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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 ACME REFINING SCRAP IRON AND METAL)
 COMPANY, an Illinois corporation)
)
 Respondents.)

No. PCB 03 - 20
(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on November 4, 2003, we filed with the Illinois Pollution Control Board a "Stipulation and Proposal for Settlement" and "Relief from the Hearing Requirement", a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

SERVICE LIST

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

Adam Meek
Jim Mitchell
Katten Muchin Zavis Rosenman
525 W. Monroe, Suite 1600
Chicago, Illinois 60661-3693

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois)
)
Complainant,)
)
vs.)
)
ACME REFINING SCRAP IRON AND)
METAL COMPANY, an Illinois)
corporation,)
)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 03 - 20
(Enforcement - Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, ACME REFINING SCRAP IRON AND METAL COMPANY ("ACME"), an Illinois corporation, 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. 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 trial 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 any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and not to contest its validity in any subsequent proceeding to implement or enforce its terms. Insolvency of the Respondent by filing a petition for bankruptcy shall not be deemed a proceeding to contest the validity of this Stipulation.

I.

JURISDICTION

The Board has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("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 Agreement and to legally bind them to it.

III.

STATEMENT OF FACTS

A. Parties

1. On August 22, 2002, 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 (2002), 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 (2002).

3. At all times relevant to the Complaint, including April 13, 2001, Respondent, ACME, was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to this Complaint, Respondent Acme operated Transfer Station #101 at 1409 Rockland Road, Lake Bluff, Lake County, Illinois.

2. Transfer Station #101 stores scrap metal. Prior to May, 2001, some of the scrap metal was coated in oil. The oil coated scrap metal was stored in large piles on an open-air concrete pad. The concrete pad was designed to direct oily discharges from the stored scrap metal to a sump. ACME pumped the oily discharge from the sump into drums for removal from the site.

C. Allegations of Non-Compliance

1. Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations:

Count I: Water Pollution
Violation of Section 12(a) of the Act, 415 ILCS
5/12(a) (2002);

Count II: Permit Violation

Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002); and Section 309.102(a) of the Board Regulations, 35 Ill. Adm. Code 309.102(a).

D. Admission of Violations

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

E. Compliance Activities to Date

1. Upon learning of the oil discharge into the tributary ditch of the Chicago River on April 13, 2001, ACME arranged for the removal of oil impacted liquid. Additionally, ACME no longer accepts oil coated metal shavings or turnings for storage at the site since this material was the probable cause of the oily discharge.

2. ACME is now covered by a National Pollutant Discharge Elimination System ("NPDES") permit and has prepared its Storm Water Pollution Prevention Plan ("SWPPP") as required by its NPDES permit.

IV.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

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:

1. The Parties state that the impact to the public resulting from ACME's non-compliance was that the non-compliance (specifically, discharging oil and operating without an NPDES permit) presented a potential for risk of harm to human health and the environment.

2. The Parties agree that ACME's business is of social and economic benefit.

3. The parties agree that the facility was suitable to the area in which it is located when the concrete pads near the small tributary ditch are not overloaded with contaminants.

4. The parties agree that complying with the requirements of the Act is both technically practicable and economically

reasonable.

5. The parties state that ACME helped remediate the site and surrounding waterway, improved its material handling practices to reduce the risk of further discharges into State waters, and now operates under an NPDES permit.

V.

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 . . . 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:

1. The Parties state that the duration of the violation for water pollution occurred from at least from April 13, 2001, until the oil liquid was removed some days later, and for operating without an NPDES permit occurred until August 10, 2001.

2. The parties agree that ACME demonstrated diligence in regard to these violations after the State made ACME aware of the violations. ACME subsequently arranged for the removal of the oily liquid and applied for the NPDES permit.

3. The Parties agree ACME received some economic benefit by delaying compliance with the requirements to obtain an NPDES permit. ACME leased transfer station #101 in April, 1999, but did not take the steps necessary to come into compliance with those provisions of the Act and regulations that are cited in this Stipulation, including application for an NPDES permit, until April, 2001.

4. The Parties agree that the appropriate penalty that will serve as a deterrence is \$21,000.00.

5. Respondent has one previously adjudicated violation of the Act, a 1990 air pollution violation for a facility located at 3357 Justine Street in Chicago, Illinois.

VI.

APPLICABILITY

A. This Stipulation Agreement shall apply to and be binding

upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation Agreement the failure of any of its officers, directors, agents, or employees to take such actions as shall be required to comply with the provisions of this Stipulation.

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a contemplated future owner or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent.

C. Severability: It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the

remaining clauses shall remain in full force and effect.

VII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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 Regulations, 35 Ill. Adm. Code, Subtitles A through H.

VIII.

TERMS OF SETTLEMENT

A. Penalty

1. a. The Respondent shall pay a civil penalty of Twenty One Thousand Dollars (\$21,000.00). Within thirty (30) days after the date on which the Board adopts a final order approving this Stipulation, Respondent shall pay \$21,000.00. Payment shall be made as follows:

b. Payment shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and 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

c. The name, case number, and the Respondent's Federal Employer Identification Number ("FEIN"), 36-3060875,

shall appear on the face of the certified checks or money orders.

A copy of the certified check or money order and the transmittal letter shall be sent to:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph, Suite 2001
Chicago, Illinois 60601

3. For purposes of payment and collection, the Respondent's attorney may be reached at the following address:

Adam M. Meek
Katten Muchin Zavis Rosenman
525 West Monroe, Suite 1600
Chicago, Illinois 60661-3693

4. For purposes of payment and collection, Respondent may be reached at the following addresses:

ACME Refining Company
3357 South Justine Street
Chicago, Illinois 60608

5. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

B. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42 (g) (2002), interest shall accrue on any penalty amount owed by the Respondent 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).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. 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.

4. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent 's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph St., Suite 2001
Chicago, Illinois 60601

C. Future Use

Notwithstanding any other language in this Stipulation Agreement to the contrary, this Stipulation may be asserted against the Respondent in any subsequent enforcement action as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Sections 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42 (h) (2002).

D. Cease and Desist

The Respondent shall cease and desist from all future violations of the Act and Board Regulations, including, but not limited to those violations that are outlined in Section III.C. of this Stipulation.

E. Release from Liability

In consideration of the Respondent's payment of a \$21,000.00 penalty, the Complainant releases, waives and discharges the Respondent from further liability or penalties for any violations of the Act and Board Regulations 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 August 22, 2002. 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 Agreement.

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 or the Illinois EPA may have against any person, as defined by Section 3.26 of the Act, 415 ILCS 5/3.26 (2002), or entity other than the Respondent.

F. Retention of Jurisdiction

The Board shall retain jurisdiction of this matter for the purpose of interpreting and enforcing the terms and conditions of the Stipulation.

G. Enforcement of Stipulation

1. Upon the entry of this Stipulation, any party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing the terms and conditions of this Stipulation. This Stipulation is a binding and enforceable order of the Board and may be enforced by the Illinois Circuit Court through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce this Stipulation may be made by mail and waives any requirement of service of process.

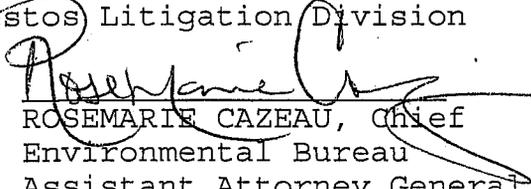
WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

AGREED:

FOR THE COMPLAINANT:

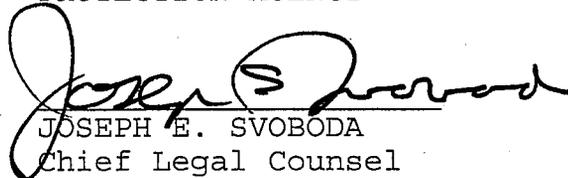
PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 9/25/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 9/19/03

FOR THE RESPONDENT:
ACME REFINING SCRAP IRON AND METAL COMPANY

BY: _____
Larry Baron
Its President

DATE: _____

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

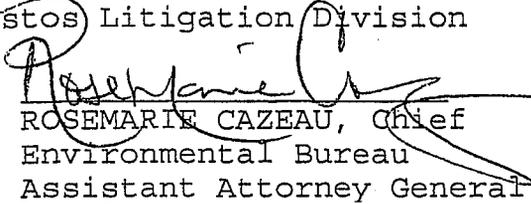
AGREED:

FOR THE COMPLAINANT:

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 9/25/03

DATE: 9/19/03

FOR THE RESPONDENT:
ACME REFINING SCRAP IRON AND METAL COMPANY

BY: 
Larry Baron
Its President

DATE: 10/9/03

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STATE OF ILLINOIS
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PEOPLE OF THE STATE OF ILLINOIS,)
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COMPANY, an Illinois corporation)
)
 Respondents.)

No. PCB 03 - 20
(Enforcement - Water)

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 violation of the Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (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.
4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

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

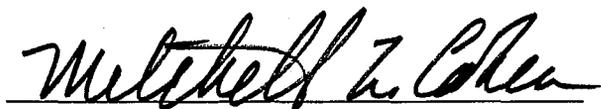
BY:


MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

DATE: November 4, 2003

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 4th day of November, 2003, I caused to be served by First Class Mail the foregoing "Stipulation and Proposal for Settlement" and "Relief from the Hearing Requirement" 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.


MITCHELL L. COHEN