

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
MEXICHEM SPECIALTY)	
RESINS, INC., a Delaware Corporation,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, MEXICHEM SPECIALTY RESINS, INC., as follows:

COUNT I
OPERATING WITHOUT A CLEAN AIR ACT PERMIT PROGRAM PERMIT

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2012).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4(2012), and charged, *inter alia*, with the duty of enforcing the Act.

3. By letter dated September 26, 2013, Respondent granted to the Illinois EPA a waiver of Section 31 of the Act, 415 ILCS 5/31(2012), notice requirements and the opportunity for a meeting with the Illinois EPA.

4. Respondent, Mexichem Specialty Resin, Inc., is a Delaware corporation and as of November 21, 2014, is in good standing with the Illinois Secretary of State's Office.

Respondent's registered agent is National Registered Agents, Inc., 200 W. Adams Street, Chicago, Illinois 60606.

5. On May 30, 2013, Mexichem, S.A.B. de C.V. acquired a manufacturing plant located at 1546 Country Road, 1450 North, Henry, Marshall, Illinois ("Facility" or "Source"). Mexichem, S.A.B. de C.V. is the owner of the Facility.

6. Respondent is a wholly-owned subsidiary of Mexichem, S.A.B. de C.V.

7. Since May 30, 2013, Respondent was and is operator of the Facility.

8. At all times relevant to this complaint, Respondent's primary business at the Facility was manufacturing specialized polymer materials, including Polyvinyl Chloride ("PVC") resins.

9. At all times relevant to this Complaint, the emissions units operated by Respondent at the Source include the Fluidized Bed Coal Fired Boiler; Natural Gas Fired Boiler Nos. 1-2; storage and handling for coal, limestone, fly ash, and bottom ash; Tank Farm fugitive emissions; Poly Building fugitive emissions and process operations; Resin Reclaim System; Coagulum Grinder System; Dryer Nos. 1-4 Systems; Tailings System; Resin Storage Silos; and the Wastewater Stripping System.

10. At all times relevant to this Complaint, various emissions units at the Source are capable of emitting, and have emitted Sulfur Dioxide ("SO₂"), Nitrogen Oxides ("NO_x"), Carbon Monoxide ("CO"), Particulate Matter ("PM"), and Hazardous Air Pollutants ("HAP"), which are specified air contaminants as that term is defined in Section 201.102 of the Board's Air Pollution Control Regulations, 35 Ill. Adm. Code 201.102.

11. At all times relevant to this Complaint, the Potential to Emit (“PTE”) NO_x and SO₂ at the Source was greater than 100 tons per year.

12. Respondent’s operation of the Source is subject to the Act and the Illinois Pollution Control Board’s (“Board”) rules and regulations for air pollution, which are found in Title 35, Subtitle B, of the Illinois Administrative Code (“Air Pollution Regulations”).

13. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2012), provides:

Prohibitions.

After the applicable CAAPP permit or renewal application submittal date as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency.

14. Section 3.315 of the Act, 415 ILCS 5/3.315(2012), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

15. Respondent, a corporation, is a “person,” as that term is defined in Section 3.315 of the Act, 415 5/3.315(2012).

16. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2012), provides the following definitions:

“CAAPP” means the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act.

“CAAPP Permit” . . . means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act.

“CAAPP source” means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

“Major source” means a source for which emissions of one or more air pollutants meet the criteria for major status pursuant to paragraph(c) of subsection 2 of this Section.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by USEPA. This definition does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term “capacity factor” as used in Title IV of the Clean Air Act or the regulations promulgated thereunder.

“Source” means any stationary source (or any group of stationary sources) that is located on one or more contiguous or adjacent properties that are under common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility. The determination as to whether any group of stationary sources is located on contiguous or adjacent properties, and/or is under common control, and/or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act.

17. At all times relevant to this Complaint, Respondent was an “owner or operator” of a “CAAPP source”, as those terms are defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2012).

18. Because the Source is a "CAAPP source" and a "major source," Respondent is required to obtain a CAAPP permit prior to operating the Source, pursuant to Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2012).

19. As of May 30, 2013, Respondent was required to apply for and obtain a CAAPP permit.

20. On September 27, 2013, Illinois EPA received from Respondent an application for a CAAPP Permit for the Source.

21. Respondent operates the Source without a CAAPP permit, beginning May 30, 2013 through the present.

22. By failing to timely apply for the CAAPP permit and operating the Source without the requisite CAAPP permit, Respondent has violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2012).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, MEXICHEM SPECIALTY RESINS, INC.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;

- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

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

BY: *Matthew J. Dunn*
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Of Counsel
AMANDA KIMMEL
ARDC# 6303715
500 South Second Street
Springfield, Illinois 62706
217/557-9457
Dated:

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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 MEXICHEM SPECIALTY RESINS, INC., (“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.* (2012) 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. A Complaint was filed simultaneously with this Stipulation 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 (2012), 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 (2012).

3. At all times relevant to the Complaint, Respondent was and is a Delaware corporation that is not in good standing with the Secretary of State for the State of Illinois.

4. On May 30, 2013, Mexichem, S.A.B. de C.V. acquired a manufacturing plant located at 1546 Country Road, 1450 North, Henry, Marshall, Illinois ("Facility" or "Source"). Mexichem, S.A.B. de C.V. is the owner of the Facility.

5. Respondent is a wholly-owned subsidiary of Mexichem, S.A.B. de C.V.

6. Since May 30, 2013, Respondent was and is operator of the Facility.

7. Respondent operates the Source without a CAAPP permit, beginning May 30, 2013 through the present.

B. Allegations of Non-Compliance

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

Count I: Failure to Obtain a Clean Air Act Permit Program Permit.
Respondent failed to submit an application for the CAAPP permit in a timely manner and operated the Source without the requisite CAAPP permit, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2012).

C. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

On September 27, 2013, Illinois EPA received from Respondent an application for a CAAPP Permit for the Source.

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 violation of the Act and the Board's 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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2012), 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 failure to timely obtain the CAAPP permit hindered the Illinois EPA's ability to monitor and enforce applicable federal and state environmental laws and regulations.
2. There is social and economic benefit to the facility resulting from the manufacturing operations performed by Respondent at the facility.
3. Respondent's operations are suitable to the area in which they are located.
4. Obtaining a CAAPP permit is both technically practicable and economically reasonable.
5. Respondent has submitted a CAAPP permit application.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2012), 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;

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. The Respondent failed to timely submit its application for a CAAPP permit. Respondent operates a major source without the requisite CAAPP permit, from May 30, 2013 through the present.
2. Respondent acted diligently to apply for a CAAPP permit, once the Illinois EPA notified it of its noncompliance.
3. Any economic benefit attributable to the noncompliance would be minimal.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board's regulations.
5. 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. On September 26, 2013, Respondent waived the notice requirements prescribed by Section 31 of the Act and therefore a Compliance Commitment Agreement was not issued.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) 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.

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, 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:

Amanda Kimmel
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. Respondent shall operate the Source consistent with expired CAAPP Permit No. 96020128 until the issuance of the appropriate operating permit by the Illinois EPA, for which Respondent has already applied.

2. 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. Respondent reserves the right to claim Confidential Business Information (CBI) collected as a result of such inspections in the manner prescribed by Illinois law.

3. 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's regulations.

4. The Respondent shall cease and desist from future violations of the Act that were

the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$10,000.00 penalty, its commitment to cease and desist as contained in Section V.D. 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 violations of the Act 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 simultaneous with this Stipulation. 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

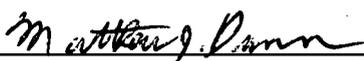
The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

LISA BONNETT, Director
Illinois Environmental Protection Agency

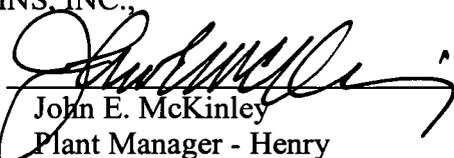
BY: 
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 12/2/14

DATE: 11/26/14

MEXICHEM SPECIALTY RESINS, INC.,

BY: 
John E. McKinley
Plant Manager - Henry

DATE: 11/11/14

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) (2014).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: s/Amanda Kimmel
AMANDA KIMMEL
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on December 5, 2014, cause to be served by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT, STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT upon the following:

Mexichem Specialty Resins, Inc.
1546 County Road 1450 North
Henry, IL 61537

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

s/Amanda Kimmel
AMANDA KIMMEL
Assistant Attorney General

This filing is submitted on recycled paper.