

ORIGINAL

~~JUL 28 1999~~

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. FILED
DEC 8 1999
AT. O'CLOCK M SOFRON B. NEDILSKY

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 STRATEGIC MATERIALS, INC.,)
)
 Defendant.)

Case No. **99 - C - 0853**

STIPULATION, SETTLEMENT AGREEMENT, AND ORDER

Plaintiff, the United States of America, by authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA") is filing a Complaint in this action against Strategic Materials, Inc. (hereinafter "Defendant") concurrently with the filing of this Stipulation, Settlement Agreement and Order; the Complaint alleges violations of Section 113(b) of the Clean Air Act, as amended, ("Act"), 42 U.S.C. § 7413(b), and regulations promulgated thereunder, including violations of the State Implementation Plan for the State of Wisconsin ("SIP") approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410 applicable to Defendant's glass recycling facility located at 12305 W. Silver Spring Road, Milwaukee, Wisconsin ("Facility");

Copy mailed to attorneys for parties by the Court pursuant to Rule 77 (d) Federal Rules of Civil Procedures.

Plaintiff and Defendant, having agreed that settlement of this action is in the public interest, and that entry of this Order without further litigation is the most appropriate means of resolving this action; and the Court having been duly advised of these premises;

NOW, THEREFORE, before taking any testimony, without adjudication or admission of any fact or law, and upon consent and agreement of the parties to this Stipulation, Settlement Agreement, and Order, it is hereby AGREED, ORDERED, and ADJUDGED:

1. Within thirty days after entry of this Stipulation and Settlement Agreement ("Settlement Agreement") as an Order of the Court, Defendant shall pay a civil penalty in the amount of \$276,176 to the United States of America to resolve the civil claims alleged in the Complaint. The civil penalty paid pursuant to this Settlement Agreement shall not be deductible for purposes of federal taxes. Payment shall be made to the United States by Fedwire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account. Payment shall be made in accordance with specific instructions to be timely provided to Defendant upon entry of this Settlement Agreement and shall reference DOJ Case No. 90-5-2-1-2205 and United States Attorney, Eastern District of Wisconsin, File No. 1997V01425. Any EFTs received after 4:00 p.m. (Eastern Time) shall be credited on the next business day. Defendant shall advise the Financial Litigation Unit of the

United States Attorney's Office for the Eastern District of Wisconsin at the time payment is being wire-transferred.

2. Defendant shall also transmit evidence of such payment to the United States and EPA at the following addresses:

Leslie Allen
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(reference: DOJ Case No. 90-5-2-1-2205)

Joseph Cardile
Air and Radiation Division, AE-17J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mary McAuliffe
Office of Regional Counsel, C-14J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

3. Within thirty days of entry of this Settlement Agreement, Defendant shall install chain link fencing, with plastic inserts as additional wind screen, along the east property line to create a barrier for wind blown material. Defendant shall confirm the installation of the fence, in writing, to the persons identified in Paragraph 2, above.

4. Defendant shall maintain the chain link fencing and plastic inserts along the east property line, in a manner that maintains a barrier for wind blown material.

5. The requirement of this Settlement Agreement to maintain the fence and plastic inserts shall apply to, and be binding upon the Defendant, and any successors-in-interest to Defendant's glass recycling operations that continue such operations on the premises, or while processed and/or unprocessed glass material is stored on the premises ("Successor"). Defendant shall condition the transfer to any Successor of ownership or operation of the Facility, or any part of the Facility that includes the fence installed along the east property line, on the Successor's agreement to maintain the fence and plastic inserts in a manner that maintains a barrier for windblown material. At least thirty (30) days prior to transferring ownership or operation of the Facility, or of any part of the Facility that includes the fence installed along the east property line, Defendant shall advise the prospective Successor of the Facility or relevant portion thereof, of the requirement to maintain the chain link fencing and plastic inserts along the east property line, in a manner that maintains a barrier for wind blown material, and shall provide the prospective Successor with a copy of this Settlement Agreement. Defendant shall notify, in writing, the persons identified in Paragraph 2 of any Successor at least twenty-one (21) days prior to any such transfer and shall also verify that such notice has been given.

6. Upon receipt of payment of the civil penalty and confirmation of the installation of the chain link fencing required by Paragraph 3, the United States shall file a notice with the Court, indicating that payment has been received, and that the United States of America's Complaint against Defendant is dismissed with prejudice, with each party bearing its own costs and attorneys' fees.

7. If the civil penalty provided for in this Settlement Agreement is not timely paid, this Settlement Agreement shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid amount in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and any other applicable federal authority. The United States shall be entitled to interest on any overdue amount from the due date at the rate established by the Department of Treasury pursuant to 28 U.S.C. § 1961. Further, Defendant shall be liable for reasonable attorneys' fees and costs incurred by the United States to collect any amount due under this Settlement Agreement and/or to enforce the provisions of this Settlement Agreement concerning installation and maintenance of the fencing required pursuant to Paragraphs 3-5.

8. The Court shall retain jurisdiction for the purpose of interpreting and enforcing this Settlement Agreement.

9. The undersigned representatives of each party to this Settlement Agreement certify that they are fully authorized by the party he or she represents to enter into the terms and conditions of this Settlement Agreement, and may execute and legally bind that party to the Settlement Agreement.

10. Consistent with the provisions of 28 C.F.R. § 50.7, it is the policy of the United States that this Settlement Agreement shall be lodged with the Court for public notice and comment for a period of not less than 30 days. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or consideration which indicate that the Settlement Agreement is inappropriate, improper or inadequate. If no changes are proposed in response to public comments, Defendant consents to entry of the Settlement Agreement without further notice.

11. Defendant hereby agrees to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons, and to accept service of the Complaint filed in this action by regular U.S. mail.

As stipulated and agreed to by the parties,

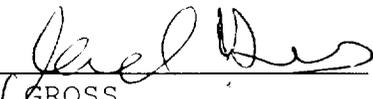
SO ORDERED THIS 8th DAY OF December, 1999. -

[Handwritten signature]

Chief United States District Judge

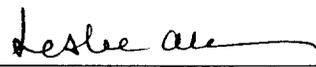
United States of America v. Strategic Materials, Inc.

FOR PLAINTIFF
UNITED STATES OF AMERICA:



JOEL M. GROSS
Chief, Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Date: July 27, 1999



LESLIE ALLEN
Senior Attorney
United States Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4114

Date: July 15, 1999

United States of America v. Strategic Materials, Inc.

THOMAS P. SCHNEIDER
United States Attorney
Eastern District of Wisconsin

By: 
PENELOPE COBLENTZ FLEMING
Assistant United States Attorney
U.S. Attorney's Office
Federal Building
Room 530
517 E. Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-1700

Date: July 28, 1999

United States of America v. Strategic Materials, Inc.

BY: Bertram C. Frey
Acting for GAIL C. GINSBERG
Regional Counsel
United States Environmental
Protection Agency, Region 5

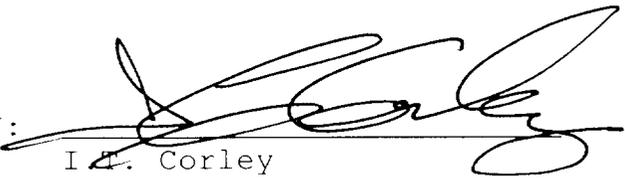
Date: July 8, 1999

Mary McAuliffe
MARY MCAULIFFE
Associate Regional Counsel
United States Environmental
Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Date: July 8, 1999

United States of America v. Strategic Materials, Inc.

FOR DEFENDANT
STRATEGIC MATERIALS, INC.

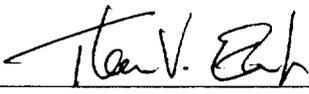
BY: 

I. T. Corley
Chief Executive Officer
Strategic Materials, Inc.

Date: 6/28/99

United States of America v. Strategic Materials, Inc. -

FOR DEFENDANT
STRATEGIC MATERIALS, INC.

BY: 
THOMAS V. ERDOS, JR.
Erdos, Harger & Juravich, L.L.P.

Date: June 28, 1999