

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
)  
v. )  
)  
TRUSERV CORPORATION, a Delaware, )  
corporation, d/b/a TRUE VALUE )  
MANUFACTURING COMPANY, )  
)  
Respondent. )

RECEIVED  
CLERK'S OFFICE  
JUL 29 2005  
STATE OF ILLINOIS  
Pollution Control Board

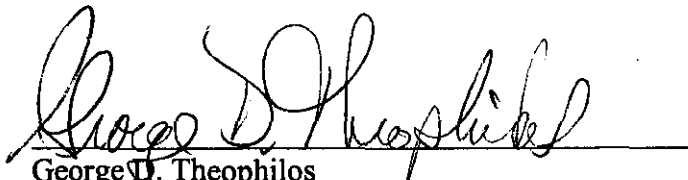
PCB 05-149  
Enforcement - Air

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 29th day of July, 2005, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and a STIPULATION AND PROPOSAL FOR SETTLEMENT, true and correct copies of which are attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney General  
of the State of Illinois

By:   
George D. Theophilos  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, 20<sup>th</sup> Fl.  
Chicago, IL 60601  
(312) 814-6986

DATE: July 29, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

## **SERVICE LIST**

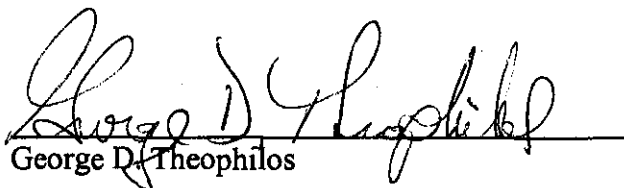
Mr. Bradley P. Halloran, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, IL 60601

Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Ms. Cynthia Faur, Esq.  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
233 S. Wacker Dr., Suite 8000  
Chicago, IL 60606

**CERTIFICATE OF SERVICE**

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused to be mailed, this 29<sup>th</sup> day of July, 2005, the foregoing **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and **STIPULATION AND PROPOSAL FOR SETTLEMENT** to the persons listed on said Service List by first class mail in a postage pre-paid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
George D. Theophilos

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves for relief from the hearing requirement in this case pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), and Section 103.300 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 103.300. In support of this Motion, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

\* \* \*

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision

(1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

*(a) Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act . . . .*

3. On February 9, 2005, the Complaint in this matter was filed with the Board.

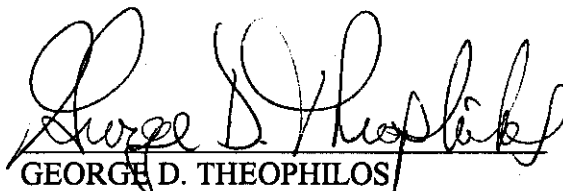
4. Subsequently, the parties to this action reached agreement on a Stipulation and Proposal For Settlement, which is being filed with the Board concurrently with this motion. No hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY:



GEORGE D. THEOPHILOS  
Assistant Attorney General  
Environmental Bureau/North  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
312-814-6986

DATE: July 29, 2005

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**TRUE VALUE COMPANY, a Delaware,** )  
**corporation, f/k/a TRUSERV** )  
**CORPORATION,** )  
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                  **Respondent.** )

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**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and TRUE VALUE COMPANY, f/k/a TRUSERV CORPORATION (“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. 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 February 9, 2005 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. At all times relevant to the Complaint, Respondent was and is a Delaware corporation that is authorized to transact business in the State of Illinois.

### **B. Facility Description**

1. At all times relevant to the Complaint, Respondent owned and operated a paint manufacturing facility located at 823 West Blackhawk, Chicago, Cook County, Illinois, 60618 (“facility”).

2. Emission sources at the facility include storage tanks, mixing tanks, holding tanks, grinding mills, and thinning operations.

3. The facility emits volatile organic material (“VOM”) from the emission sources at its facility.

4. At all times relevant to the Complaint, Respondent’s facility has been subject to Federally Enforceable State Operating Permit (FESOP) No. 95020117 issued by Illinois EPA. FESOP No. 95020117 was issued February 1, 2001 and expires on February 1, 2006.

### **C. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- Count I: Failure to cover mixing and thinning tanks in violation of Section 218.624 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.624, Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), Section 9 of Respondent’s Federally Enforceable State Operating Permit (FESOP), and Section 9(b) of the Act, 415 ILCS 5/9(b)(2002).
- Count II: Failure to cover grinding mills in violation of Section 218.625(a) and (b) of the Board Air Pollution Regulations, Section 9(a) of the Act, Sections 10(a) and 10(b) of Respondent’s FESOP, and Section 9(b) of the Act
- Count III: Failure to maintain records about leaks and failure to repair leaks within 15 days in violation of Section 218.628 of the Board Air Pollution Regulations, Section 9(a) of the Act, Section 12 of Respondent’s FESOP, and Section 9(b) of the Act.



Count IV: Failure to properly cover or enclose equipment during cleaning in violation of Section 218.630(a) of the Board Air Pollution Regulations, Section 9(a) of the Act, Section 13(a) of Respondent's FESOP, and Section 9(b) of the Act.

Count V: Failure to submit accurate Annual Emissions Report (AER) for 2002 in violation of Section 201.302(a) of the Board Air Pollution Regulations and Section 9(a) of the Act, 415 ILCS 5/9(a)(2002).

**D. Admission of Violations**

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

**E. Compliance Activities to Date**

Since the violations were noted in 2003, Respondent has come into compliance with all of the terms of its FESOP, including, but not limited to, the following:

1. Completely covering the mixing and thinning tanks at its facility pursuant to Section 9 of Respondent's FESOP;
2. Covering grinding mills pursuant to Sections 10(a) and 10(b) of Respondent's FESOP;
3. Maintaining records about leaks and repairing leaks within 15 days pursuant to Section 12 of Respondent's FESOP; and
4. Properly covering or enclosing equipment during cleaning pursuant to Section 13(a) of Respondent's FESOP.

**F. Value of Settlement and Resulting Benefits**

Any economic gains that Respondent derived from noncompliance with the terms of its FESOP, the Act, and the Board Regulations are reflected in the penalty payment. There is an environmental benefit to the Respondent's complete compliance with the terms of its FESOP.

**IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. 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.

**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. The alleged recordkeeping violations interfered with the Illinois EPA's information gathering responsibilities.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it is located.
4. Respondent's ability to follow the terms of its FESOP was both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act, the Board's Regulations, and its FESOP.

## **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. The Respondent failed to follow the terms of its FESOP. The violations began on or around July 22, 2003, and were individually resolved at various times over the following five months.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and its FESOP, once Illinois EPA notified it of its noncompliance.

3. Respondent achieved an economic benefit by failing to comply with the terms of the Act, the Board's regulations, and its own FESOP. The penalty paid is as great as or greater than the economic benefit that Respondent achieved during the period of noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of thirty thousand dollars (\$30,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent 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.

### **VIII. TERMS OF SETTLEMENT**

#### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of thirty thousand dollars (\$30,000.00) within thirty (30) 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, designated to the Illinois Environmental Protection Trust Fund. A certified check or money order shall be submitted to:

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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 36-2099896, shall appear on the check. If submitting an electronic funds transfer to the Illinois EPA, the electronic funds transfer shall be made in accordance with specific instructions to be timely provided to Defendant prior to the date of the entry of the Consent Order.

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

George Theophilos  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

and

Maureen Wozniak  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment 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 payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment 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:

Mary Gade or Cynthia Faur  
Sonnenschein, Nath & Rosenthal  
8000 Sears Tower  
233 S. Wacker Dr.  
Chicago, IL 60606

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. Compliance Plan**

1. For purposes of this Stipulation and Proposal for Settlement, True Value has agreed to provide, and the Illinois EPA has agreed to accept, a revised and signed Annual Emission Report for calendar year 2002. The Parties agree that emissions shall be calculated based upon 7 dispersion tanks, 17 thinning tanks, and 1 basket mill being noncompliant during the calendar year 2002 and using emission estimates from USEPA's Emission Inventory Improvement Program. This method of calculating emissions is for purposes of settlement only, and True Value acknowledges that future emissions shall be calculated in a fashion that is accepted by the Illinois EPA Bureau of Air Permit Section.

2. The Annual Emission Report for calendar year 2002 required by paragraph B.1. above shall be provided to the Illinois EPA within thirty (30) days from the date that the Board adopts and accepts this Stipulation; and

3. Respondent shall comply with the Act, the Board's regulations, and the terms of its FESOP permit.

**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**

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.



**E. Release from Liability**

In consideration of the Respondent's payment of the \$30,000.00 penalty and any accrued interest, completion of all activities required hereunder, commitment 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, Board Regulations, and its FESOP 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 9, 2005. 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. 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") of this Stipulation shall be submitted as follows:

As to the Complainant

George Theophilos  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

and

Maureen Wozniak  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Respondent

Mary Gade or Cynthia Faur  
Sonnenschein, Nath & Rosenthal  
8000 Sears Tower  
233 S. Wacker Dr.  
Chicago, IL 60606

**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 Board Order**

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. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. 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.

4. 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: Rose Marie Cazeau/rab  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 7-14-05

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY: William D. Ingersoll  
WILLIAM D. INGERSOLL  
Acting Chief Legal Counsel

DATE: July 11, 2005

TRUE VALUE COMPANY

BY:



MICHAEL HAINING  
Senior Vice President, Logistics and  
Manufacturing  
True Value Manufacturing Company

DATE: 07-21-05