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JUL 30 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,  
by JAMES E. RYAN, Attorney General  
of the State of Illinois,

Complainant,

v.

METALS TECHNOLOGY CORPORATION,  
an Illinois Corporation,

Respondent.

PCB 01-1

(Enforcement - Air)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 30th day of July, 2004, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the  
State of Illinois

By: Paula B. Wheeler

PAULA BECKER WHEELER  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, 20<sup>th</sup> Fl.  
Chicago, IL 60601  
312/814-1511

DATE: July 30, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Vincent S. Oleszkiewicz  
Baker & McKenzie  
One Prudential Plaza  
Suite 3300  
130 East Randolph Street  
Chicago, IL 60601

Bradley Halloran  
Chief Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street, 11th Floor  
Chicago, IL 60601

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(Enforcement - Air)

**MOTION TO REQUEST RELIEF**  
**FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On July 3, 2000, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On July 30, 2004, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be

held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

3. No hearing is currently scheduled in the instant case.

4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2)(2002).

Respectfully submitted,

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

By: Paula Becker Wheeler

PAULA BECKER WHEELER  
Assistant Attorney General

Environmental Bureau  
188 West Randolph Street, 20<sup>th</sup> Fl.  
Chicago, IL 60601  
312/814-1511

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
by LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	PCB 01-1
	)	
v.	)	(Enforcement - Air)
	)	
METALS TECHNOLOGY CORPORATION,	)	
an Illinois Corporation,	)	
	)	
Respondent.	)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, METALS TECHNOLOGY CORPORATION ("MTC"), by its attorney, do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further state that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose 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 as evidence of a past adjudicated violation of the Act as alleged herein, pursuant to Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2002), in

determining appropriate civil penalties for any future violations of the Act.

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 MTC, and any officer, agent, employee or servant of MTC, as well as the MTC's successors and assigns. MTC 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

A. Parties

1. The Attorney General of the State of Illinois brought this

action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent MTC, at all times relevant to the Complaint in this matter, was and is an Illinois corporation in good standing.

**B. Facility Description**

Respondent MTC, at all times relevant to the Complaint in this matter, has owned and operated a facility located at 120 North Schmale Road, Carol Stream, Du Page County, Illinois ("facility"). Respondent is in the business of heat treating and cleaning metal parts. Respondent heat treats metal parts in small furnaces to anneal or temper the metal, cleans parts in an open top vapor degreaser and sandblasts parts as required.

**C. Noncompliance**

Complainant has alleged the following violations of the Act against the Respondent:

Count I: FAILURE TO OBTAIN A CONSTRUCTION PERMIT BEFORE CONSTRUCTING EQUIPMENT CAPABLE OF CAUSING OR CONTRIBUTING TO AIR POLLUTION; violations of 415 ILCS 5/9(b)(2002) and 35 Ill. Adm. Code 201.142. (2002)

Count II: FAILURE TO OBTAIN AN OPERATING PERMIT BEFORE CAUSING OR ALLOWING THE OPERATION OF A NEW AIR POLLUTION EMISSION SOURCE; violations of 415 ILCS 5/9(b)(2002) and 35 Ill. Adm. Code 201.143.

Count III: FAILURE TO OBTAIN A CONSTRUCTION PERMIT FOR A

MAJOR STATIONARY SOURCE OF A HAZARDOUS AIR POLLUTANT,  
LOCATED IN A SEVERE NONATTAINMENT AREA FOR OZONE; violations  
of 415 ILCS 5/9(b) (2002) and 35 Ill. Adm. Code 203.201.

Count IV: FAILURE TO TIMELY SUBMIT A CLEAN AIR ACT PERMIT  
PROGRAM APPLICATION; violations of 415 ILCS 5/9(a) (2002),  
415 ILCS 5/39.5(6) (b) (2002) and 35 Ill. Adm. Code 270.301.

Count V: FAILURE TO TIMELY SUBMIT AN EMISSION REDUCTION  
MARKET SYSTEM APPLICATION; violations of 415 ILCS  
5/9.8(b) (2002) and 35 Ill. Adm. Code 205.310.

Count VI: FAILURE TO DEMONSTRATE COMPLIANCE WITH THE  
NATIONAL EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS  
APPLICABLE TO HALOGENATED SOLVENT CLEANING; violations of  
415 ILCS 5/9.1(d) (2002) and 40 CFR 63.463.

V.

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 questions  
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. Impact to the public resulting from MTC's noncompliance was that the Illinois EPA and the public were not privy to information that is important to the control of air pollution in Illinois. The permitting process is the only method available for the State to identify possible air pollution sources and their control. An additional impact to the public was caused by excess emissions released into the atmosphere.

2. The metal treating facilities that are the subject of the Complaint have social and economic value.

3. The metal treating facilities that are the subject of the Complaint are suitable to the areas in which they are located.

4. Complying with the requirements of the Act and the Board Regulations is both technically practicable and economically reasonable.

5. MTC applied for and was subsequently issued the requisite air permits and has resolved the concerns for excess emissions for the regulated combustion and emission sources. The Respondent has addressed the violations that are the subject of the complaint in this case.

## VI.

### CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (eff. 1/1/04), provides as follows:

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

(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 respondent 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 respondent because of delay in compliance with requirements, in which case the economic benefit 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; and
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.

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

1. The violations that are the subject of the Complaint occurred over an approximately five-year period.

2. The Respondent was diligent in addressing the violations by meeting with the State on several occasions to discuss measures necessary to achieve compliance, and the implementation of such measures to facilitate operating in compliance with the applicable environmental statutes and regulations.

3. The Respondent did accrue an economic benefit by avoiding timely preparation of construction and operating permit applications, CAAPP permit application submittal, ERMS baseline determination, and failure to demonstrate compliance with all requirements of 40 CFR 63, Subpart T, the exact amount of which it is difficult to determine. The civil penalty contained herein recovers any economic benefit obtained by Respondent from the alleged noncompliance.

4. The parties believe that a civil penalty of \$50,000.00 coupled with a Supplemental Environmental Project will deter MTC from committing further violations, and will aid in enhancing voluntary compliance by MTC and others similarly situated and subject to the Act.

5. The Complainant is not aware of any other adjudicated violations of the Act by MTC.

6. Self-disclosure is not an issue in this matter.

7. A Supplemental Environmental Project has been undertaken as described in Section VII.6 of this Stipulation.

VII.

TERMS OF SETTLEMENT

1. The Respondent neither admits nor denies the violations as alleged in the Complaint.

2. The Respondent shall pay a civil penalty of Fifty Thousand Dollars (\$50,000.00). Payment shall be made as follows:

a. An initial payment of TWENTY FIVE THOUSAND (\$25,000.00) shall be due within thirty (30) days after the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement.

b. A final payment of TWENTY FIVE THOUSAND (\$25,00.00) shall be paid within twelve (12) months after the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement.

c. Payments shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Illinois 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, IL 62794

A copy of the check shall be sent to:

Paula Becker Wheeler  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, 20th Floor  
Chicago, IL 60601

MTC shall write the case caption and number, and its Federal Employer

Identification Number ("FEIN"), 36-2717867, upon the certified check or money order.

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

Metals Technology Corporation  
120 North Schmale Road  
Carol Stream, Il. 60186

and

Baker and McKenzie  
Vincent Oleszkiewicz  
130 East Randolph, Suite 3300  
Chicago, Il. 60601

4. If the Respondent fails to make any payment specified within Section VII.2.a. of this Stipulation Order on or before the date upon which the payment is due, the Respondent will be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately.

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

6. Said penalty amount is not inclusive of avoided permit fees by Respondent, which fees total \$3000.00. Said fees must be paid within 60 days after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. Said fees are to be paid by certified check or money order, payable to CAAPP 091 Fund, and mailed to the following address:

Illinois Environmental Protection Agency  
Fiscal Services

1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

7. Respondent shall undertake and complete a Supplemental Environmental Project ("SEP") as approved by the Illinois EPA. The SEP requires that MTC ship parts to an outside vendor for cleaning through the use of an aqueous solution (soap and water), these parts are then shipped back to MTC for heat treating and processing. This aqueous solution cleaning may also be performed by MTC at its facility so long as the proven cost is not less than that which MTC is currently expending on an annual basis. This cleaning involves no solvent or volatile organic compound emissions to the atmosphere. The cost for this cleaning is allegedly over and above that which would result if MTC ran these parts through its vapor degreasing system. This program is not necessary or required under MTC's CAAPP permit, it does however, improve, protect and reduce risks to the public health and environment by reducing annual HAPs emissions into the atmosphere from the MTC facility.

The Respondent agrees to undertake this SEP for at least the next seven years (2004 through 2010). In the event that the Respondent does not perform the SEP, in any particular year, the Respondent shall tender \$10,000.00 in the manner required in Paragraph VII.2.c, for each year that the SEP is not performed. This check shall be received within 30 days of noncompliance with this paragraph in each of the years 2004 through 2010.

Respondent shall submit an annual report evidencing the actual costs of this outsourcing and the emissions reductions at the facility

attributable to this aqueous cleaning to the Illinois EPA at the address above by March 15 of each year starting in 2005.

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 brought by the People of the State of Illinois."

#### VIII.

##### 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 Social Security number 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:

Paula Becker Wheeler  
Assistant Attorney General (or other designee)  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

IX.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents 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 carrying out inspections. 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.

X.

CEASE AND DESIST

Respondent shall cease and desist from future violations of the Act and Board regulations, including but not limited to, those sections of the Act and Board regulations that were the subject matter of the complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

XI.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the Respondent's responsibility to comply with any federal, state or local laws and regulations.



XII.

RELEASE FROM LIABILITY

In consideration of the Respondent's payment of a \$50,000.00 civil penalty, performance of its SEP, and its commitment to refrain from further violations of the Act and the Board Regulations, upon receipt by Complainant of the payment required by Section VII of this Stipulation and proof of the performance of the SEP, the Complainant releases, waives and discharges Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties for violations 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.

This Stipulation may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

(THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK)

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

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

FOR THE RESPONDENT:

METALS TECHNOLOGY CORPORATION

By: Thomas Bell

Its: Co-President

Dated: 5-28-04

By: \_\_\_\_\_

ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Dated: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By: \_\_\_\_\_

JOSEPH E. SVOBODA  
Chief Legal Counsel

Dated: \_\_\_\_\_

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

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

FOR THE RESPONDENT:

METALS TECHNOLOGY CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: Rosemarie Cazeau  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Dated: 7/28/04

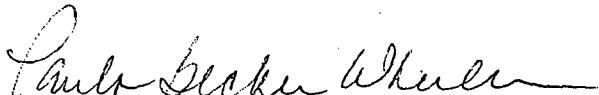
ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By: Joseph E. Svoboda  
JOSEPH E. SVOBODA  
Chief Legal Counsel

Dated: 7-26-2004

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an Assistant Attorney General in this case, do certify that I caused to be served this 30th day of July, 2004, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
PAULA BECKER WHEELER