

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois)
Complainant,)
v.)
ACTION ATHLETIC, INC., an Illinois)
Corporation,)
Respondent.)

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CLERK'S OFFICE

OCT 03 2003

STATE OF ILLINOIS

Pollution Control Board

No. PCB 02-213
(Enforcement - Air)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that today we have filed with the Pollution Control Board the following Stipulation and Proposal for Settlement and Request for Relief from the Hearing Requirement on behalf of the People of the State of Illinois, a copy of which is attached and hereby served upon you.

Respectfully submitted,

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

BY: 
JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-6986

DATE: October 3, 2003

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Brad Halloran, Esq.
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601
(312) 814-3620

Ms. Carolyn Hesse, Esq.
Barnes & Thornburg
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606-2809
(312) 214-8301

Ms. Maureen Wozniak, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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STATE OF ILLINOIS
Pollution Control Board
No. PCB 02-~~201~~
(Enforcement - Air)

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) (2002), 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) (2002). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of the Board's air pollution regulations in addition to Sections 9(a), 9(b), 9.8(b), and 39.5(b)(6) of the Act, 415 ILCS 5/9(a), 9(b), 9.8(b), and 39.5(b)(6) (2002).
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties have reached agreement on all outstanding issues in this matter.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement which is filed contemporaneously with this Motion.

5. 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) (2002).

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) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-6986

DATE: October 3, 2003

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2002).

II.

AUTHORIZATION

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

III.

APPLICABILITY

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

IV.

STATEMENT OF FACTS

A. PARTIES

1. The parties to this Stipulation are Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and Respondent, Action Athletic.

2. The subject Complaint was brought by the Attorney General on her own motion and upon the request of the Illinois EPA pursuant to the terms and provisions of Section 31 of the Act, 415 ILCS 5/31 (2002).

3. Respondent Action Athletic is an Illinois corporation in good standing.

4. At all times relevant to this complaint, Action Athletic owned and operated a sports equipment manufacturing facility located at 3144 21st St. in Zion, Lake County, Illinois ("Site").

5. Action Athletic manufactures wrestling mats for schools, gymnasiums, fitness clubs, YMCAs, the military, law enforcement agencies, and private parties.

6. Complainant filed its Complaint on May 31, 2002.

B. SOURCE DESCRIPTION

Respondent emits volatile organic material (VOM) from its facility into the environment from the manufacture of wrestling pads.

C. VIOLATIONS

This Stipulation is intended to resolve the allegations in the Complaint filed in this matter. The Complaint alleges violations of the Act and of the Board's Air Pollution Regulations outlined as follows:

COUNT I Operation of an air emissions source without a permit in violation of Section 9(b) of the Environmental Protection Act (Act), 415 ILCS 5/9(b) (2002) and Section 201.143 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.143;

COUNT II Operation of a Clean Air Act Permit Program (CAAPP) source without submitting a complete CAAPP permit application and operation of a CAAPP source

without obtaining a CAAPP permit in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2002), and Sections 270.201 and 270.301 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 270.201 and 270.301; and

COUNT III Failure to submit an Emissions Reduction Market System (ERMS) baseline application by March 1, 1998 and operation of a new "participating source" (as defined in the Board's Air Pollution Regulations at Section 205.210, 35 Ill. Adm. Code 205.210) without submitting an ERMS application from March 1, 1998 until January 1, 2001 in violation of Section 9.8(b) of the Act, 415 ILCS 5/9.8(b)(2002), and Section 205.310 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 205.310.

COUNT IV Failure to submit seasonal emissions reports as a new participating source during 1999 and 2000 in violation of Section 9.8(b) of the Act, 415 ILCS 5/9.8(b)(2002), and Section 205.300(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 205.300(a).

COUNT V Failure to reduce uncontrolled VOM emissions from the airless spray unit and the six (6) gas-fired makeup units in violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Sections 201.141 and 218.926(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 and 218.926(b)(1).

D. ADMISSION / DENIAL OF VIOLATIONS

Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

V.

FUTURE COMPLIANCE

Respondent will use compliant coatings and has obtained all necessary permits in compliance with all applicable laws and regulations.

VI.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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 state as follows:

1. Complainant alleges that Respondent caused air pollution and emitted more VOM than Board Air Pollution Regulations allow for miscellaneous fabricated product manufacturing.
2. The parties agree that Respondent's operation is of social and economic value.
3. The parties agree that Respondent's facility is a suitable source in the area where it is located.
4. The parties agree that compliance with the requirements of the Act and Board regulations is both technically practicable and economically reasonable.
5. Respondent is using compliant coatings in its production process which keeps its VOM emissions below that level allowed by regulation.

VII.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the parties state as follows:

1. The gravity of the alleged violations is significant in that the Respondent's facility is located in a non-attainment area. Complainant alleges that Respondent did not comply with the Act and the applicable Board Regulations which resulted in air pollution. Complainant also alleges that the duration is equally as significant, as the violations continued for a period of several years.

2. Respondent has complied with the Act by implementing

compliant coatings which reduce VOM emissions to the level allowed by Board Regulation, and by meeting all reporting deadlines.

3. Complainant alleges that Respondent derived economic benefit by not implementing the new coatings before the violations began in 1996.

4. Complainant contends that a twenty-five thousand one-hundred ninety-eight dollar and twenty-one cent (\$25,198.21) civil penalty is adequate to deter Respondent from future violations.

5. Complainant is unaware of any previously adjudicated violations by Respondent.

VIII.

TERMS OF SETTLEMENT

1. The parties represent that they have 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, Respondent does not affirmatively admit the allegations of violation within the Complaint, and this Consent Order shall not be interpreted as including such admission.

2. Respondent shall pay twenty-eight thousand dollars (\$28,000.00) within thirty (30) days of the date of entry of this Stipulation.

a. Payment of a civil penalty of twenty-five thousand one-hundred ninety-eight dollars and twenty-one cents (\$25,198.21) shall be made by certified check or money order payable to the "Illinois Environmental Protection Agency" and

designated to the Environmental Protection Trust Fund. The certified check or money order shall include Respondent's federal employer identification number (36-2739226) on it and be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the check shall be sent to:

Joel Sternstein
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

On the check or money order, Respondent shall include the case name and case number.

b. Payment of permit fees in the amount of two-thousand eight-hundred one dollars and seventy-nine cents (\$2,801.79) shall be made by certified check or money order payable to the "Illinois Environmental Protection Agency" and designated to the Bureau of Air Permit Fund. The certified check or money order shall include Respondent's federal employer identification number (36-2739226) on it and be sent by first class mail to the Illinois Environmental Protection Agency at the address in Section VIII.2.a of this Stipulation. A copy of the check shall be sent to Joel Sternstein at the address in Section VIII.2.a of this Stipulation. On the check or money order, Respondent shall include the case and case number.

3. For the purposes of collection, inquiries can be addressed to Respondent's attorney at:

Carolyn S. Hesse
Barnes & Thornburg
One N. Wacker Drive
Suite 4400
Chicago, Illinois 60606-2809
(312) 214-8301

4. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any amount not paid within the time prescribed herein at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on a payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed Complainant shall be paid by certified check payable to the "Illinois Environmental Protection Agency" for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section IX.2 herein.

d. In the event that Respondent fails to make all or part of the payment set forth in Section IX.2 of this Stipulation, Respondent shall be in default and the unpaid balance owed, plus any accrued interest, shall become due and owing to Complainant, immediately.

5. Respondent shall in the future operate in compliance with the Act and Board Regulations promulgated thereunder.

6. Respondent shall cease and desist from violations of the Act and Board Regulations, including but not limited to,

those Sections of the Act and Board regulations that were alleged to be the subject matter of the Complaint as outlined in Section IV.C of this Stipulation.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects Respondent's responsibility to comply with any federal, state or local laws and regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board Regulations, 35 Ill. Adm. Code Subtitle A through H.

X.

RELEASE FROM LIABILITY

In consideration of Respondent's full payment of the civil penalty of twenty-eight thousand dollars (\$28,000.00), commitment to comply with the terms of this Stipulation entered herein, the requirements of the Act, and the regulations promulgated thereunder, Complainant releases, waives and discharges Respondent and its employees, agents, directors, officers, successors and assigns from any further liability or penalties from the violations of the Act and Board regulations which were the subject matter of the Complaint, upon receipt by Complainant of all payments required by Section VIII of this Stipulation. However, nothing in this Stipulation shall be construed as a waiver by Complainant of the right to redress future or heretofore undiscovered violations or obtain penalties with respect thereto.

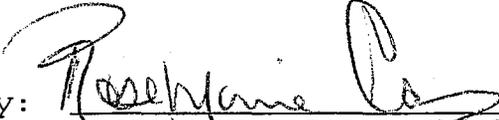
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation as written.

AGREED:

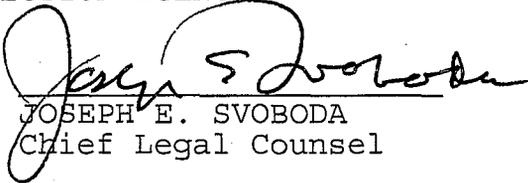
FOR COMPLAINANT:

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

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

By:  Date: 9/3/03
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:  Date: 8/25/03
JOSEPH E. SVOBODA
Chief Legal Counsel

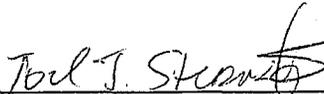
FOR RESPONDENT:

By:  Date: 9/25/03
MR. JOSEPH HIGGINS
ACTION ATHLETIC, INC.
President

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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 3rd day of October, 2003, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement, Request for Relief from the Hearing Requirement, and Notice of Filing to the parties named on the attached Service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JOEL J. STERNSTEIN