

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 07-81
)	(Enforcement - Water)
DURRE BROS. WELDING AND MACHINE SHOP, INC., an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 18, 2010, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

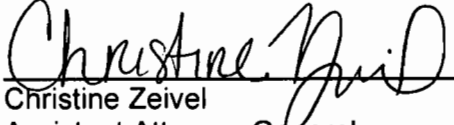
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
Christine Zeivel
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that I did on October 18, 2010, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.


Christine Zeivel
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

J. Reed Roesler
Davis & Campbell, L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602-1241

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

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MACHINE SHOP, INC., an Illinois)	
corporation,)	
)	
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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2008), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008). In support of this motion, Complainant states as follows:

1. On February 28, 2007, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: _____
Christine Zeivel
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
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an Illinois corporation,)	
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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 DURRE BROS. WELDING AND MACHINE SHOP, INC. ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2008), and the Board's Regulations alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On February 28, 2007, a Complaint was filed on behalf of the People of the State

of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), 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 (2006).

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. At all times relevant to the Complaint, Respondent owned and operated a welding and machine shop facility located at 405 S. Chestnut Street, Minonk, Woodford County, Illinois ("site").

4. Since 1998, Durre has conducted the following industrial activities at the site: metal sawing, flame and laser cutting, press break welding, shot blasting, drilling, spray washing and powder coat painting.

5. A one-third acre, seventeen foot deep pond on site is stocked with fish and is a water of the State.

6. A smaller, approximately 400 square foot pond is also on site, discharges to the pond referenced in paragraph 5, and is also a water of the State.

7. On April 19, 2005, the Illinois EPA inspected the site. On that date, an active industrial storm water discharge was present on site. Wastewater from the shot blaster equipment was discharged to the stocked pond.

8. Unpermitted effluent from a private sewage system on site enters the small pond. A sample from the small pond taken on April 19, 2005, was later analyzed and results demonstrated high levels of organic wastes.

9. On April 19, 2005, the Illinois EPA observed unlabeled containers of used oil.

10. Prior to April 19, 2005, on dates better known to the Respondent, the site discharged wastewater from its wash line onto the land surface on the north side of the facility.

11. On April 19, 2005, the Respondent was conducting the following industrial activities: metal sawing, flame and laser cutting, press break welding, shot blasting, drilling, spray washing and powder coat painting.

12. Pursuant to 40 C.F.R. 122.26(b)(14), these activities trigger requirement for a National Pollutant Discharge Elimination System ("NPDES") industrial storm water permit.

13. On April 19, 2005, the site was not covered by a NPDES permit.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: By discharging industrial storm water to the stocked pond, the Respondent caused, allowed or threatened the discharge of wastewater from the site into waters of the State so as to cause or tend to cause water pollution violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

By allowing effluent, containing high levels of organic wastes from a private sewage system, to enter the small pond, the Respondent caused, allowed or threatened the discharge of effluent into waters of the State violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

Count II: By conducting SIC code 35 industrial activities at the site, and discharging wastewater associated with these activities without an NPDES permit, the Respondent caused, threatened or allowed the discharge of any contaminant into the waters of the State in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

Count III: By discharging wastewater from its wash line onto the land surface on the north side of the facility, the Respondent caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to waters of the State, thereby violating Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

Count IV: By causing or allowing the open dumping of waste at the site through consolidation and land application of industrial liquid waste, the Respondent violated Section 21(a) of the Act, ILCS 5/21(a) (2006).

By disposing of waste at a site that is not permitted by the Illinois EPA as a sanitary landfill, the Respondent violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006).

By disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, the Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).

Count V: By storing containers filled with used oil without clearly labeling them as to the containers' contents, the Respondent violated Section 739.122 of the Pollution Control Board's Standards for the Management of Used Oil, 35 Ill. Adm. Code 739.122 (2005).

C. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

Upon notification of the violations, the Respondent developed a Pollution Prevention Plan and ceased all waste water discharges to waters of the State. The Respondent also obtained a construction permit to build a sewer connection to the Minonk sewer system. The Respondent abandoned its existing sewer system and removed and properly disposed of sludge from the

septic tank. In addition, all connections to the former septic system, pond and field tile were permanently removed.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 to this Stipulation state the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Obtaining a permit prior to conducting industrial activities that fall under SIC code 35, industrial machinery and equipment, standards is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

1. The Respondent performed SIC code 35 industrial activities without a permit at the site, caused or allowed the discharge of industrial storm water and effluent containing high levels of organic wastes into waters of the State, caused or allowed the open dumping of waste and failed to label its oil containers. The violations began on or before April 19, 2005, and were individually resolved during the course of this action.
2. Respondent has been responsive throughout this enforcement action and has taken prompt and substantive actions to remedy each of the violations noted during the April 19, 2005 inspection.
3. The Respondent has successfully shown it did not need a waste water evaporator for disposal of its industrial waste water. Rather, it only purchased one after the initiation of this enforcement action to serve as a secondary outlet for its waste water. However, the Respondent avoided payment of the annual \$500.00 storm water permit fee for 2003, 2004 and 2005 resulting in an economic benefit of \$993.00 and \$1,500.00 in avoided costs.

The Respondent received a nominal economic benefit for its failure to label used oil

containers.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Five Thousand Dollars (\$5,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA'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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Five Thousand Dollars (\$5,000.00) within sixty (60) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is

received. 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.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Christine Zeivel
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. 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.

2. 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.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$5,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 February 28, 2007. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

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

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to

sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

F. Enforcement of Stipulation

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.

G. Execution of Stipulation

The undersigned representatives for each party to this Stipulation 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.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

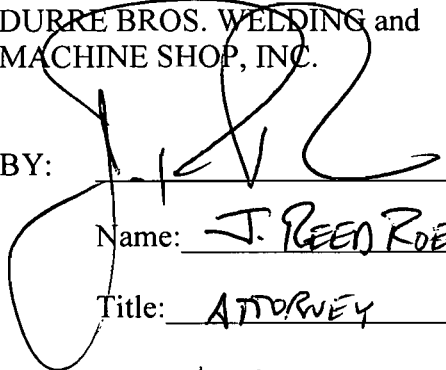
BY: 

JOHN J. KIM
Chief Legal Counsel

DATE: 10/14/10

DATE: 10/12/10

DURRE BROS. WELDING and
MACHINE SHOP, INC.

BY: 

Name: J. REED ROESLER
Title: ATTORNEY

DATE: 10/3/10