

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 04 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois)
)
 Complainant,)
)
 v.)
)
 WERNER CO., a Pennsylvania)
 corporation,)
)
 Respondent.)

PCB 03-101
(Enforcement-Air)

NOTICE OF FILING

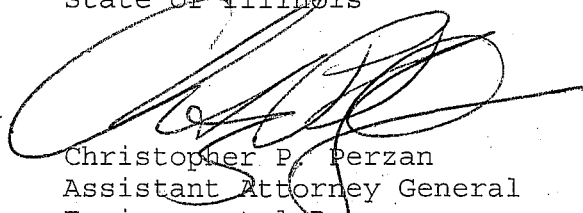
TO: Mr. Charles Gering
McDermott, Will & Emery
227 W. Monroe Street
Chicago, Illinois 60606-5096

PLEASE TAKE NOTICE that on February 4, 2005, we filed with the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and Motion for Relief From Hearing Requirement, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY



Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3532

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
Complainant,)
v.)
WERNER CO., a Pennsylvania)
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Respondent.)

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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, on her own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, WERNER CO. ("Werner"), 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. This Stipulation may also be used in any permitting action for the purposes of Section 39(i) of the Act, 415 ILCS 5/39(i) (2002). This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

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 Werner, and any officer, shareholder, director, agent, employee or servant of Werner, as well as Werner's successors and assigns. Werner shall not raise as a

defense to any enforcement action taken pursuant to this settlement the failure of its officers, shareholders, 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

1. 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), and is charged, *inter alia*, with the duty of enforcing the Act.

2. Respondent Werner, at all times relevant to the Complaint in this matter, was and is a Pennsylvania corporation in good standing and authorized to do business in Illinois.

3. Respondent Werner, at all times relevant to the Complaint in this matter, has owned and operated a facility located at 10800 West Belmont Avenue, Franklin Park, Cook County, Illinois ("facility").

4. Werner conducts extrusion fabrication and manufacturing operations at the facility. Werner fabricates ladders, scaffolding, stages and planks. Among other things, Werner operates punch presses and rail piercers in its operations.

5. Werner obtained a joint construction and operating permit for emissions sources and air pollution control equipment at the facility on February 18, 1998. The Illinois EPA further issued a Clean Air Act Permit Program Permit to Werner on April 21, 2000.

6. The Illinois EPA issued a violation notice to Werner dated

September 21, 1999. Werner submitted to the Illinois EPA a proposed Compliance Commitment Agreement ("CCA") dated January 24, 2000. By letter of February 23, 2000, the Illinois EPA rejected the CCA. The Illinois EPA further issued a Notice of Intent to Pursue Legal Action letter dated April 5, 2000.

7. Werner has substantially reduced its use of lubricants containing volatile organic material ("VOM") from greater than 31 tons to less than 1 ton per year.

V.

ALLEGATIONS OF NONCOMPLIANCE

Complainant contends that the Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Air Pollution Regulations:

Count I: AIR POLLUTION; violation of Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 Ill. Adm. Code 201.141 and 35 Ill. Adm. Code 218.986. Respondent emitted VOM pollutants in violation of applicable control requirements for VOM.

Count II: FAILURE TO OBTAIN CONSTRUCTION PERMIT; violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002) and 35 Ill. Adm. Code 201.142. Respondent failed to obtain a construction permit from the Illinois EPA before constructing new emission sources and air pollution control equipment.

Count III: FAILURE TO OBTAIN AN OPERATING PERMIT; violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.143. Respondent failed to obtain an operating permit before operating new emission sources and air pollution control equipment.

VI.

NATURE OF RESPONDENT'S OPERATIONS

Respondent operates a ladder manufacturing facility. Respondent operates equipment including rail piercers and pultruders, along with associated pollution control equipment. Respondent historically employed lubricants containing VOM in the course of these operations.

VII.

EXPLANATION OF PAST FAILURES TO COMPLY

1. Respondent submitted a permit application to the Illinois EPA on or about December 23, 1997. The permit application identified emission sources and air pollution control equipment that were constructed without authorization.
2. Respondent further operated emission sources and air pollution control equipment without permit authorization.
3. Werner failed to comply with the applicable emission control requirements of 35 Ill. Adm. Code 218.986.

VIII.

FUTURE PLANS OF COMPLIANCE

Werner shall comply with all requirements of the Act, 415 ILCS 5/1 *et seq.* (2002), and the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

IX.

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. The impact to the public resulting from Werner'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 permit process is the only method available for the State to identify possible air pollution sources and their control and to ensure that those sources will not contribute to or cause the deterioration of air quality in Illinois. Werner also failed to comply with emission control requirements for its punch presses and rail piercing operations.

2. The Parties agree that the Respondent's facility has social and economic value.

3. The Parties agree that the Respondent's facility is suitable to the area in which it is located.

4. The Parties agree that the reduction of emissions from the facility required by the applicable regulations was both technically practicable and economically reasonable.

5. The Parties agree that the Respondent has achieved compliance with the regulatory requirements cited in the Complaint.

X.

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 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;
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; and
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;
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 Complainant contends that the violations that are the subject of the Complaint occurred over an approximately five-year period, from 1995 until 2000.

2. The Complainant contends that the Respondent was not diligent in acquiring permit authorization to construct and operate

the emission sources and air pollution control equipment as alleged in the Complaint and complying with applicable emission control requirements. Werner did subsequently respond to the issuance of a Violation Notice and Notice of Intent to Pursue Legal Action letter. The Respondent notes that it acquired the necessary permits and achieved the requisite 81% control for the VOM sources as of October 2, 2000.

3. The Respondent did not accrue an appreciable measure of economic benefit by operating emission sources without achieving the required control.

4. The parties believe that the civil penalty as set out in Section XI will deter Werner from committing further violations, and will aid in enhancing voluntary compliance by Werner and others similarly subject to the Act.

5. The State is not aware of any other adjudicated violations of the Act by Werner.

6. Respondent did not self-disclose the noncompliance pursuant to the requirements of Section 42(h)(6) of the Act, 415 ILCS 5/42(h)(6)(2002).

7. Respondent has performed a Supplemental Environmental Project and the Complainant has mitigated its penalty demand accordingly, as further detailed in Section XI.

XI.

TERMS OF SETTLEMENT

1. The Respondent represents that it has entered into this

Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Respondent 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.

2. a. The Complainant believes a civil penalty in the amount of \$85,000.00 is appropriate based on the estimated gravity and duration of the violations, lack of due diligence, deterrence impact and the economic benefit of noncompliance.

b. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, the Complainant agrees to mitigate its civil penalty demand by approximately sixty-two per cent (62%); based on Respondent's implementation of a Supplemental Environmental Projects at its facility as set forth in this Stipulation and Proposal for Settlement.

c. Accordingly, Respondent shall pay a civil penalty of \$32,000.00 into the Environmental Protection Trust Fund within thirty (30) days after the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement. Payment 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:

Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601

Werner shall write the case caption and number, and its Federal Employer Identification Number ("FEIN"), 25-1754435, upon the certified check or money order.

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

Werner Co.
c/o Geoffrey R. Hartenstein
93 Werner Road
Greenville, Pennsylvania 16125

With a copy to:

Charles M. Gering
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606

4. Pursuant to Section 42(g) of the Act, 415 ILCS 4/42(g) (2002), interest shall accrue on any amount not paid within the time period prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount

that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Complainant, shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI.2. herein.

5. The SEP implemented by the Respondent consists of the conversion of an open bath pultrusion machine to a pre-form resin injection machine. Capital cost of the SEP was approximately \$139,000.00. Werner began implementation of the SEP in 2001. The SEP resulted in the following environmental benefits:

a. A reduction in air emissions of approximately 3,500 pounds (i.e., 1.75 tons) of styrene per year. Styrene is both a volatile organic material and a hazardous air pollutant. This emission reduction is based on current production levels and may increase to as much as 5,400 pounds (2.7 tons) per year as production increases.

b. An overall reduction in ambient air concentrations of styrene in the workplace attributed to the reduced volume of resin used and smaller resin surface area that comes into contact with the air.

6. No VOM emission reductions associated with the SEP shall be used to demonstrate compliance with the Emission Reduction Market System ("ERMS") or otherwise made available for sale, trade or banking in the ERMS.

7. Respondent shall at all times operate and maintain all equipment and systems relating to the SEP so as to ensure that the resulting VOM emission reductions are permanent and continuous. In the event that the Respondent determines that the SEP or its associated equipment or systems must be altered, modified or replaced, the Respondent shall ensure that the alterations, modifications or replacements result in equal or greater emission reductions than those obtained from the approved SEP pursuant to this Stipulation and Proposal for Settlement. The Respondent shall provide written notice to the Illinois EPA at least 30 days prior to the start of construction of any alteration, modification or replacement. The notice shall include a detailed explanation of the planned alterations, modifications or replacements and a demonstration of associated emissions reductions.

8. Respondent certifies, by signature to this Stipulation and Proposal for Settlement, that it has not, and will not ever, sell emission offsets or accept any kind of emissions credit under the New Source Review programs (i.e., the Prevention of Significant Deterioration program of 40 C.F.R. §52.21 and the Illinois Pollution Control Board's non-attainment area program at 35 Ill. Adm. Code Part 203) that relate to or derive from the emissions reductions achieved by the implementation of the above-referenced SEP.

9. Any public statement, oral or written, made by or on behalf of Respondent, concerning any SEP required by this Stipulation and Proposal for Settlement, shall include the following language: "This project was undertaken in connection with the settlement of

enforcement actions initiated by the State of Illinois."

10. Respondent hereby certifies that, as of the date of filing of this Stipulation and Proposal for Settlement, Respondent is not required by any federal, state or local law, regulation, permit or order to perform any actions required herein; nor is Respondent required to perform any of the actions required herein by any other agreement, grant or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive credit, penalty offset, or other benefit in any other enforcement action for any actions required by this Stipulation and Proposal for Settlement.

11. Werner shall cease and desist from future violations of the Act, 415 ILCS 5/1 et seq. (2002), and the Board Regulations, 35 Ill. Adm. Code Subtitles A through H, 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 V. of this Stipulation and Proposal for Settlement.

XII.

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.

XIII.

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, his employees and representatives may take photographs, samples, and collect information, as they deem necessary. The Respondent reserves its rights to assert claims as to trade secrets or other nondisclosable information pursuant to 2 Ill. Adm. Code Part 1828, 35 Ill. Adm. Code Part 130 or other applicable law.

XIV.

RELEASE FROM LIABILITY

In consideration of the Respondent's payment of a \$32,000.00 civil penalty, its commitment to implement the aforementioned 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 XI of this Stipulation, 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.

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

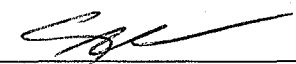
MATTHEW J. DUNN
Chief, Environmental / Asbestos
Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

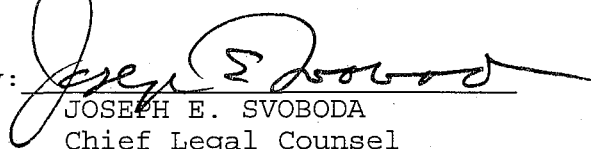
Dated: 12/14/04

FOR THE RESPONDENT:

WERNER CO.

By: 
Its: GENERAL MANAGER

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

Dated: 12-9-04

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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 requests 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 thereof, 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 [415 ILCS 5/31(c)(2)].

3. On the same date as this Request, the Complainant is filing a Stipulation and Proposal for Settlement with Respondents with the Board.

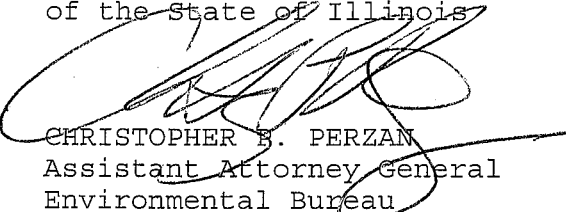
4. No hearing is currently scheduled in this case.

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

Respectfully submitted,

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

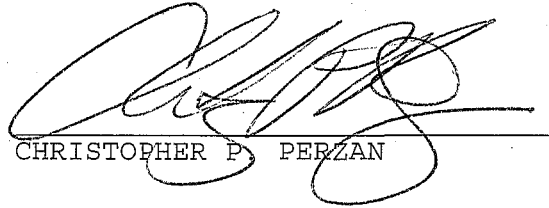
BY:



CHRISTOPHER B. PERZAN
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-3532

CERTIFICATE OF SERVICE

I, CHRISTOPHER P. PERZAN, an Assistant Attorney General, certify that on the 4th day of February, 2005, I caused to be served by U.S. Mail the foregoing documents to the parties named on the attached notice of filing, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



CHRISTOPHER P. PERZAN