

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
)
)
 v.) PCB No. 05-192
) (Enforcement - Air)
)
)
 Bag Makers, Inc., an Illinois)
 corporation,)
)
 Respondent.)

NOTICE OF FILING

TO: See Attached Service List
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
312-814-0609

DATE: November 16, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

Steven Murawski, Esq.
Gardner Carton & Douglas
191 N. Wacker Drive, Suite 3700
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Illinois Environmental Protection Agency
1021 North Grand Avenue East
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Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No. 05-192
)	(Enforcement - Air)
)	
Bag Makers, Inc., an Illinois)	
corporation,)	
)	
Respondent.)	

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) (2004), 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) (2004). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violation of the Sections 9(a), 9(b) and 39.5(6)(b) of the Act, 415 ILCS 5/9(a), 9(b) and 39.5(6)(b) (2004) and Sections 201.142, 201.143, 203.201, 201.302(a), 254.137(a), 254.132(a) and 218.404(b) of the Board regulations, 35 Ill. Adm. Code 201.142, 201.143, 203.201, 201.302(a), 254.137(a), 254.132(a) and 218.404(b).

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) (2004).

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) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:


JENNIFER A. TOMAS

Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0609

DATE: November 16, 2005.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)	
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Bag Makers, Inc., 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, the Illinois Environmental Protection Agency ("Illinois EPA"), and BAG MAKERS, INC., ("Respondent"), 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 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 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 Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

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. STATEMENT OF FACTS

A. Parties

1. On April 29, 2005, 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(2004), 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 (2004).

3. At all times relevant to the Complaint, Respondent 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 the Complaint, Respondent owned and operated a flexographic printing facility located at 6606 South Union Road, Union, McHenry County, Illinois ("site").

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: CONSTRUCTING AIR EMISSION SOURCES WITHOUT A PERMIT, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2004), and 35 Ill. Adm. Code 201.142.

Count II: FAILURE TO OBTAIN OPERATING PERMITS FOR NEW EMISSION SOURCES, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2004), and 35 Ill. Adm. Code 201.143.

- Count III: FAILURE TO OBTAIN A CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMIT, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2004).
- Count IV: FAILURE TO COMPLY WITH NEW SOURCE REVIEW (NSR) REQUIREMENTS, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code 203.201.
- Count V: FAILURE TO SUBMIT TIMELY ANNUAL EMISSIONS REPORTS, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code 201.302(a), 254.137(a) and 254.132(a).
- Count VI: VIOLATION OF FLEXOGRAPHIC PRINTING RULES: FAILURE TO MAINTAIN RECORDS, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code 218.404(b).

D. Non-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. On July 1, 2003, Respondent submitted an application for a Federally Enforceable State Operating Permit ("FESOP") from the Illinois EPA.

2. On May 10, 2005, the Illinois EPA issued Respondent a FESOP for the site.

IV. APPLICABILITY

This Stipulation 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 the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

V. 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.

VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2004), 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 Complainant contends the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Obtaining a permit prior to construction at the site, obtaining operating permits for new emission sources at the site, obtaining a Clean Air Act Permit Program ("CAAPP") permit, submitting timely reports, and properly maintaining records is technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2004), 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 respondent 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 respondent because of delay in compliance with requirements, in which case the economic benefits 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 Complainant contends the following:

1. The Respondent operated emission units without the required permits for a period of at least eight years. Respondent constructed numerous emission units without demonstrating compliance with the Board's NSR regulations. The Respondent failed to keep records and make reports as required by the Board's flexographic printing regulations. The permitting, CAAPP, NSR, flexographic printing and recordkeeping and reporting requirements are of programmatic significance to the Illinois EPA.

2. Respondent was diligent in responding to the Act's Section 31 process.

3. Respondent had an economic benefit of \$700.00 in avoided air pollution site fees. The penalty obtained includes this amount.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of \$62,700:00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

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

7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Sixty Two Thousand Seven Hundred Dollars (\$62,700.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by two certified checks, money orders or electronic funds transfers payable to the Illinois EPA; one payment of \$62,000.00 designated to the Illinois Environmental Protection Trust Fund and one payment of \$700.00 designated to the Illinois Environmental Permit and Inspection Fund. Both payments shall be submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276

Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), shall appear on the checks. A copy of the certified checks, money orders or records of electronic funds transfer and any transmittal letters shall be sent to:

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Maureen Wozniak
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois

Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

Charles D. Sanford
President
Bag Makers, Inc.
6606 South Union Road
Union, IL 60180

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Compliance Plan

Respondent shall obtain appropriate construction and operating permits from the Illinois EPA Bureau of Air for future regulated equipment additions or changes.

C. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.E, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit

proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h) (2004). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

D. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

E. Release from Liability

In consideration of the Respondent's payment of the \$62,700.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.D and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent and its officers, directors, agents and employees from any further liability or

penalties for 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 April 29, 2005. 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.

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 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

F. 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.

G. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") of this Stipulation shall be submitted as follows:

As to the Complainant

Jennifer A. Tomas
Assistant Attorney General (or other designee)
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Maureen Wozniak
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Donald L. Brown
Executive Vice President
Bag Makers, Inc.
6606 South Union Road
Union, IL 60180

H. Modification of Stipulation

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.G. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

I. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois

Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

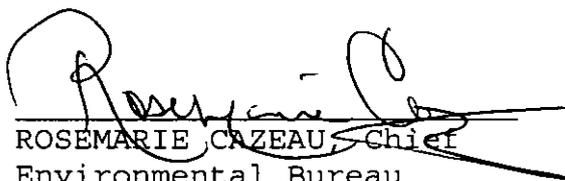
4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

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

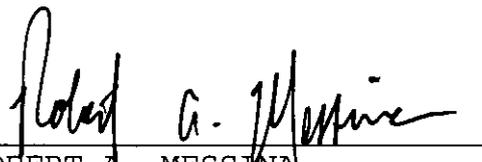
PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:  DATE: 11/8/05
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY:  DATE: 11/2/05
ROBERT A. MESSINA
Chief Legal Counsel

Bag Makers, Inc.

BY:  DATE: 11/9/05
DONALD L. BROWN
Executive Vice President

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 16th day of November 2005, I caused to be served by First Class United States Mail, the foregoing Stipulation and Proposal for Settlement and Motion for Relief from 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.


JENNIFER A. TOMAS