

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 92-68
	)	
CHEM-PLATE INDUSTRIES, INC.,	)	(Enforcement)
an Illinois corporation,	)	
	)	
Respondent.	)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by ROLAND W. BURRIS, Attorney General of the State of Illinois, at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, and Respondent, CHEM-PLATE INDUSTRIES, INC., do 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 further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms thereof 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 in aggravation or in mitigation of penalty under Section 42(h) of

the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1042(h) (prior adjudication of violation of the Act). 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, Ill. Rev. Stat. 1991, ch. 111-1/2, pars. 1001 et seq.

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

The Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent, as well as the successors and assignees of each and any officer, director, agent, employee or servant of Respondent. The

Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation and Proposal for Settlement the failure of its 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 ("IEPA" or "Agency"), is an administrative agency of the State of Illinois created pursuant to Section 4 of the Act.

2. Respondent, CHEM-PLATE INDUSTRIES, INC. ("Chem-Plate"), is an Illinois Corporation. At all times relevant to the Complaint, Chem-Plate has owned and operated facilities located at 1990 East Devon Avenue, Elk Grove Village, Cook County, Illinois.

3. At its facilities, Chem-Plate generated in excess of 1000 kilograms of hazardous waste within a calendar month and shipped that waste off-site within the United States.

4. Section 21(i) of the Act provides as follows:

No person shall:

- i. Conduct any process or engage in any act which produces hazardous waste in violation of any regulation or standards adopted by the Board under subsections (a) and (c) of Section 22.4 of this Act.

5. Section 722.141(a) of the Illinois Pollution Control

Board's Waste Disposal Regulations, 35 Ill. Adm. Code  
722.141(a), which was adopted by the Board under Section  
22.4(a) of the Act, provides as follows:

A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall prepare and submit a single copy of an annual report to the Agency by March 1 for the preceding calendar year. The annual report must be submitted on a form supplied by the Agency, and must cover generator activities during the previous calendar year, and must include the following information:

1. The USEPA identification number, name and address of the generator.
2. The calendar year covered by the report.
3. The USEPA identification number, name and address for each off-site treatment, storage or disposal facility in the United States to which waste was shipped during the year.
4. The name and USEPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States.
5. A description, USEPA hazardous waste number (from 35 Ill. Adm. Code 721, Subpart C or D), DOT hazard class and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by USEPA identification number of each off-site facility to which waste was shipped.
6. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
7. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

8. The certification signed by the generator or the generator's authorized representative.

6. Chem-Plate is an Illinois corporation, doing business in Cook County, Illinois. Chem-Plate is a generator of hazardous waste which in 1990 generated more than 1000 kilograms of hazardous waste in a calendar month at its facilities located at 1990 East Devon Avenue, Elk Grove Village, Cook County, Illinois and shipped that waste off-site within the United States.

7. Complainant alleges, and Chem-Plate denies, that Chem-Plate failed to timely submit to the Agency annual reports for 1989 and 1990, by March 1, 1990 and March 1, 1991, respectively, which is required of any generator of hazardous waste who ships that waste off-site within the United States.

V.

NATURE OF RESPONDENT'S OPERATIONS

1. Chem-Plate produces certain hazardous wastes as a by-product of its operations.

2. Complainant alleges, and Respondent denies, that the facility generated more than 1000 kilograms of hazardous waste in a calendar month during 1989 and 1990 and shipped that waste off-site within the United States.

VI.

EXPLANATION OF PAST FAILURES TO COMPLY WITH THE ACT

Chem-Plate generated the waste as a part of continuing operations at its plant and eventually submitted a hazardous waste generator annual report in May, 1990 and June 10, 1991.

VII.

FUTURE PLANS OF COMPLIANCE

Chem-Plate will diligently conform to the record keeping and reporting requirements of 35 Ill. Adm. Code Part 722, Subpart D and shall cease and desist from future violations of said provisions.

VIII.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Illinois Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1033(c), provides:

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;
5. any subsequent compliance.

In response to these factors the parties state as follows:

A. Impact to the public resulting from alleged noncompliance is that the Agency and the public are not privy to information that is important to regulating hazardous waste in the State of Illinois.

B. The parties agree that the Elk Grove Village facility is of social and economic benefit.

C. The suitability of the pollution source to the area in which it is located is neither an aggravating or mitigating factor in the consideration of this violation.

D. The technical practicability and economic reasonableness of reducing deposits is not at issue here. The only issue involved here is the alleged failure to file an annual report with the Agency by March 1 of the following calendar year.

E. Chem-Plate is now in compliance with the requirements of 35 Ill. Adm. Code 722.141(a).

IX.

DETERMINATION OF PENALTY

Section 42(h) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1042(h) provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) 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:

A. An annual hazardous waste reports were received by the Agency in May, 1990 and June 10, 1991.

B. Chem-Plate was informed by post card and by a certified mail Compliance Inquiry Letter of the alleged violation after March 1, 1991.



C. No economic benefits were accrued by Chem-Plate for allegedly failing to submit an annual report by the required March 1 deadline.

D. The Agency contends that \$8,000.00 is a reasonable penalty based on the above stated alleged violation.

E. The Agency has no previous record of adjudicated violations by Chem-Plate.

X.

TERMS OF SETTLEMENT

A. Chem-Plate does not admit to past violations of Section 21(i) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1021(i), and 35 Ill. Adm. Code 722.141(a).

B. Chem-Plate shall cease and desist from any future violations of Section 21(i) of the Act and 35 Ill. Adm. Code Section 722.141(a);

C. Chem-Plate agrees to pay a penalty of \$8,000.00 into the Illinois Hazardous Waste Fund. The payments shall be made in \$4,000 installments as follows:

- \$4,000 within sixty (60) days from the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal for Settlement.
- \$4,000 within one hundred and twenty (120) days from the date on which the Pollution Control Board adopts a final order approving this Stipulation and Proposal for Settlement.

Payments shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Hazardous Waste Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
2200 Churchill Road  
Post Office Box 19276  
Springfield, IL 62794-9276

Chem-Plate's Federal Employer Identification Number, which is \_\_\_\_\_, shall be written upon the certified checks or money orders.

XI.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to, the Illinois Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1001 et seq., and the Illinois Pollution Control Board's Land Pollution Control regulations.

XII.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of a \$8,000.00

penalty and commitment to refrain from further violations of the Act, the Complainant releases, waives and discharges Respondent from any further liability or penalties from violations of the Act which were the subject matter of the complaint herein. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

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

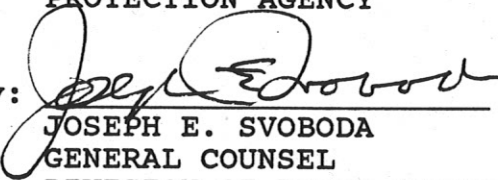
AGREED:


FOR THE COMPLAINANT:

FOR THE RESPONDENT:

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

CHEM-PLATE INDUSTRIES, INC.

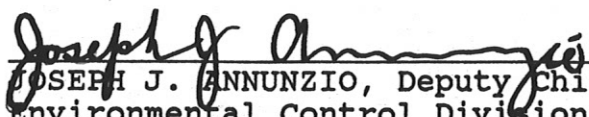
By:   
JOSEPH E. SVOBODA  
GENERAL COUNSEL  
DIVISION OF LEGAL COUNSEL

By:   
TITLE: ATTORNEY  
FEIN: 36-288694v

Dated: 2/2/93

Dated: JAN. 27, 1993

ROLAND W. BURRIS  
Attorney General  
State of Illinois

By:   
JOSEPH J. ANNUNZIO, Deputy Chief  
Environmental Control Division  
Assistant Attorney General

Dated: 2/26/93

chem1.stp/mf

PROOF OF SERVICE

I, MICHAEL FRANKLIN, having been duly sworn and under oath do state that on this 26th day of February 1993, I caused to be served the foregoing Notice of Filing, and Stipulation and Proposal for Settlement upon the persons to whom said Notice is directed by posting same in envelopes addressed to said persons, by first class mail, postage prepaid with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
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