the renewal permit.
2. Effective immediately, the Respondent shall comply with the Act and all applicable Board and federal regulations, including without limitation, 40 C.F.R. 63, Subpart WWWWWW.
3. The Respondent shall timely prepare all annual compliance certifications and, as necessary, timely submit such certifications to the Illinois EPA.
4. The Respondent shall timely submit to the Illinois EPA all reports of deviation under FESOP No. 73070088 or applicable Board and federal regulations.
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, the Board regulations, the NESHAP regulations and FESOP No. 73070088.

7. The Respondent shall cease and desist from future violations of the Act, the NESHAP regulations and FESOP No. 73070088 that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$1,000.00 penalty, its commitment to cease and desist as contained in Section V.D.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, the NESHAP regulations and FESOP No. 73070088 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 February 17, 2012. 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, or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

Upon the 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.

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

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: 4/4/12

DATE: 3/27/12

BERTEAU-LOWELL PLATING
WORKS, INC.

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 ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General, State of Illinois

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

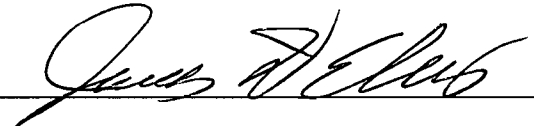
BY: _____
Matthew J. Dunn, Chief

BY: _____
JOHN J. KIM, Interim Director

DATE: _____

DATE: _____

BERTEAU-LOWELL PLATING
WORKS, INC.



DATE: 3-16-12

CERTIFICATE OF SERVICE

I, Kathryn A. Pamenter, an Assistant Attorney General, do certify that I caused to be served via mail this 10th day of April, 2012, the attached Notice of Electronic Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement upon the persons listed below by placing a true and correct copy in an envelope, first class postage prepaid, and depositing same with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

Berteau-Lowell Plating Works, Inc.
c/o Mr. James Elies, Registered Agent
2320 W. Fullerton Avenue
Chicago, IL 60647

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


KATHRYN A. PAMENTER