

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

FEB 23 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
NED MANDICH d/b/a H.B.M. )  
ELECTROCHEMICAL, )  
)  
Respondent. )

PCB No. 04-178  
(Enforcement - Air)

NOTICE OF FILING

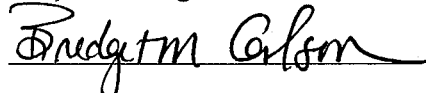
TO: See Attached Service List.

PLEASE TAKE NOTICE that on February 23, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: 

BRIDGET M. CARLSON  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-0608

SERVICE LIST

Mr. Ned Mandich  
Mrs. Olga Mandich  
HBM Electrochemical  
2800 Bernice Road  
Lansing, Illinois 60438

Ms. Bridget M. Carlson  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Ms. Maureen Wozniak  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
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Manager  
Compliance and Enforcement Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Kevin Mattision  
Source Monitoring Unit  
9511 West Harrison  
Des Plaines, IL 60016

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**Pollution Control Board**

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NED MANDICH d/b/a H.B.M. )  
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PCB No. 04-178  
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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)(2002), moves that the Illinois Pollution Control Board ("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)(2002). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 9(b) and 9.1(d)(1) of the Act, 415 ILCS 5/9(b) and 5/9.1(d)(1)(2002), Section 201.143 of the Board regulations, 35 Ill. Adm. Code 201.143, Sections 63.343(c)(1)(ii), 63.342(c)(1)(i) and 63.347(h) of 40 CFR Part 63, Subpart N and Conditions 1(b) and 11 of H.B.M.'s Operating Permit number 84120020.
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

5. 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)(2002).

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)(2002).

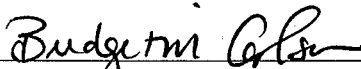
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:

  
BRIDGET M. CARLSON  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-0608

DATE: February 23, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS, )  
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 Respondent. )  
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PCB 04-178

(Enforcement)

**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 NED MANDICH d/b/a H.B.M. ELECTROCHEMICAL ("Mandich"), 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. 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 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 any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

## I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2002).

## II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

## III. STATEMENT OF FACTS

### A. Parties

1. On April 8, 2004, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002).

3. Respondent Mandich d/b/a H.B.M. Electrochemical, at all times relevant to the Complaint in this matter, was and is a resident of Homewood, Cook County, Illinois.

### B. Site Description

1. From at least 1996, Mandich d/b/a H.B.M. Electrochemical has owned and/or

operated a hard chrome electroplating facility that plates hydraulic cylinders and rods.

The parts are finished by grinding and polishing.

2. The facility, known as H.B.M. Electrochemical (“H.B.M.”), is located at 2800 Bernice Road, Lansing, Cook County, Illinois (“facility”).

3. The facility utilizes three (3) hard chrome plating tanks controlled by composite mesh pad (“CMP”) scrubbers.

4. At all times relevant to the Complaint, Mandich d/b/a H.B.M. Electrochemical has been and is in control of and is responsible for the day-to-day operations of the facility.

### C. Allegations of Non-Compliance

Complainant contends that Respondent Mandich d/b/a H.B.M. Electrochemical has violated the following provisions of the Act and Board regulations:

- |            |  |
|------------|--|
| Count I:   | <u>Operating Air Emission Sources Without a Permit – Violation of Section 9(b) of the Act, 415 ILCS 5/9(b)(2002), and Section 201.143 of 35 Ill. Adm. Code.</u>  |
| Count II:  | <u>Failure to Comply with National Emission Standards for Decorative Chromium Electroplaters – Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)(2002), and Sections 63.343(c)(1)(ii), 63.342(c)(1)(i) and 63.347(h) of 40 CFR Part 63, Subpart N.</u> |
| Count III: | <u>Violation of Operating Permit Conditions – Violation of Section 9(b) of the Act, 415 ILCS 5/9(b)(2002), and Conditions 1(b) and 11 of H.B.M.’s Operating Permit number 84120020.</u>  |

**D. Admission of Violations**

The Respondent Mandich d/b/a H.B.M. Electrochemical admits to the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

**E. Compliance Activities to Date**

1. On March 17, 2003, the Illinois EPA issued Violation Notice A-2003-00068 to H.B.M. for operating emission sources without the required State operating permit, failing to maintain the pressure drop on the CMP scrubbers at the required level, emitting excess hexavalent chromium and failing to submit required reports.

2. H.B.M.'s Operating Permit number 84120020 expired on March 25, 2001 and was not renewed until September 10, 2003. From March 25, 2001 through September 10, 2003, Mandich and H.B.M. operated hard chromium electroplating tanks without the required Illinois EPA operating permit. H.B.M is currently operating under a valid Operating Permit.

3. On May 29, 2003, Mandich d/b/a H.B.M. Electrochemical conducted a performance test of the control equipment at the facility.

4. On July 21, 2003, Mandich d/b/a H.B.M. Electrochemical submitted the results of the performance test to the Illinois EPA. Upon review of the results, the Illinois EPA determined that the results were acceptable and that Mandich d/b/a H.B.M. Electrochemical had demonstrated compliance with the requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for chromium electroplating.



#### **IV. APPLICABILITY**

This Stipulation shall apply to and be binding on Complainant and Respondent Mandich d/b/a H.B.M. Electrochemical.

#### **V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

#### **VI. IMPACT 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 question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state the following:

1. Human health and the environment were threatened by the emission of excess hexavalent chromium to the atmosphere and the Illinois EPA's information gathering responsibilities were hindered by 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 the required permits, compliance with all applicable provisions of 40 CFR 63, Subpart N, timely submission of monitoring reports and conducting emissions testing at the facility is both technically practicable and economically reasonable.
5. Mandich d/b/a H.B.M. Electrochemical has subsequently complied with the Act, permit conditions, and federal and Board regulations relating to the violations alleged in the Complaint.

## **VII. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. Respondent operated the chromium electroplating tanks in a manner that failed to demonstrate compliance with the NESHAP for a period of four and one-half years. Further, for at least two years, the facility operated without the required permit. The permitting requirements and the chrome NESHAP are of great programmatic significance to the Illinois EPA.
2. Respondent was diligent in returning to compliance with the chrome NESHAP.
3. The quantifiable economic benefit to Respondent Mandich d/b/a H.B.M. Electrochemical of delaying compliance is One-Hundred Dollars (\$100.00) in avoided air pollution site fees to be deposited into the Illinois Environmental Permit and Inspection Fund.
4. Complainant has determined that a penalty of Fifteen Thousand dollars

(\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent Mandich d/b/a H.B.M. Electrochemical has no previously adjudicated violations of the Act.

6. Self-disclosure is not an issue in this matter.

7. This matter does not involve a Supplemental Environmental Project.

### VIII. TERMS OF SETTLEMENT

#### A. Penalty Payment

1. The Respondent Mandich d/b/a H.B.M. Electrochemical shall pay a civil penalty of Fifteen Thousand One Hundred Dollars (\$15,100.00) within seven (7) days from the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, and designated to the following:

a. \$15,000 shall be sent to the Illinois Environmental Protection Trust Fund. The certified check or money order shall be directed to the following contact address:

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

b. The remaining \$100 shall be sent to the Illinois Environmental Permit and Inspection Fund. The certified check or money order shall be directed to the following contact address:

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

The name, case number, and Mandich's Social Security Number, 270-58-6997, 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:

Ms. Bridget M. Carlson  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g)(2002), interest shall accrue on any penalty amount not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid penalty shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received by the Illinois EPA. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid penalty then due and owing. All interest on penalties owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

Mr. Ned Mandich  
President  
H.B.M Electrochemical Company  
1650 Ridge Road  
Homewood, Illinois 60430

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Future Compliance**

For a period of three (3) years after the Board's order approving and entering this Stipulation, Respondent Mandich d/b/a H.B.M. Electrochemical shall conduct annual emissions testing to demonstrate the facility's compliance with the chrome NESHAP. Tests shall be conducted in accordance with 40 CFR 63, Subpart N and test protocols shall be submitted to the Illinois EPA at least 60 days prior to the date of testing for the Illinois EPA's review and approval. Testing shall be conducted, and results reported to the Illinois EPA, no later than May 31, 2005, May 31, 2006 and May 31, 2007.

**C. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.E, below, the Respondent hereby agrees that 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 promulgated thereunder for all violations alleged in

the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a), and (i) and/or 5/42(h)(2002). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**D. Cease and Desist**

Respondent Mandich d/b/a H.B.M. Electrochemical shall cease and desist from future violations of the Act and Board Regulations, 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 III.C. of this Stipulation.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$15,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.D and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on April 8, 2004. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent Mandich d/b/a H.B.M. Electrochemical 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 (2002), or entity other than the Respondent.

**F. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

**G. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this



Stipulation, except for payments pursuant to Sections VIII.A (“Penalty Payment”) shall be submitted as follows:

As to the Complainant

Ms. Bridget M. Carlson  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Ms. 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  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Kevin Mattision  
Source Monitoring Unit  
9511 West Harrison  
Des Plaines, IL 60016

As to the Respondent

Mr. Ned Mandich  
HBM Electrochemical  
2800 Bernice Road  
Lansing, Illinois 60438

**H. Modification of Stipulation**

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.G. Any such

request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

**I. Enforcement of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

3. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN

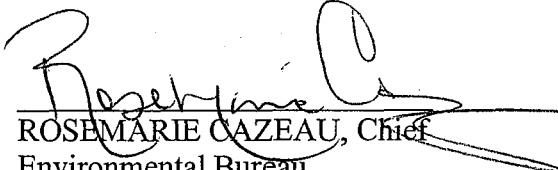
Attorney General

State of Illinois

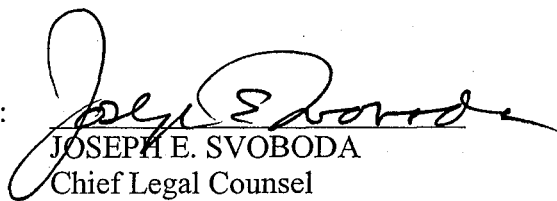
MATTHEW J. DUNN, Chief

Environmental Enforcement/

Asbestos Litigation Division

BY:  DATE: 12/14/04  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:  DATE: 12-9-04  
JOSEPH E. SVOBODA  
Chief Legal Counsel

NED MANDICH d/b/a H.B.M.  
ELECTROCHEMICAL

BY: N.Mandich DATE: 1-25-05  
Name: N.V.MANDICH, Ph.D.  
Title: president

CERTIFICATE OF SERVICE

I, BRIDGET M. CARLSON, an Assistant Attorney General, certify that on the 23<sup>rd</sup> day of February 2005, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
BRIDGET M. CARLSON