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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 06 2004

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney General )  
of the State of Illinois, )  
 )  
Complainant, )  
 )  
v. )  
 )  
CROMWELL-PHOENIX, INC., )  
an Illinois Corporation, )  
 )  
Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 04-136  
(Enforcement - Air)

NOTICE OF FILING

TO: Eric E. Boyd  
Seyfarth Shaw  
55 East Monroe Street, Suite 4200  
Chicago, IL 60603-5803

PLEASE TAKE NOTICE that I have today, December 6, 2004, filed with the Office of the Clerk of the Illinois Pollution Control Board the **Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement**, true and correct copies of which are attached hereto and herewith served upon you.

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

BY:



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MICHAEL C. PARTEE  
Assistant Attorney General  
Environmental Bureau/North  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
Tel.: (312) 814-2069

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STATE OF ILLINOIS  
Pollution Control Board

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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, CROMWELL-PHOENIX, INC., have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and to submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein is made and agreed upon for purposes of settlement only. The parties further stipulate 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 except as otherwise provided herein. If the Board approves and enters this Stipulation, the parties agree 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. (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. This Stipulation may be signed in counterparts, all of which shall be considered one settlement.

III.

STATEMENT OF FACTS

A. Parties

1. On January 30, 2004, 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 at 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, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

**B. Site Description**

1. From at least 1993 until about September 2000, Respondent operated a facility located at 7401 South Pulaski Road, Chicago, Cook County, Illinois ("former facility").

2. At its former facility, Respondent produced corrosion inhibiting packaging materials by using paper coating machines to coat paper with corrosion inhibiting compounds. These corrosion inhibiting compounds contained more than 0.28 kilograms per liter or 2.3 pounds per gallon volatile organic material ("VOM").

3. In about 2000, Respondent moved its operations to another facility located at 12701 South Ridgeway Avenue, Alsip, Cook County, Illinois ("current facility"). Respondent applies corrosion inhibiting compounds containing more than 0.28 kilograms per liter or 2.3 pounds per gallon VOM at its current facility.

4. Complainant contends that Respondent operated air pollution sources without an operating permit at its former facility, constructed and operated air pollution sources at its current facility without construction or operating permits, and did not comply with or seek an exemption from the emission limitation applicable to its paper coating machines.

5. On September 18, 2003, the Board granted Respondent an Adjusted Standard from the VOM paper coating requirements under 35 Ill. Adm. Code 218.204(c).

**C. Allegations of Non-Compliance**

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

Count I: Causing, threatening or allowing air pollution in violation of Section 9(a) of the Act (415 ILCS 5/9(a) (2002)) and Section 201.141 of the Board's Air Pollution Regulations (35 Ill. Adm. Code 201.141);

Count II: Constructing air pollution source without construction permit in violation of Section 9(b) of the Act (415 ILCS 5/9(b) (2002)) and Section 201.142 of the Board's Air Pollution Regulations (35 Ill. Adm. Code 201.142);

Count III: Operating an air pollution source without an operating permit in violation of Section 9(b) of the Act and Section 201.143 of the Board's Air Pollution Regulations (35 Ill. Adm. Code 201.143);

Count IV: Exceeding the emission limitation for a coating line in violation of Section 9(a) of the Act and Section 218.204(c) of the Board's Air Pollution Regulations (35 Ill. Adm. Code 218.204(c));

Count V: Failing to demonstrate compliance with the emission limit for a coating line in violation of Section 9(a) of the Act and Section 218.204 of the Board's Air Pollution Regulations (35 Ill. Adm. Code 218.204);

**D. Non-Admission of Violations**

The Respondent has agreed to this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation, the Respondent does not admit the violations alleged in the Complaint or the Alleged Violations contained in this Stipulation, and this Stipulation shall not be interpreted or construed as including or expressing any such admission.

**E. Compliance Activities to Date**

Respondent applied for and was granted both an Adjusted Standard from the VOM paper coating requirements under 35 Ill. Adm.

Code 218.204(c) and the necessary operating permit, thereby remedying the alleged noncompliance.

IV.

APPLICABILITY

1. This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, employee or servant of the Respondent, as well as 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.

2. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the current facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under 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 RESULTING FROM THE 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 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 VOM emissions from the Respondent's facilities have not caused negative health or environmental effects.
2. There is social and economic benefit to Respondent's current facility.
3. Operation of the current facility is suitable for the area in which it is located.
4. Reducing or eliminating the emissions from Respondent's paper coating line was neither technically practicable nor economically reasonable. Accordingly, Respondent was granted an

Adjusted Standard from the VOM paper coating requirements under 35 Ill. Adm. Code 218.204(c).

5. Respondent is in compliance 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 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 parties state as follows:

1. Complainant contends that the alleged violations began at various times between 1993 and 2000, but were all resolved on September 18, 2003, when Respondent was granted an Adjusted Standard from the VOM paper coating requirements under 35 Ill. Adm. Code 218.204(c).

2. Respondent was diligent in achieving compliance with the Act and Board regulations once it became aware of the alleged noncompliance.

3. Because of a delay in compliance with requirements, the Complainant contends that approximately one third of the \$60,000.00 civil penalty against the Respondent goes to negate the economic benefit accrued as a result of the delay in compliance.

4. The Complainant contends that the civil penalty to be paid by the Respondent will serve to deter any future violations of the Act, Board and Illinois EPA regulations, and permit requirements, and will enhance voluntary compliance with State and federal environmental laws. The Complainant further contends that approximately two thirds of the \$60,000.00 civil penalty against the Respondent is deterrence-based.

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 Thousand Dollars (\$60,000.00) within 30 days from the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by certified check, money order or wire transfer 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, Illinois 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number, 36-3582927, shall appear on the certified check, money order or wire transfer. A copy of the certified check or money order and the transmittal letter or a copy of the receipt for the wire transfer shall be sent to:

Michael C. Partee  
Assistant Attorney General  
Environmental Bureau/North  
188 West Randolph Street, Suite 2001  
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) (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 from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) is 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 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:

Roy Galman  
Vice President of Operations  
Cromwell-Phoenix, Inc.  
12701 S. Ridgeway Ave.  
Alsip, IL 60803

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. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, the Respondent agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action 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 Sections 39(a) and/or 42(h) of the Act, 415 ILCS 5/39(a) and/or 5/42(h) (2002). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action, any allegations that these alleged violations were adjudicated.

**C. 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 and with reasonable advance notice, for the purpose 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 consistent with Constitutional limitations.

**D. Cease and Desist**

The Respondent shall cease and desist from violations of the Act and Board regulations that were the subject matter of the Complaint as outlined in Section III.C of this Stipulation.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$60,000.00 penalty, any interest accrued thereon, and upon the Board's acceptance and approval of the terms of this Stipulation, the Complainant releases, waives and discharges the Respondent 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 January 30, 2004. 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 for 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 (2002), or entity other than the Respondent or any officer, director, or agent of the Respondent.

**F. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all

available means.

2. Respondent agrees that service of process on Respondent in any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation may be made by certified mail.

3. The parties agree that, if the Board does not approve and accept this Stipulation, 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 any Board Order accepting and approving same 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.

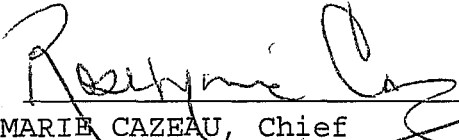
5. Each party shall remain responsible for its own costs and fees incurred in relation to the Complaint and resolution of this matter.

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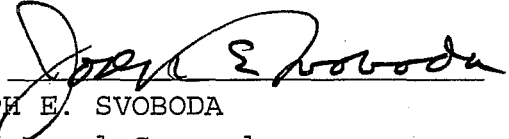
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation as written.

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

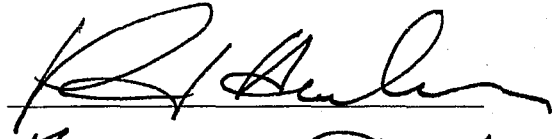
MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:  DATE: 11/18/04  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau/North  
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:  DATE: 11-16-04  
JOSEPH E. SVOBODA  
Chief Legal Counsel

CROMWELL-PHOENIX, INC.

BY:  DATE: 11/29/04  
Name: Francis J. Dochow  
Title: LES

DEC 06 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney General )  
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MOTION FOR 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 hereby moves for relief from the hearing requirement in this case pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), and Section 103.300 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 103.300. In support of this Motion, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

\* \* \*

(c)(2) 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).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

*(a) 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 proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act . . . .*

3. On January 30, 2004, the Complaint was filed on behalf of the People of the State of Illinois with the Board.

4. Simultaneous with the filing of this Motion, a Stipulation and Proposal for Settlement was filed with the Board, and no hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY: Michael C. ParTEE

MICHAEL C. PARTEE  
Assistant Attorney General  
Environmental Bureau/North  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
Tel.: (312)814-2069

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of **Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Notice of Filing** were mailed, first class postage prepaid, to the person listed on the Notice of Filing on December 6, 2004.

BY:



\_\_\_\_\_  
MICHAEL C. PARTEE

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on December 6, 2004:

Pollution Control Board, Attn: Clerk  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

BY:



\_\_\_\_\_  
MICHAEL C. PARTEE