

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

JAN 09 2006

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB No. 05-201  
) (Enforcement - Air)  
)  
ILLINOIS TOOL WORKS, INC., a )  
Delaware corporation, )  
)  
Respondent. )

**NOTICE OF FILING**

TO: See Attached Service List  
(VIA ELECTRONIC FILING)

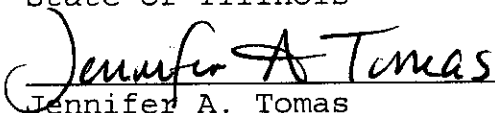
PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

  
\_\_\_\_\_  
Jennifer A. Tomas  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
312-814-0609

DATE: January 9, 2006

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

Service List

Patricia Sharkey  
Mayer Brown Rowe & Maw  
Hyatt Center, 71 South Wacker Drive  
Chicago, Illinois 60606

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

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

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PCB No. 05-201  
(Enforcement - Air)

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) (2004), 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) (2004). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violation of the Sections 9(a), 9(b) and 39.5(6)(b) of the Act, 415 ILCS 5/9(a), 9(b) and 39.5(6)(b) (2004) and Sections 201.142, 201.143, 201.302(a), 254.137(a), and 254.132(a) of the Board regulations, 35 Ill. Adm. Code 201.142, 201.143, 201.302(a), 254.137(a), and 254.132(a).

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) (2004).

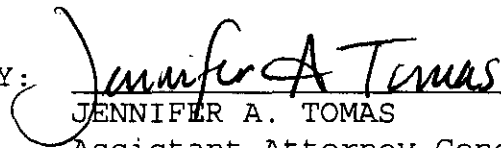
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c) (1) of the Act, 415 ILCS 5/31(c) (1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

  
\_\_\_\_\_

JENNIFER A. TOMAS  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-0609

DATE: January 9, 2006.

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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 ILLINOIS TOOL WORKS 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. 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. (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 to legally bind them to it.

### **III. STATEMENT OF FACTS**

#### **A. Parties**

1. On May 31, 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 (2004), 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 (2004).

3. At all times relevant to the Complaint, Respondent was and is a Delaware corporation authorized to transact business in the State of Illinois.

**B. Site Description**

At all times relevant to the Complaint, Respondent operated a plastics injection molding facility located at 195 Algonquin Road, Des Plaines, Cook County, Illinois, known as its Fastex Division ("Fastex facility").

**C. Allegations of Non-Compliance**

The Complaint filed in this matter alleges that the Respondent violated the following provisions of the Act and Board regulations:

Count I: Constructing Air Emission Sources Without a 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 Obtain Operating Permits for New Emission Sources, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.143.

Count III: Failure to Timely Submit Annual Emission Reports, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 201.302(a), 254.137(a), and 254.132(a).

Count IV: Failure to Obtain a Clean Air Act Permit Program (CAAPP) Permit, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2002).

**D. Non-Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

**E. Compliance Activities to Date**

1. Beginning on March 13, 1998, the Fastex facility was permitted under a state Operating Permit (No. 73031904) issued by the Illinois EPA.

2. On July 26, 2002, Respondent submitted to the Illinois EPA an application for a Federally Enforceable State Operating Permit ("FESOP") that contained a potential to emit ("PTE")



analysis. On May 19, 2004, the Illinois EPA issued FESOP I.D. Number 031063AAD, Application No. 02070077, to Illinois Tool Works for the Fastex facility.

3. On February 17, 2005, Respondent submitted additional PTE information to the Illinois EPA. On July 13, 2005, the Illinois EPA issued a revised FESOP to Respondent.

4. On April 26, 2004, the Fastex facility applied for a construction permit for the installation of 18 plastic injection molding machines, prior to their construction at the Fastex facility. The Illinois EPA issued that permit on May 19, 2004. Respondent asserts that it believed plastic injection molding and metal stamping equipment are exempt from the state construction permit requirement at 35 Ill. Adm. Code 201.102 pursuant to the exemption stated in 35 Ill. Adm. Code 201.146(cc) and (aa), respectively.

5. On April 26, 2004, the Fastex facility applied for a construction permit and a revision to its FESOP permit for the installation of ultrasonic welding equipment at its facility. Respondent asserts that it believed ultrasonic welding is exempt from state construction permit requirements in 35 Ill. Adm. Code 201.102 pursuant to the exemption stated in 35 Ill. Adm. Code 201.146(y). IEPA thereafter determined that the ultrasonic welding equipment was exempt from permit requirements under 35 Ill. Adm. Code 201.146(y).

6. Fastex also applied for the installation of a filter paper curing oven in that same application. On July 13, 2005, the Illinois EPA issued a construction permit for the curing oven.

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

1. Complainant believes that the Seventeen Thousand Five Hundred Dollar (\$17,500.00) civil penalty will deter Respondent, and similarly situated entities, from future violations of the Act and Illinois Pollution Control Board regulations.

**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.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement.

In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under 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) (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 the following:

1. The Complainant states that the environment was threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations. Respondent does not agree with Complainant's position.

2. The parties agree that there is social and economic benefit to the facility.

3. The parties agree that the operation of the facility was and is suitable for the area in which it occurred.

4. The parties agree that obtaining the necessary permits, compliance with their terms, and timely submission of annual reports are technically practicable and economically reasonable.

5. The parties agree that Respondent has subsequently complied with the Act and Board regulations.

#### **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, 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 Complainant states that the Respondent constructed and operated emission sources without the required permits for a

period of five years, failed to submit complete and accurate annual emission reports for calendar year 1998, and failed to timely submit a Clean Air Act Permit Program ("CAAPP") permit and/or FESOP permit application. The CAAPP/FESOP, state permitting, and reporting requirements are of programmatic significance to the Illinois EPA. Respondent states that the 1998 AER was inaccurate, but overestimated emissions, and that it complied with all applicable permitting requirements.

2. Although the Respondent had obtained from the Illinois EPA an operating permit for the Fastex facility, Complainant states Respondent was not diligent in obtaining new permits as equipment was added to the facility. Respondent believes it was diligent and obtained all required permits.

3. The parties agree that, if the allegations were found to be true, the economic benefit to Respondent would not be significant given the administrative nature of the violations, and further, that the penalty obtained would negate any such benefit.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seventeen Thousand Five Hundred Dollars (\$17,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. Respondent disagrees that a penalty is necessary to ensure future compliance.

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 Seventeen Thousand Five Hundred Dollars (\$17,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. 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 and 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) shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

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

AND

Maureen Wozniak  
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) (2004), 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 (2004). 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:

Illinois Tool Works Inc.  
Agent: James H. Wooten, Jr.  
3600 W. Lake Avenue  
Glenview, Illinois 60026

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 Plan**

1. For purposes of this Stipulation and Proposal for Settlement only, the Illinois EPA has agreed to accept Respondent's PTE calculations, submitted to the Office of the Attorney General by letter dated February 17, 2005, as a true and accurate representation of the Respondent's Fastex facility PTE. This decision made for settlement purposes only is based on the understanding that for the facility at issue in this matter, staffing levels at the facility are an operational limitation on the facility and that the molding machines at issue are not physically capable of processing polypropylene. Respondent agrees that all of Respondent's future PTE calculations for this

facility shall be based on methods which are both consistent with generally accepted and published U.S. EPA regulations, policy and guidance and generally accepted by the Illinois EPA Bureau of Air Permit Section.

2. Respondent acknowledges and agrees that its Fastex Division is required to apply for and obtain appropriate construction and operating permits from the Illinois EPA Bureau of Air for all equipment additions or changes at the Fastex facility which are not exempt from such permitting requirements pursuant to the Act or Board regulations.

3. Respondent shall in the future obtain permits prior to constructing or operating any emission source at its Fastex facility for which a permit is required by the Act or Board regulations.

**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) (2004). 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 Seventeen Thousand Five Hundred Dollar (\$17,500.00) 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 May 31, 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 (2004), 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

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

Maureen Wozniak  
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

As to the Respondent  
Illinois Tool Works Inc.  
Agent: James H. Wooten, Jr.  
3600 W. Lake Avenue  
Glenview, Illinois 60026

Patricia F. Sharkey  
Mayer Brown Rowe & Maw  
71 South Wacker Drive  
Chicago, Illinois 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.

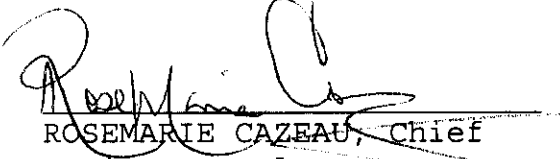
3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

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.

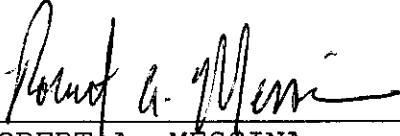
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

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


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

BY:  DATE: 1/3/06  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:  DATE: 12/28/05  
ROBERT A. MESSINA  
Chief Legal Counsel

ILLINOIS TOOL WORKS INC.

BY:  DATE: 1/5/06  
Name: Philip S. Dallosto  
Title: Associate General Counsel  
and Assistant Secretary



CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 9<sup>th</sup> day of January 2006, 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.

  
JENNIFER A. TOMAS

