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SEP 30 2003

STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

September 26, 2003

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

Re: **People v. Mill, Inc., a Delaware corporation**  
PCB No. 02-63

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT 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 cursive script, appearing to read "Delbert D. Haschemeyer".

Delbert D. Haschemeyer  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

DDH/pp  
Enclosures

**RECEIVED**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**  
**CLERK'S OFFICE**  
**MORGAN COUNTY, ILLINOIS**

SEP 30 2003

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
  Complainant, )  
)  
  vs.  ) )  
) )  
MII, INC., a Delaware corporation, )  
)  
  Respondent.  )

STATE OF ILLINOIS  
*Pollution Control Board*

PCB No. 02-63


**NOTICE OF FILING**

To: Mr. Fred Prillaman  
Mohan, Alewelt, Prillaman & Adami  
1 North Old State Capitol Plaza, Ste. 325  
Springfield, Illinois 62701

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 MOTION FOR RELIEF FROM HEARING REQUIREMENT and 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:   
DELBERT D. HASCHEMEYER  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: September 26, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that I did on September 26, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT

To: Mr. Fred Prillaman  
Mohan, Alewelt, Prillaman & Adami  
1 North Old State Capitol Plaza, Ste. 325  
Springfield, Illinois 62701

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  
Illinois Pollution Control Board  
State of Illinois Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Sudman  
Hearing Officer  
Illinois Pollution Control Board  
600 South Second Street  
Springfield, IL 62704

  
Delbert D. Haschemeyer  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
MORGAN COUNTY, ILLINOIS

RECEIVED  
CLERK'S OFFICE

SEP 30 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
MII, INC., a Delaware corporation, )  
)  
Respondent. )

PCB No. 02-63

**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) (2000), moves that the Illinois Pollution Control 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) (2000). In support of this motion, Complainant states as follows:

1. On this date, Complainant is filing a Stipulation and Proposal for Settlement with the Board, proposing to resolve the allegations in the pending Complaint.
2. The parties have reached agreement on all outstanding issues in this matter.
3. 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) (2000).

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) (2000).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY:



DELBERT D. HASCHEMEYER  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: 9/25/03

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
MORGAN COUNTY, ILLINOIS

RECEIVED  
CLERK'S OFFICE

SEP 30 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
MII, INC., a Delaware corporation, )  
)  
Respondent. )

PCB No. 02-63

**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 Respondent, MII, INC., a Delaware corporation, have agreed to the making of this Stipulation and Proposal for Settlement 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 not to contest its validity in any subsequent proceeding to implement or enforce its 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.* (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 to legally bind them to it.

III.

**STATEMENT OF FACTS**

A. Parties

1. On November 27, 2001, a Complaint was filed on behalf of the People of the State of Illinois by James E. Ryan, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (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, Respondent was and is a Delaware 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 facility which produces shelving for offices and homes located at 500 Capital Way, Jacksonville, Morgan 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: Air Pollution

Complainant alleges that Respondent caused, threatened or allowed excess emissions of volatile organic material (VOM) a contaminant, into the environment from the shelving plant so as to cause or tend to cause air pollution, or so as to violate regulations or standards adopted by the Board in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and 35 Ill. Adm. Code 201.141.

Count II: VOM Emission and Permit Violation

Based on a March 11, 1997, inspection, the Complainant alleges Respondent was not keeping records for the coating operation as required by conditions 5(a)(b) and (c) of Operating Permit No. 73030989 in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

Based on a July 29, 1998, inspection and subsequent record production, the Complainant alleges that Respondent:

- a. used two non-compliant, semi-transparent stains in spray booth #2 on dates known to Respondent up to and during August 1998, in violation of 35 Ill. Adm. Code 215.204(l) and 215.207;
- b. used eight non-compliant opaque stains which were used in spray booth #2, the CEFLA, on dates known to Respondent up to and during the month of September 1998, in violation of 35 Ill. Adm. Code 215.204(l);
- c. used six non-compliant top coats in spray booth #2 and the CEFLA flow center on dates known to the Respondent up to and including dates in September 1998, in violation of condition 3(a) of revised Permit No. 73030989 issued October 9, 1997. Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), 35 Ill. Adm. Code 215.204(l) and 215.207;
- d. added lacquer retarder (7.12 lb/gal VOM) to their lacquers which, after mixing, constituted non-compliant coatings, used two non-compliant lacquers in violation of 35 Ill. Adm. Code 215.204(l)(2);
- e. used 716 gallons of lacquer thinner in June 1998, 116 gallons in excess of permit limits in revised Permit No. 73030989, condition 4.f issued October 9, 1997, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);
- f. used more than 45 gallons per month of clear lacquer in spray booth #2 for the months of February through June, and August of 1998, in violation of condition 4(d) of revised Permit No. 73030989 issued



October 9, 1997, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);

- g. used more than 45 gallons per month of pigmented lacquer in spray booth #3 for the months of February, April, and June through September 1998, in violation of condition 4(e) in revised Operating Permit No. 73030989 issued October 9, 1997, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);
- h. used more than 384 gallons per month of pigmented lacquer in the CEFLA for the months of January, February, and April through August of 1998, in violation of condition 4(b) of revised Operating Permit No. 73030989 issued October 9, 1997, and Section 9(b) of the Act, 41 ILCS 5/9(b) (2000);
- i. failed to aggregate VOM emissions from coating lines #2 and #3 with the glue and curtain lines as required by regulation and its permit, and continued to use noncompliant coatings in violation of 215.207;
- j. on September 9, 1999, Respondent had ceased all aggregating of VOM emissions while continuing to use noncompliant coatings, in violation of 215.207; and
- k. since on or before July 27, 1998 and continuing, added solvent to coating and has not performed testing for VOM content or the solvent in accordance with method 24 or any alternative method in violation of 215.208.

Based on a September 9, 1999, inspection and subsequent information provided by

Respondent, the Complainant alleges that:

- a. monthly usage of clear gloss lacquer exceeded the maximum permitted monthly usage for the months of May, June, July, August, October, November and December 1998, and the maximum permitted usage in spray booth #2 of the facility also exceeded the maximum permitted monthly emission limits from the application of the clear gloss lacquer coating for the months of May, June, July, August, October, November, and December 1998, and the permitted yearly emission rate in violation of revised Operating Permit No. 73030989 issued October 9, 1997, condition 4(d), Sections 9(a) and 9(b) of the Act, 415 ILCS 5/9(a) and (b) (2000), and 35 Ill. Adm. Code 215.204(l)(1);
- b. on dates known to the Respondent, the Respondent used non-compliant coatings #8040 NC tint green (6.04 lbs. VOM/gallon), #8071 black dye (7.0 lbs. VOM/gallon), #8073 dye blue (7.04 lbs. VOM/gallon), #8074 dye burnt umber 96.04 lbs. VOM/gallon), #8075 dye raw umber (6.04 lbs. VOM/gallon), and #8092 tint yellow-green

(6.04 lbs. VOM/gallon) in the CEFLA, in violation of revised Operating Permit No. 73030989 issued October 9, 1997, condition 3(a), Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b), and 35 Ill. Adm. Code 215.204;

- c. on dates known to the Respondent, Respondent used non-compliant coatings #8005 mahogany stain, #8006 walnut stain, #8013 aztec paint, and #8033 fruitwood stain in the glue booth, spray booths #2 and #3, without doing any aggregation of emission sources in violation of revised Operating Permit No. 73030989 issued October 9, 1997, conditions 3(b), (c), and 5(a), and Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b) (2000), and 35 Ill. Adm. Code 215.207;
- d. on dates known to the Respondent, Respondent added high VOM solvent (7.12 lbs. VOM/gallon) and high VOM dyes to coating used in spray booth #2, in violation of revised Operating Permit No. 73030989 issued October 9, 1997, condition 5(b)(ii), Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b) (2000), and 35 Ill. Adm. Code 215.204(l)(1);
- e. on dates known to Respondent, Respondent added #8085 fisheye eliminator (7.15 lbs. VOM/gallon) to the clear coating in violation of revised Operating Permit No. 73030987 issued October 9, 1997, conditions 4(a) and 5(b)(ii), Sections 9(a) and (b) of the Act, 415 ILCS 9(a) and (b) (2000), and 35 Ill. Adm. Code 215.204(l)(1); and
- f. failed to keep records of the total amount of any VOM collected and either recycled or shipped offsite in violation of revised Operating Permit No. 73030989 issued October 9, 1997, condition 5(b)(iii), and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

Plaintiff further alleges that on or about May 27, 1999, Respondent replaced two curtain coaters with a Giardina finishing system and obtained a permit (#990202104) from the Illinois EPA to construct and operate that system. Based on an Illinois EPA's inspection of September 9, 1999, and information subsequently submitted to the Illinois EPA by the Respondent, the Complainant alleges that the Respondent:

- a. has not kept monthly records of the total amount of VOM collected and recycled into the process or shipped off-site in violation of Operating Permit No. 99020104, condition 5(b)(iii) and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);
- b. on dates known to the Respondent, added laquer retarder (7.12 lbs. VOM/gallon) to the clear coat lacquer finish without recording the ratio of solvent to clear coat or measuring to determine emission

limit for lacquer finish in violation of Permit No. 99020104, conditions 2.1.3(c)(i) and 2.1.5(b), Sections 9(a), (b) and 9.1(d) of the Act, 415 ILCS 5/9(a), (b) and 9.1(d) (2000), 40 CFR 63.806(d)(1) and 35 Ill. Adm. Code 215.204(l)(1);

- c. has not kept records of material throughout of shelving uprights in lbs/hr and lbs/mo in violation of Operating Permit No. 99020104, conditions 2.1.9(c)(vii) and 2.1.10(c)(ii) and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);
- d. has not kept records of the VOM emissions per month in violation of Operating Permit No. 99020104, conditions 2.1.9(c)(viii) and 2.1.10(c)(i), and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);
- e. failed to maintain written work practice implementation plan in violation of Operating Permit No. 99020104, conditions 2.1.5(a)(i) and 2.1.9(a)(iii), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), and 40 CFR 63.806(d)(1);
- f. failed to maintain a written inspection and maintenance plan in violation of Operating Permit No. 99020104, condition 2.1.5(a)(iii), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), and 40 CFR 63.803(c);
- g. failed to specify solvent amount used in cleaning and wash-off at each coating operation in violation of Operating Permit No. 99020104, condition 2.1.5(c)(iv), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), and 40 CFR 63.803(d);
- h. failed to keep a formulation assessment plan in violation of Permit No. 99020104, condition 2.1.5(a)(iii), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), and 40 CFR 63.803(1);
- i. failed to report VOM content of solvent recovered or the total amount of cleanup solvent recovered in violation of Operating Permit No. 99020104, conditions 2.1.9(c)(v) and (vi), and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);
- j. failed to notify the Illinois EPA Compliance Section of non-compliance of the Giardina Coating Line in violation of Operating Permit No. 99020104, condition 2.1.10(b) and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000);
- k. failed to demonstrate initial compliance and failed to submit the initial compliance report for the Giardina Coating Line in violation of Operating Permit No. 99020104, Condition 2.1.12(b), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), 40 CFR 63.804(f)(1) and 40 CFR 63.807(b);

- l. has not completed performance tests in accordance with 40 CFR 63.805 to demonstrate initial compliance in violation of Operating Permit No. 99020104, condition 2.1.7(a), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), and 40 CFR 63.805;
- m. has not demonstrated compliance with any of the stated methods in violation of Operating Permit No. 99020104, condition 2.1.6, Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), and 40 CFR 63.802(a)(1);
- n. has not kept the records required by Operating Permit No. 99020104, Conditions 2.1.9(a)(i)(B) and (C), cannot report the as-applied VHAP content and the as-applied VOM content of the clear-coat because it adds solvent to the clear-coat without keeping track of the ratio amounts or how the VOM content is altered in violation of Operating Permit No. 9990201040, conditions 2.1.9(a)(i)(b), 2.1.9(a)(i)(C), 2.1.12(a) and 2.1.6(a), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), 40 CFR 63.802(a)(1), 40 CFR 63.803(a), 40 CFR 63.806(b)(2), and 40 CFR 63.806(b)(3); and
- o. has failed to keep records required by Operating Permit No. 99020104, condition 2.1.9(a)(ii) in violation of Operating Permit No. 99020104, conditions 2.1.9(a)(ii), Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2000), and 40 CFR 63.806(c).

Count III: Construction Without a Permit Violation

Complainant alleges that during approximately November of 1996, Respondent constructed A Busellata CNC point-to-point machine with a bag house and subsequently operated the same without first obtaining a construction and operating permit, in violation of 35 Ill. Adm. Code 201.142 and 201.143, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

Count IV: Failure to Timely Submit Clean Air Act Permit Program Permit Application

Complainant alleges that Respondent's facility constitutes a major source subject to the Clean Air Act Program and, as such, is subject to the requirement to obtain a Clean Air Act Permit requirement, thus, required to submit a complete Clean Air Act Permit Program permit application no later than March 7, 1996. Complainant alleges that Respondent untimely submitted its Clean Air Act Permit Program permit application on or about March 23, 1998, two years late, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2000).

D. Responsive Pleadings

Except as provided in Paragraph E below, Respondent has denied all material allegations of the Complaint.

E. Admission of Violations

This Stipulation and Proposal for Settlement is entered into for the purpose of settling and compromising disputed claims without the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, MII, Inc., does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission, except for the allegations appearing in Paragraphs 21(c), (d) and (o) of Count II of the Complaint (failure to keep records), which Respondent admits.

F. Compliance Activities to Date

1. Beginning in November, 2001, pursuant to an agreed-upon schedule, Respondent agreed to prepare, and Complainant and the Illinois Environmental Protection Agency ("Agency") reviewed, recalculations of both the VOM and hazardous air pollutant ("HAP") contents of raw products used and emissions from the subject facility for the following purposes: (a) establishing whether Respondent was subject to the NESHAP regulations or exempt under the Small Quantity Exemption to the NESHAP regulations; (b) establishing whether and to what extent any of the alleged violations in Counts I and II of the Complaint actually occurred; and (c) determining whether Respondent was eligible for a Federally Enforceable State Operating Permit ("FESOP"), pursuant to Section 39.5 of the Illinois Environmental Protection Act ("Act").

2. The said recalculations consisted of attempting to match the appropriate Material Safety Data Sheets ("MSDS") with the products used by Respondent during all of the 12-month rolling time periods beginning December 1997, then calculating the emissions of HAPs emitted during each of those 12-month rolling time periods, based upon the submitted MSDS.

3. From time to time in 2002, Complainant and Respondent, and their respective attorneys and engineers and technical staff, met to discuss the status of these recalculations.

4. At at least one of these meetings, Respondent explained that it believed that its Jacksonville, Illinois plant could be excluded from the CAAPP, and that it believed that the appropriate permit for this facility was a FESOP, which imposed federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for this facility.

5. The last of the recalculations prepared by Respondent and submitted to Complainant for its review, were prepared and submitted on July 30, 2002.

6. In the July 30, 2002, report, Respondent concluded that its subject Jacksonville, Illinois facility qualified for an extended NESHAP compliance date and further qualified for, and continues to qualify for, an exemption from the NESHAP rules applicable to wood furniture coating subject to Agency confirmation.

7. In January 2003, Complainant determined that the recalculations presented by the Respondent indicated Respondent's facility, which is the subject of this Complaint, would qualify for an exemption from the NESHAP rules, since there were never emitted more than a total of 12.5 tons per year of HAPs or more than 5 tons per year of any individual HAP, during any 12-month rolling period, from the plant.

8. On March 26, 2003, Complainant further concluded that Respondent is currently operating in compliance with those provisions of the Act and applicable regulations alleged to have been violated in the Complaint by the Respondent.

9. On or about May 17, 2003, Respondent filed with the Agency an application for a FESOP for this facility.

IV.

**APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer or agent 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 or agents 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, and 40 CFR 63 (subpart JJ).

VI.

**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 involving, 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 the following:

1. The threat to or interference with human health, the environment or physical property was *de minimis*.
2. There is social and economic benefit to the facility.
3. Operation of the facility was and is suitable for the area in which it occurred.
4. The maintenance of adequate records and the providing of correct reports as required by Respondent's permits, all of which was redone as described in Section III, paragraph F, pages 8-10 was both 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) (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 as follows:



1. Based on the recalculation as described in Section III, paragraph F, pages 8-10 and Respondent's responsive pleadings as described in Section III, paragraphs D and E, Respondent's failure to maintain adequate records and the resulting failure to submit reports as required by Respondent's permits occurred primarily between 1997 and 2000.

2. The alleged violations initially occurred due to an alleged misunderstanding by Respondent. After the filing of the Compliant herein, Respondent has been diligent in addressing the alleged violations. Respondent has corrected the situation leading to the alleged violations, and is now in a position to receive the appropriate permit for this facility.

3. Some economic advantage may have initially been accrued by the Respondent in that Respondent apparently did not apply the resources necessary to ensure that its record keeping was adequate to comply with its initial permit. The parties agree that the penalty provided for herein will offset any economic benefit realized by Respondent.

4. Except for the allegations appearing in paragraphs 21(c), (d) and (o) of Count II of the Complaint (failure to keep records), Respondent denies that it has violated the act or the regulations promulgated thereunder, or the permits heretofore issued to Respondent by the Agency, but for the purpose of settlement, has agreed to pay a penalty in the sum of \$50,000 to the Environmental Protection Trust Fund. The State believes that such a penalty will deter Respondent from future violations of the Act. Further, this penalty will aid Illinois EPA's enforcement of the Act and the Board's Rules and Regulations as against persons similarly subject to the Act.

5. There are no known prior adjudicated violations of the Act by Respondent relative to the subject facility.

VIII.

**TERMS OF SETTLEMENT**

A. Penalty Payment

1. The Respondent shall pay a penalty in the sum of fifty thousand dollars (\$50,000.00) within thirty (30) days after the date the Board adopts and accepts this Agreement. The penalty described in this Agreement shall be paid by certified check payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and 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), 37-1107490, shall appear on the check. A copy of the certified check or money order and the transmittal letter shall be sent to:

Attorney General's Office  
Attn: Peggy Poitevint  
500 South Second Street  
Springfield, IL 62706

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), 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 (2002). Interest on any unpaid payment shall begin 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 or money order, payable to the Treasurer of the State of Illinois, designated to the 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:

MII, Inc.  
Attn: Alex Craig  
2200 West 5<sup>th</sup> Street  
Lincoln, Illinois 62656

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

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, this Stipulation may be used 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).

C. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Section IX. of this Stipulation, shall be submitted as follows:

As to the Complainant:

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

As to the Respondent

MII, Inc.  
Attn: Alex Craig  
2200 West 5<sup>th</sup> Street  
Lincoln, Illinois 62656

D. 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 Consent Order, 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.

E. Cease and Desist

The Respondent shall cease and desist from future violations of the Act, Board Regulations, and the NESHAP, including but not limited to those sections of the Act, Board Regulations and the NESHAP that were the subject matter of the Complaint as outlined in Section III.C. of this Stipulation.,

F. Dispute Resolution

As part of the resolution of any dispute, the parties, by agreement, or by order of Court, may, in appropriate circumstances, extend or modify any provision of the Order accepting and adopting the terms of this Stipulation and Proposal for Settlement to account for any delay that may occur as a result of dispute resolution.

G. Release from Liability

In consideration for the payment by Respondent to Complainant of the sum of \$50,000, and its actions to date and its commitment to refrain from future violations of the Act, Board regulations, and Agency permits, Complainant releases, waives, and discharges Respondent from and against any and all liability or penalties for violations alleged in the Complaint, as well as any violations of the Respondent's current CAAPP permit, so long as said violations do not constitute violations of any applicable emissions limitations or provisions of any subsequently issued permit through the date of the Board's Order approving and accepting this Stipulation and Proposal for Settlement for Respondent's Jacksonville facility. However, nothing in this Stipulation and Proposal of Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undisclosed violations, or obtain penalties with respect thereto. Complainant reserves, and this

Consent Order 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, other than the Respondent.

H. Enforcement of Consent 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 and Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waive 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.

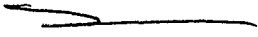
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

Respectfully submitted,

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

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

Dated: 9/24/03

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Dated: 9/22/03

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY  
BY: Joseph E. Svoboda  
JOSEPH E. SVOBODA *by WPI*  
Chief Legal Counsel

Dated: 9/18/03

MII, INC., a Delaware corporation  
BY: 