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CLERK'S OFFICE

OCT 11 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 04-13
) (Enforcement-Air)
INTERMATIC INCORPORATED, a)
Delaware corporation,)
)
 Respondent.)

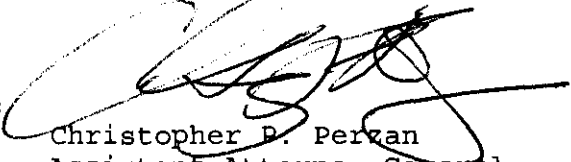
NOTICE OF FILING

TO: Stephen J. Bonebrake
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

PLEASE TAKE NOTICE that on October 11, 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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Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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INTERMATIC INCORPORATED, a)
Delaware corporation,)
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 Respondent.)

PCB 04-13
(Enforcement-Air)

MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT

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

1. On July 28, 2003, a Complaint was filed with the Pollution Control Board ("Board") in this matter. Simultaneously with this Motion, the parties are filing a Stipulation and Proposal for Settlement with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), (2002) allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

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

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

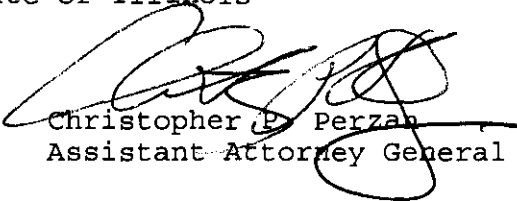
WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2)(2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General of the
State of Illinois

By:



Christopher P. Perzan
Assistant Attorney General

Office of the Attorney General
Environmental Bureau
188 West Randolph Street, 20th Fl.
Chicago, IL 60601
312/814-3532

OCT 11 2005

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 v.)
)
 INTERMATIC, INCORPORATED, a)
 Delaware Corporation)
)
 Respondent.)

PCB 04-13 STATE OF ILLINOIS
Pollution Control Board
(Air-Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, INTERMATIC, INCORPORATED ("Intermatic" or "Respondent"), an Illinois corporation, do hereby agree to this Stipulation and Proposal for Settlement. 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 full 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 this or any other proceeding except to enforce the terms of 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 in any future enforcement action or permit proceeding as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Section 39(a) & (i) and 42(h) of the Act, 415 ILCS 5/39(a)

& (i), 5/42(h)(2004). This agreement 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. (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 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 Respondent, and on any officer, director, agent, employee or servant of Respondent, Intermatic, as well as Intermatic's successors and assigns. Intermatic waives as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brings this action on her own motion, as well as at the request of the Illinois EPA, pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2004).

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

3. Respondent, Intermatic, is a corporation organized under the laws of the State of Delaware and authorized to do business in Illinois.

B. Facility Description

1. At all times relevant to the Complaint filed in this matter, Respondent owned and operated an electrical products manufacturing facility producing products including low voltage lighting, professional lighting, photo controllers, surge suppressor strips, and timers and located at 7777 Winn Road, Spring Grove, McHenry County, Illinois ("site").

2. In its manufacturing process, Intermatic uses, among other things, a degreaser, five sheet-fed offset printing presses, three pad printing presses, seven silk screen printers, a washer, three paint booths, a natural gas curing oven, two natural gas boilers, punch presses, screw making machines, gas fired heaters, tool room grinders,

soldering stations, a wave solder line, a thermal form mold machine, a powder paint hand booth for parts clean-up, and 52 injection molding machines.

3. Intermatic has a Clean Air Act Permit Program ("CAAPP") permit, no. 96030112, ("CAAPP permit"), issued by the Illinois EPA on October 18, 2000, as amended. In addition, Intermatic submitted to Illinois EPA an application dated November 4, 2003 to further modify the CAAPP Permit, regarding the fifth printing press at the facility. Illinois EPA has not issued a decision on this application as of the date of this document. Prior to the amendment, the initial CAAPP permit, among other things, limited Intermatic's seasonal emissions to 15 tons of volatile organic material between May 1 and September 30 of each year.

C. Allegations of Noncompliance

Complainant contends that the Respondent has violated the following provisions of the Act, Board Air Regulations, and the CAAPP Permit:

- | | |
|------------|--|
| Count I: | Failure to obtain a construction permit, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.142. |
| Count II: | Failure to Modify a Clean Air Act Permit, in violation of Section 39.5(6)(b), 415 ILCS 415 5/39.5(6)(b) (2002). |
| Count III: | Failure to Comply with Emission Reduction Marketing System Requirements, in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a)(2002), 35 Ill. Adm. Code 205.150(c) and Section 6.2 of the CAAPP permit. |
| Count IV: | The Complainant moved for voluntary dismissal of this Count and the Board |

subsequently dismissed Count IV.

- Count V: Failure to comply with emission limitation, in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a)(2002) and Condition 5.5.1 of the CAAPP permit.
- Count VI: Failure to comply with idling emission limitation, in violation of Sections 9.1(d)(1) and 39.5(6)(a) of the Act, 415 ILCS 5/9.1(d)(1) and 39.5(6)(a)(2002), 40 CFR 63.463(b)(2)(ii) and Condition 7.1.5(b) of the CAAPP permit.
- Count VII: Failure to properly maintain and operate carbon adsorber, in violation of Sections 9.1(d)(1) and 39.5(6)(a) of the Act, 415 ILCS 5/9.1(d)(1) and 39.5(6)(a)(2002), 40 CFR 63.463(e)(2)(vii), 35 Ill. Adm. Code 218.105(d)(2)(A)(iii) and Condition 7.1.8(a)(ii)(C) of the CAAPP permit.
- Count VIII: Failure to submit idling emission exceedance reports and compliance certifications, in violation of Sections 9.1(d)(1) and 39.5(6)(b) of the Act, 415 ILCS 5/9.1(d)(1) and 39.5(6)(a)(2002), 40 CFR 63.463, 40 CFR 63.468; and Condition 7.1.10 of the CAAPP permit.
- Count IX: Failure to submit annual compliance certifications, in violation of Sections 39.5(6)(a) of the Act and Condition 9.8 of the CAAPP permit.

D. Non-Admission of Alleged Violations

Respondent, Intermatic, 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 Respondent does not admit the allegations of violations within the Complaint, and referenced within Section IV.C. herein, and this Stipulation and Proposal for Settlement should not be

interpreted as including such an admission.

V.

FUTURE PLANS OF COMPLIANCE

Respondent certifies that it has restored the facility to compliance as of the entry of this Stipulation and Proposal for Settlement and has accepted a cease and desist order, without admitting the asserted violations. Although Intermatic does not admit the alleged violations, it states that it has taken significant steps to address the alleged violations, including (1) enrolling the facility at issue in the ERMS program and obtaining related revisions to its CAAPP permit and emission allowances under that program; (2) submitting an application for a further modification to its CAAPP permit to specifically include a fifth printing press; (3) repairing the carbon adsorber (a pollution control device associated with the TCE degreaser) and improving its performance; (4) submitting various new or revised reports to Illinois EPA; and, (5) paying ATU excursion compensation in the amount of \$28,849.89 for the years 2000, 2001 and 2002 under the Emission Reduction Marketing System ("ERMS") requirements as identified in the ERMS bill issued by the Illinois EPA on May 6, 2005, a copy of which is attached as Exhibit A and is hereby incorporated into this Stipulation and Proposal for Settlement. These activities were performed in conjunction with discussions with the Complainant and the Illinois EPA. The performance of the Supplemental Environmental Project as detailed further below will replace one emission unit involved in the alleged violations in the Complaint.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

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 parties state:

1. The alleged impact to the public from the alleged noncompliance was that Respondent constructed and operated emissions sources and air pollution control equipment without compliance with permitting requirements. Complainant states that the permit process program is the only method available for the State to identify possible air pollution sources and their controls and to ensure that those sources will not contribute to or cause the deterioration of air quality in Illinois. Complainant further contends that the Respondent also failed to comply with Emissions Reduction Marketing System Requirements which are intended to provide a market-based system for

the reduction of volatile organic material emissions. Idling emission limitations and required controls are also intended to prevent emissions from contributing to the deterioration of air quality in Illinois. Complainant additionally contends that the reports and certifications that the Respondent failed to timely file are crucial to the Illinois EPA's ability to track compliance.

2. The manufacturing operation at the Respondent's facility has social and economic value.

3. The parties agree that the facility is suitable to the area in which it is located when it is operated in compliance with the Act and Board rules.

4. The parties agree that compliance with the Act, Board rules and permit requirements is both technically practical and reasonable.

5. The parties agree that the Respondent is in compliance with the permit conditions and regulatory and statutory provisions at issue in this matter as of the date of filing of this Stipulation and Proposal for Settlement.

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;
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:

1. Complainant contends that the violations were substantial in both gravity and duration. Complainant contends that the construction and operation of emission units without a permit as alleged in the Complaint is of significant gravity since it represents a complete failure to abide by permitting requirements. Complainant contends that the Respondent's alleged failure to maintain VOM emissions under the limit for ERMS participation and the subsequent failure to timely participate in the ERMS program are also of significant gravity. Complainant further contends that the violations involving the alleged failure to obtain a construction permit, failure to modify CAAPP permit, EMRS violations, degreaser operation violations and reporting and certification violations were of duration in excess of two years.

2. Complainant contends that the Respondent demonstrated a lack of diligence in allowing numerous violations to reoccur and to continue. Respondent has shown diligence in addressing the alleged violations since the violation notice was issued to Intermatic in this matter.

3. The Complainant contends that the Respondent realized economic benefit from the noncompliance in the amount of \$405 for avoided CAAPP fees and \$3,552 for avoided compliance with idling emission limitation demonstration requirements. The penalty amount agreed to reflects the alleged economic benefit.

4. The parties agree that the penalty amount agreed to as well as an additional payment of purchase of ATUs from the Illinois EPA's Alternative Compliance Market Account ("ACMA"), will deter the Respondent and other persons similarly situated from violations of the Act and the Board rules.

5. The parties agree that there are no known previous violations of air pollution control requirements by the Respondent.

6. The Respondent did not self disclose the violations alleged in the Complaint.

7. The Respondent has agreed to undertake a Supplemental Environmental Project ("SEP") in mitigation of the Complainant's penalty demands in this matter. The SEP is further detailed in Section VIII.C., below. The Complainant has agreed to mitigate its penalty demand, exclusive of economic benefit of noncompliance, by 70% in recognition of the Respondent's performance of the SEP. The SEP carries an initial capital cost of approximately \$230,660.

VIII.

TERMS OF SETTLEMENT

A. Penalty

1. Respondent, Intermatic, shall pay a penalty of \$30,957.00 into the Environmental Protection Trust Fund. The penalty shall be paid within 14 days of the issuance of a Board order approving this Stipulation and Proposal for Settlement. On July 20, 2005 Respondent sent to the Illinois EPA payment of \$28,849.89 for ATU excursion compensation for the years 2000, 2001 and 2002 as provided in the ACMA bill issued by Illinois EPA and dated May 6, 2005. (See Exhibit A) Payment of the penalty, in the amount of \$30,957.00, shall be made by certified check, money order, or electronic funds transfer payable to the Illinois Environmental Protection Agency and designated for deposit into the Environmental Protection Trust Fund, and shall be sent by first class mail, unless submitted by electronic funds transfer, and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

A copy of said certified check, money order or record of electronic funds transfer and any transmittal letter shall also be sent to:

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

Maureen Wozniak

Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 60294-9276

2. If the Respondent fails to make any payment specified within Section VIII.A.1. of this Stipulation and Proposal for Settlement on or before the date upon which the payment is due, the Respondent will be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately.

3. The name and number of the case and Respondent's Federal Employer Identification Number ("FEIN") shall appear on the certified check or money order. For purposes of payment and collection, Respondent may be reached at the following address:

Intermatic, Inc.
7777 Winn Road
Spring Grove, Illinois 60081

B. Supplemental Environmental Project

1. Respondent has agreed to perform a SEP as set out in this Subsection. Complainant has agreed to reduce its penalty demand of \$90,000.00, exclusive of alleged economic benefit of noncompliance, by 70% in recognition of the performance of the SEP.

2. The SEP shall consist of the replacement of the halogenated solvent trichloroethylene ("TCE") degreaser currently in use at the facility. The TCE degreaser is a source of VOM emissions and is currently a permitted emission unit, known as the DETREX unit under the CAAPP permit. The SEP involves the installation of a non-halogenated solvent Durr Universal Model 81C degreaser ("new

degreaser") in place of the TCE degreaser. The capital cost of the new degreaser will be approximately \$230,660. The Respondent will incur additional costs related to shipping, handling, installation, and training connected with the new degreaser of approximately \$20,000. Costs of operation for the new degreaser are anticipated to be approximately \$110,000 per year. The performance of the SEP will significantly reduce the VOM and HAP emissions from the facility. Respondent estimates a reduction in VOM emission of at least 9 tons per year.

3. On or before fourteen (14) days of issuance of the Board's order approving this Settlement the Respondent will begin the replacement process for the new degreaser by the issuance of a purchase order for the new degreaser. The Respondent will begin operation of the new degreaser under this SEP within 36 weeks of the date of issuance of the Board's approval of this Stipulation. This duration is required to acquire and obtain delivery of the new machine (estimated to require 26 weeks), shutdown and remove the current degreaser, including related piping, prepare the area and install the new machine, and then de-bug and begin operation of the new machine. In carrying out this SEP, Intermatic shall timely apply for all required construction, operating, CAAPP and other applicable permits as required by law.

4. Respondent hereby certifies by entering into this Stipulation and Proposal for Settlement that, as of the date of its signature, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent

required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

5. Intermatic represents by its signature on the Stipulation and Proposal for Settlement that it has not received, nor will it seek to use emissions reductions achieved as a result of the SEP as an "emissions offset" as defined at 35 Ill. Adm. Code 203.121 for any purpose. Intermatic further represents by its signature that it will not receive or seek to use or sell credit associated with emissions reductions achieved as a result of the SEP for purposes of the Illinois Emissions Reduction Marketing System, 35 Ill. Adm. Code Part 205.

6. Respondent shall submit a SEP Completion Report to Complainant within 60 days of the date Respondent commences operation of the new degreaser pursuant to Section VIII.B.3, above. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs for purchase, installation and removal;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Stipulation and Proposal for Settlement; and
- (v) A general description of the environmental and public health benefits resulting from implementation of the

SEP (with a quantification of the benefits and pollutant reductions, if feasible).

7. Respondent shall continuously use or operate the systems installed as the SEP to perform degreasing operations requiring a machine for not less than 5 years subsequent to installation; provided, however, that this requirement shall not apply during periods of machine maintenance, power outages or other events that make the use of the new machine impossible. The Respondent shall not recommence the use of any machine degreaser using TCE during that five year period.

8. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the State of Illinois for violations of Illinois air pollution statutes and regulations."

C. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2004).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date full payment is received by the Illinois EPA.

3. Where partial payment is made on any penalty amount that is

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

4. All interest on penalties owed the Complainant shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA for deposit in the EPTF and shall be submitted by first class mail unless submitted by electronic funds transfer, and delivered to the above-indicated address. The name, case number, and the Respondent's FEIN shall appear on the face of the certified check or money order. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

D. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required or permitted under this Stipulation and Proposal for Settlement, except for payments pursuant to Sections VIII.B., C. and D. of this Stipulation and Proposal for Settlement shall be submitted as follows:

As to the Complainant

Christopher P. Perzan
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

Manager
Compliance and Enforcement Section
Bureau of Air
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Ralph Tassone
Intermatic Incorporated
7777 Winn Road
Spring Grove, Illinois 60081

Stephen J. Bonebrake
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

E. Cease and Desist

Respondent shall cease and desist from any future violations of those sections or provisions of the Act and Board regulations and the CAAPP permit that were the subject matter of the complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

F. Modification of Settlement Agreement

The parties may, by mutual written consent, extend any SEP implementation dates or modify the terms of this Stipulation and Proposal for Settlement without further order of the Board. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.D. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation and Proposal

for Settlement. Any such agreed modification shall be in writing, signed by authorized representatives of each party, filed with the Board and incorporated into this Stipulation and Proposal for Settlement by reference.

G. Force Majeure

1. For purposes of this Stipulation and Proposal for Settlement, force majeure is an event arising solely beyond the control of the Respondent, which prevents the timely performance of any of the requirements hereof. For purposes of this Stipulation and Proposal for Settlement force majeure shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Respondent.

2. When, in the opinion of the Respondent, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Stipulation and Proposal for Settlement, the Respondent shall orally notify the Complainant within forty-eight (48) hours of the occurrence. Written notice shall be given to the Complainant as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence.

3. Failure by the Respondent to comply with the notice requirements of the preceding paragraph shall render this Section VIII.G voidable by the Complainant as to the specific event for which the Respondent has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

4. Within ten (10) calendar days of receipt of the *force majeure* notice required under Section VIII.G.2, the Complainant shall respond

to the Respondent in writing regarding the Respondent's claim of a delay or impediment to performance. If the Complainant agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Respondent, including any entity controlled by the Respondent, and that the Respondent could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Stipulation and Proposal for Settlement pursuant to the modification procedures established in this Stipulation and Proposal for Settlement. The Respondent shall not be liable for stipulated penalties for the period of any such stipulated extension.

5. If the Complainant does not accept the Respondent's claim of a *force majeure* event, the Respondent may submit the matter to this Board within twenty (20) calendar days of receipt of Complainant's determination for resolution to avoid payment of stipulated penalties, by filing a petition for determination of the issue. Once the Respondent has submitted such a petition to the Board, the Complainant shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon the Respondent. If this Board determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Respondent, including any entity controlled by the Respondent,

and that the Respondent could not have prevented the delay by the exercise of due diligence, the Respondent shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by the Board.

6. An increase in costs associated with implementing any requirement of this Stipulation and Proposal for Settlement shall not, by itself, excuse the Respondent under the provisions of this Section VIII.G of this Stipulation and Proposal for Settlement from a failure to comply with such a requirement.

H. Compliance with Other Laws and Regulations

This Stipulation and Proposal for Settlement in no way affects the Respondent's responsibility to comply with any other federal, state or local regulations, including but not limited to the Act and Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

I. Release From Liability

In consideration of Respondent's payment of a \$30,957.00 penalty, performance of the SEP, its commitment to refrain from any future violations of the Act, regulations and permit provisions and upon payment of all monies owed hereunder and performance of the SEP, Complainant releases, waives and discharges Respondent and Respondent's employees, agents, directors, officers, affiliates, successors and assigns from any further liability or penalties for violations of the Act, regulations and permit provisions that were the subject matter of the complaint herein, including for violations relating to the failure to hold adequate ERMS allotment trading units

in the amounts and for the years identified in the ERMS bill issued by the Illinois EPA on May 6, 2005 (Exhibit A). 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.

However, the release set forth above does not extend to any matters other than those expressly specified in the Complaint and the May 6, 2005 ERMS excursion compensation bill. The Complainant reserves, and the Stipulation and Proposal for Settlement is without prejudice to, all rights of the State of Illinois against the Respondent with respect to other matters, including, but not limited to, the following:

- a. criminal liability;
- b. liability for future violations of state, federal, local and common laws and/or regulations;
- c. liability for natural resource damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of the Stipulation and Proposal for Settlement.

Nothing in this Stipulation and Proposal for Settlement 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 in Section 3.315, 415 ILCS 5/3.315 (2004), other than the Respondent and Respondent's

employees, agents, directors, officers, affiliates, successors and assigns.

[The remainder of this page is intentionally left blank.]

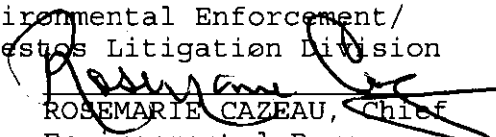
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT:

LISA MADIGAN
Attorney General of the
State of Illinois

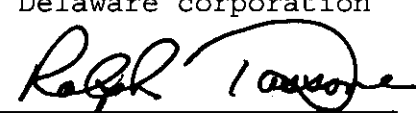
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 9/26/05

FOR THE RESPONDENT:

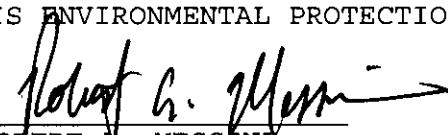
INTERMATIC, INCORPORATED,
a Delaware corporation

By: 

Its: DIRECTOR OSNA/PA COMPLIANCE

Dated: 10/3/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
ROBERT A. MESSINA
Chief Legal Counsel

Dated: 9/21/05

Exhibit A



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-5811

TDD 217/782-9143

MAY 06 2005

CERTIFIED MAIL # 7002 3150 0000 1221 0444
RETURN RECEIPT REQUESTED

Ralph Tassone
Intermatic Inc.
7777 Wind Rd
Spring Grove, Illinois 60081

RE: ATU Purchase from ACMA for Excursion Compensation, Correction
Site: Intermatic Inc.
I.D. 111080AAC
ERMS Account Number: 1800

Dear Mr. Tassone:

This corrected statement is being sent to Intermatic Inc. (Intermatic) as confirmation that allotment trading units (ATUs) must be purchased from the Alternative Compliance Market Account (ACMA) for excursion compensation for the Emissions Reduction Market System (ERMS) 2000, 2001, and 2002 seasonal allotment periods. The original bill noted that Intermatic's account was 174 ATUs short in 2000, 23 ATUs short in 2001, and 42 ATUs short in 2002. Since then, Intermatic has provided the Illinois EPA with corrected information, which is reflected below.

Because you did not hold the necessary ATUs by December 31 of each of those respective years, these values are multiplied by 1.2 for the year 2000 and 1.5 for 2001 and 2002 to arrive at the final number owed to come into compliance. You can find the number of ATUs owed and prices listed below:

2000: 169 ATUs x 1.2 = 203 ATUs @ \$113.91 each, for a total of \$23,123.73

2001: 22 ATUs x 1.5 = 33 ATUs @ \$79.44 each, for a total of \$2,621.52

2002: 42 ATUs x 1.5 = 63 ATUs @ \$49.28 each, for a total of \$3,104.64

The total amount owed is therefore **\$28,849.89**

This ACMA purchase must be transacted as follows:

1. File a completed ERMS TRADE REQUEST FORM (116-ERMS) and send the original to: DAVID "BUZZ" ASSELMEIER, Illinois EPA, Bureau of Air, Air Quality Planning Section, P.O. Box 19276, Springfield, Illinois 62794-9276. In addition, please

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000

ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463

BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800

SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120

MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

Page 2

ATU Purchase from ACMA for Excursion Compensation

Site: Intermatic Inc

I.D. 111080AAC

ERMS Account Number: 1800

send a copy of the form to: **YASMINE KEPPNER, Illinois EPA, Bureau of Air, Compliance Unit, P.O. Box 19276, Springfield, Illinois 62794-9276.** Note: In the Seller's Information section, fill in the "Name of Seller" block as "Illinois EPA."


2. Send a check made out to "Illinois EPA" for the total amount due. Include your Bureau of Air ID Number (111080AAC) and Fund #738 on the check, as well as returning a copy of this invoice with the check. (Payments will be deposited into the Alternative Compliance Market Account Fund.) Send the check and invoice to: **Illinois EPA, Fiscal Services, Mail Code #2, Attn: Mr. Kevin Bryant, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, IL 62794-9276.**

All of the above should be submitted within seven days of receipt of this letter.

Once the Illinois EPA receives and processes your ACMA purchase, a confirmation statement of the completed ATU transaction will be sent to you.

If you have questions regarding this matter, please contact YASMINE KEPPNER at 217-782-5811.

Sincerely,



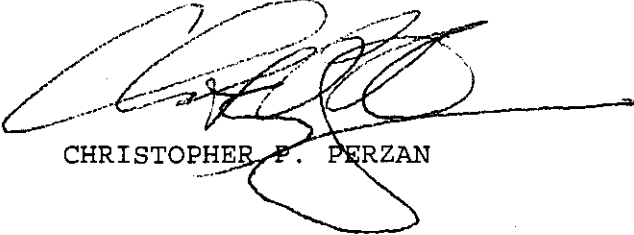
Julie K. Armitage, Acting Manager
Compliance and Enforcement Section
Bureau of Air

CERTIFICATE OF SERVICE

I, CHRISTOPHER P. PERZAN, an Assistant Attorney General, certify that on October 11, 2005 I caused to be served by US Mail the foregoing Complaint and Appearance to:

Stephen J. Bonebrake
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

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