

ORIGINAL

RECEIVED
CLERK'S OFFICE

FEB 11 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

ALLOY ENGINEERING AND CASTING
COMPANY, a Nevada Corporation,

Respondent.

PCB NO. 01-155
(Enforcement)

NOTICE OF FILING

To: Robert M. Olien
Sidley Austin Brown & Wood
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603

John McMahon
Wilkie & McMahon
8 Main Street
Champaign, Illinois 61820

Linda L. Laugges
Thomas, Mamer & Haughey
National City Bank Building
30 Main Street, 5th Floor
P.O. Box 560
Champaign, Illinois 61824-0560

Kevin Ward
Cox & Ward, P.C.
612 Spring Street
P.O. Box 252
Galena, Illinois 61036

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is 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: _____

THOMAS DAVIS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 6, 2003

CERTIFICATE OF SERVICE

I hereby certify that I did on February 6, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in the United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and STIPULATION AND PROPOSAL FOR SETTLEMENT

To: Robert M. Olien
Sidley Austin Brown & Wood
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603

John McMahon
Wilkie & McMahon
8 Main Street
Champaign, Illinois 61820

David Krchak
Thomas, Mamer & Haughey
National City Bank Building
30 Main Street, 5th Floor
P.O. Box 560
Champaign, Illinois 61824-0560

Kevin Ward
Cox & Ward, P.C.
612 Spring Street
P.O. Box 252
Galena, Illinois 61036

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s)

To: Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph, Suite 402
Chicago, Illinois 60601

A true and correct copy was also sent to:

Carol Sudman
Hearing Officer
Pollution Control Board
600 South Second Street, Suite 11-500
Springfield, Illinois 62704



THOMAS DAVIS
Assistant Attorney General

This filing is submitted on recycled paper.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
ALLOY ENGINEERING AND CASTING COMPANY, a Nevada corporation,	)	PCB NO. 01-155 (Enforcement)
	)	
	)	
Respondent.	)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, ALLOY ENGINEERING AND CASTING COMPANY, a Nevada corporation, and hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties agree that this Settlement is a compromise of a disputed claim. The parties further stipulate that this statement of facts is made and agreed upon for the purposes of settlement only and that neither the fact that a party has entered into the Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future enforcement action as evidence of a past adjudication of violation, as provided in Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2002). The agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the Settlement set forth herein.

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 Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

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

IV.

STATEMENT OF FACTS

1. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

2. Respondent, Alloy Engineering and Casting Company ("Alloy"), is a Nevada corporation qualified to do business in Illinois.

3. Respondent operates a manufacturing facility located at 1700 West Washington Street, Champaign, Champaign County, Illinois (the "facility"). The major process at the facility is the production of alloy castings.

4. On December 11, 2001, the State filed its First Amended Complaint alleging that the Respondent violated Sections 9(a), 9(b), 12(a), 12(b), 12(f), 21(e), 21(f) and 21(i) of the Act, 415 ILCS 5/9(a), (b); 12(a), (b), (f) and 21(e),(f), (i) (2002); and Sections 201.141, 201.142, 201.143 and 212.301 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, 201.142, 201.143, 212.301(1999); Sections 703.121(a), 703.150(a), 722.111, 722.134, 725.113, 725.115(a) and (b), 725.274, 725.116, 725.133, 725.137, 725.151(a), 725.153, 725.155, 725.173(a), 725.212(a), 725.242(a), 725.243(a) and 808.121 of the Board's Land Pollution Regulations, 35 Ill. Adm. Code 703.121(a), 703.150(a), 722.111, 722.134, 725.113, 725.115(a) and (b), 725.274, 725.116, 725.133, 725.137, 725.151(a), 725.153, 725.155, 725.173(a), 725.212(a), 725.242(a), 725.243(a) and 808.121(1997); Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a)(1999); and Respondent's Operating Permit No. 73050389.

5. Count I alleges air pollution based upon the following disputed facts: On April 3, 2000, an inspection was performed by the Illinois EPA in response to a citizen complaint. Fugitive emissions were observed from the silo load out at the facility and fugitive dust was observed as trucks were leaving the facility. On April 25, 2000, the Illinois EPA responded to citizen complaints of particulate fallout from the facility. An Illinois EPA inspector obtained samples from the surface of a vehicle parked on North Fair Street near the facility. Subsequent analysis of the samples indicated the particles contained iron oxide, consistent with the processes conducted at, and emissions from, Alloy's facility. On May 25, 2000, an inspection was performed by the Illinois EPA, again in response to multiple citizen complaints regarding fallout material from the facility. Surface samples of the particulates were taken. Laboratory

analysis again revealed the particulates contained iron oxide, consistent with the processes at, and emissions from, Alloy's facility. Complainant contends that, by failing to control fugitive dust and permitting the emission of particulate matter, thereby causing or allowing the emission of contaminants, Alloy has caused air pollution.

6. Count II alleges air pollution control permit violations based upon the following disputed facts: On May 4, 2000, the Illinois EPA conducted an annual inspection and record review for the facility. The maintenance records for the dust collectors were incomplete. Dates were entered in maintenance records without corresponding information regarding preventative or corrective maintenance activities taken. Specifically, the unit scrubber had numerous dated entries without the associated statement of malfunction or maintenance activity. On May 27, 2000, an examination of the north/center CSI baghouse was conducted by Alloy's maintenance department. Sand was discovered on an upper platform. On May 30, 2000, the north/center CSI baghouse was shut down for extensive testing and on May 31, 2000, a ruptured filter bag and damaged wire cage were discovered by Alloy employees. The Illinois EPA conducted a record review of preventative maintenance activities for all Alloy's control equipment on March 17, 2001. Neither the May 31, 2000 north/center CSI baghouse rupture and associated bag replacement, nor the damaged wire cage and subsequent repairs were recorded in a maintenance record kept on the premises at the facility. On May 25, 2000, a hole allowing discharge of uncontrolled particulate matter was discovered by Alloy employees in the auger housing of the east end dust collector associated with the north/center CSI baghouse. Upon discovery, Alloy effected temporary repairs. Ultimately, permanent repairs were effected. The Illinois EPA conducted a record review of preventative maintenance activities for all of Alloy's control equipment on March 17, 2001. Neither the May 25, 2000 hole in the auger housing of the dust collector nor the subsequent repairs were recorded in a maintenance record kept on the premises at the facility.

7. Count III alleges construction and operation of equipment without the required permits based upon the following disputed facts: On or before May 25, 2000, Alloy constructed one green sand silo, one pneumatic waste sand silo with a truck loadout, and a baghouse in the counter-gravity division of the facility and constructed a sand muller, a spent sand tunnel fluidized cooler with Pangborn scrubber, a bucket elevator for the spent sand and sand reclamation unit with dust collector, two green sand silos, one waste silo, a rail receiving pit, and controls on the mold cleaning operation in the static division of the facility. Alloy did not apply for permits from the Illinois EPA for the construction and operation of such equipment. The process weight rate of one of the counter-gravity furnaces is listed at 4,000 pounds per hour in the application for a permit under which the unit now operates. The application permit under which the static division at the facility is now operating does not contain the requisite data regarding emissions from charging treatment, tapping, pouring and cooling for the electric arc furnaces operated at the site.

8. Count IV alleges hazardous waste disposal violations based upon the following disputed facts: On September 15, 2000, the Illinois EPA collected samples of dust from each of the seven baghouses located at the site. These samples were subsequently analyzed. Illinois EPA performed a thorough inspection of the site on September 28, 2000, and additional samples were taken. Samples taken from two of the baghouses exceeded the regulatory limit for two hazardous waste constituents, lead and selenium. Respondent had not performed the requisite analysis to determine whether baghouse dust was a hazardous waste, nor did it develop and follow a written waste analysis plan. Respondent had previously allowed its hazardous baghouse waste to be placed in common dumpsters, disposed as non-hazardous waste, and transported to Brickyard Disposal and Recycling, Danville, Illinois, or Clinton Landfill, Clinton, Illinois. This waste was all manifested as foundry sand.

9. Count V alleges noncompliance with the Part 725 requirements based upon the following disputed facts: During a September 15, 2000 inspection, the Illinois EPA inspector noted that Alloy had not obtained a permit from the Illinois EPA to store baghouse waste and that Alloy did not identify and properly mark hazardous baghouse waste containers stored at the facility. Additionally, Alloy did not provide the requisite RCRA training to its personnel or keep records of that training and had not submitted a written RCRA closure plan and a written closure cost estimate to the Illinois EPA.

10. Counts VI, VII, and VIII alleges water pollution violations based upon the following disputed facts: During a September 15, 2000 inspection, the Illinois EPA inspector noted that process wastewater from the facility was discharged to drains connected to the storm sewer system which ultimately enters a water of the State. Alloy operated its facility and discharged the process wastewater without an industrial storm water NPDES permit.

11. Respondent has resolved the circumstances leading to the alleged emissions and waste disposal violations and has several months ago applied for the appropriate process water discharge permit.

V.

FUTURE PLANS OF COMPLIANCE

Respondent shall diligently conform to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's Air, Land and Water Pollution Regulations, 35 Ill. Adm. Code Subtitles B, C and G.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides;

- c. 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:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. 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;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance.

In response to these factors, the parties state as follows:

1. Complainant contends that the injury to, or interference with, the protection of the health, general welfare, and physical property of the People would be characterized as a potential for air, land and water pollution and the degree of injury would be dependent upon the extent of the pollution and the degree of exposure to that pollution. A tort action alleging nuisance and trespass resulting from particulate emissions is pending as *Heather Livengood et al. V. Alloy Engineering & Casting Company*, Champaign County Circuit Court No. 01 L 53.
2. The parties agree that Respondent's facility is of social and economic benefit;
3. Respondent's facility is located at a site which has been used for the operation of a manufacturing facility nearly sixty years. Respondent's facility has been found suitable for such use at that location;
4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable; and
5. Respondent has implemented control measures subsequent to the allegations of violation that are the subject of the First Amended Complaint in this matter in order to satisfy the concerns of the Illinois EPA regarding the Act and the Board's Air, Land and Water Pollution Regulations.

VII.

CONSIDERATION OF SECTION 42(H) FACTORS

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

- h. 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 the 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 alleged violations were distinct in nature and occurred from 1999 through the time of the filing of the First Amended Complaint;
- 2. In response to notices of noncompliance issued by the Illinois EPA, the Respondent worked with the Illinois EPA to resolve compliance issues to the satisfaction of the Illinois EPA;
- 3. The economic benefit of Respondent's alleged noncompliance is the savings, if any, realized by not timely complying with the Act and the Board's regulations promulgated thereunder;

4. Complainant has determined, without the agreement of Respondent, in this instance, that a penalty of one hundred and fifty-two thousand five hundred and one dollars (\$152,501.00) would serve to deter further violations and aid in future voluntary enforcement of the Act and applicable regulations.

5. There are no previously adjudicated violations of the Act by Respondent.

VIII.

TERMS OF SETTLEMENT

A. Respondent does not admit the violations alleged in the First Amended Complaint;

B. The Respondent shall pay a penalty of seventy-five thousand dollars (\$75,000.00) into the Illinois Environmental Protection Trust Fund within ninety (90) days from the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund, and shall 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

Respondent's Federal Employer Identification Number ("FEIN") shall be written upon the certified check or money order. Respondent's FEIN is: 37-0614321

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

C. Respondent shall at all times meet its obligations under the Act to comply with Sections 9(a), 9(b), 12(a), 12(b), 12(f), 21(e), 21(f) and 21(i) of the Act, 415 ILCS 5/9(a),(b); 12(a),(b), (f) and 21(e),(f), (i) (2002); the Board's Air, Land and Water Pollution Regulations, 35

III. Adm. Code Subtitles B, C and G; and Respondent's Operating Permit No. 73050389. This agreement represents the full and final settlement of all claims against Respondent that are referenced in the First Amended Complaint filed on December 11, 2001.

D. Respondent shall undertake and complete three separate Supplemental Environmental Projects ("SEPs") as approved by the Illinois EPA. These SEPs were negotiated in order to reduce the civil penalty that would otherwise have been appropriate for the violations alleged in the First Amended Complaint. The first SEP involves the implementation of electronic Photohelic controls to improve the pulsing cleaning system of emission control devices. The improved operating efficiency of the system will eliminate excessive cake buildup on filter media, thus increasing particulate collection capability; energy conservation would be a side benefit due to reduced air consumption. The first SEP must be completed by September 1, 2003. The second SEP involves the repair and replacement of emission control ducting and the third SEP pertains to the implementation of broken bag detectors in the exhaust stacks of the emission control devices. The second and third SEPs must be completed within two years of the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal for Settlement. Respondent shall continue to operate the SEPs for at least ten years after completion.

The costs to be incurred by the Respondent in the performance of these SEPs are expected to total approximately \$85,000. The parties have agreed to a penalty offset of \$77,501. In the event that the Respondent does not perform the SEPs, the Respondent shall pay an additional monetary penalty of \$77,501 in the manner required above.

Respondent shall submit a project completion report, including a summary of the actual costs, to the Illinois EPA within ninety days of completing each SEP or within ninety days of the deadline for each SEP..

Any public statement, oral or written, made by the Respondent regarding this SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action undertaken by the People of the State of Illinois."

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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

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

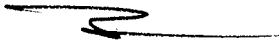
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

JAMES E. RYAN,
Attorney General, State of Illinois,

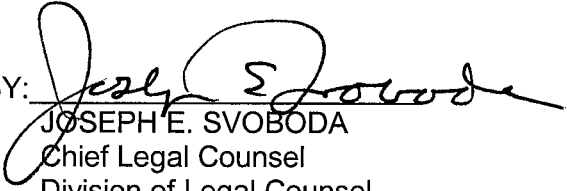
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Dated: 2/06/03

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Dated: 1/31/03

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

ALLOY ENGINEERING AND
CASTING COMPANY

Dated: 2/04/2003

BY: Mark D. Chandler
MARK D. CHANDLER
PRESIDENT / COO



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 6, 2003

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Alloy Engineering and Casting Company***
PCB No. 01-155

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and STIPULATION AND PROPOSAL FOR SETTLEMENT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be "Thomas Davis", is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures