

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 FREEPORT AREA ECONOMIC)
 DEVELOPMENT FOUNDATION,)
 d/b/a Northwest Illinois Development)
 Alliance, an Illinois not-for-profit corporation,)
 and WEITZ INDUSTRIAL, LLC,)
)
 Respondents.)

**PCB No. 10-89
(Enforcement - Water)**

NOTICE OF FILING

To: Dan Fishburn
 FISHBURN WHITON THRUMAN
 8 East Stephenson Drive
 Freeport, Illinois 61032

Jeryl L. Olson
 SAYFARTH SHAW
 131 S. Dearborn Street
 Suite 2400
 Chicago, Illinois 60603

Elizabeth Leifel Ash
 SAYFARTH SHAW
 131 S. Dearborn Street
 Suite 2400
 Chicago, Illinois 60603

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

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

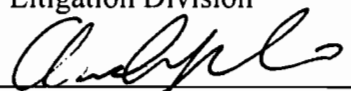
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN,

Attorney General of the
State of Illinois

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

BY:



ANDREW J. NICHOLAS

Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069
Dated: October 7, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No. 10-89
)	(Enforcement - Water)
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DEVELOPMENT FOUNDATION,)	
d/b/a Northwest Illinois Development)	
Alliance, an Illinois not-for-profit corporation,)	
and WEITZ INDUSTRIAL, LLC,)	
)	
)	
Respondents.)	

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) (2010), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010). In support of this motion, Complainant states as follows:

1. The Complainant and Respondent Freeport Area Economic Development Foundation ("FAEDF"), have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. The Complainant and Respondent FAEDF 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) (2010).

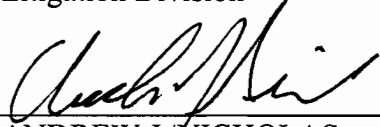
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY:



ANDREW J. NICHOLAS

Environmental Bureau
Assistant Attorney General
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
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Dated: October 7, 2010

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Alliance, an Illinois not-for-profit corporation,)	
and WEITZ INDUSTRIAL, LLC,)	
)	
)	
Respondents.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT with RESPONDENT
FREEPORT AREA ECONOMIC DEVELOPMENT FOUNDATION

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 Freeport Area Economic Development Foundation, d/b/a Northwest Illinois Development Alliance (“FAEDF”) (“Respondent”) (“Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2008), and the Board’s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. In conjunction with filing of this Stipulation, a Complaint is being 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 (2008), 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 (2008).

3. At all times relevant to the Complaint, Respondent FAEDF was and is an Illinois not-for-profit in good standing with the Illinois Secretary of State. FAEDF's office is located at 27 West Stephenson Street, Freeport, Illinois.

4. On August 31, 2006, the Illinois EPA issued NPDES Permit No. ILR10G259 to FAEDF for construction at Mill Race Industrial Park located east of Springfield Road, north of Hiveley Road, and south of Business 20, Freeport, Stephenson County, Illinois ("Site").

5. On August 16, 2007, the Illinois EPA inspected the Site and observed a row of silt fencing bordering Silver Creek that was knocked down and covered with mud. The inspector also observed that settleable solids had discharged from the Site into Silver Creek.

6. On September 27, 2007, the Illinois EPA sent Violation Notice ("VN") No. W-2007-00384 to FAEDF.

7. On January 4, 2008, FAEDF submitted a compliance commitment agreement ("CCA") to the Illinois EPA.

8. On February 4, 2008, the Illinois EPA rejected FAEDF's proposed CCA.

9. On April 2, 2008, the Illinois EPA inspected the Site and observed downed silt fencing, and evidence of sediment draining into Silver Creek.

10. On October 3, 2008, the Illinois EPA sent FAEDF a notice of intent to pursue legal action ("NIPLA") letter.

11. On November 6, 2008, the Illinois EPA inspected the Site. The inspector noted that the channel flowing from the Site to Silver Creek was not stabilized and silt fencing was buried beneath sediment at the point of discharge.

12. On November 9, 2009, the Illinois EPA inspected the Site. The inspector observed that seeding had occurred in some areas. A large portion of the northwest and north central part of the Site did not contain sufficient topsoil to support vegetation. A rock dam had been installed in front of the culvert entering a retention basin. Surface and gully erosion was noted just upstream of the rock dam. A lack of stabilization was noted throughout this area. Notification of permit coverage was not posted and information regarding FAEDF's stormwater pollution prevention plan was not displayed.

13. Respondent Weitz Industrial, LLC is not a party to this Stipulation.

14. Reference to "Respondent" in this Stipulation refers to Respondent FAEDF only.

B. Allegations of Non-Compliance

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

Count I: Water Pollution

By failing to maintain storm water controls at the Site, FAEDF caused or allowed contaminants to discharge into a water of the State causing water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

Count II: Offensive Conditions

By allowing discharges containing color and turbidity of other than natural origin and causing bottom deposits in Silver Creek, FAEDF violated Sections 302.203 and 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.106, thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

Count III: Water Pollution Hazard

By depositing sediment onto the land in such a place and manner so as to create a water pollution hazard, FAEDF violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

Count IV: Permit Violations

By failing to implement provisions of its stormwater pollution prevention plan and allowing contaminants to discharge into Silver Creek, FAEDF violated Part IV of its NPDES permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

C. Admission of Violations

Respondent FAEDF admits to the violations alleged in the Complaint filed in this matter and referenced within Section 1.B. herein.

D. Compliance Activities to Date

The Respondent has performed the following compliance measures:

1. On December 6, 2009, a minimum of 4" of topsoil was placed on all areas that are not permanently stabilized.
2. On December 18, 2009, straw bale checks were placed along Silver Creek from Springfield Road to the retention pond for temporary erosion control.
3. On December 18, 2009 rip rap was placed along the length of the channel to prevent future erosion.

4. On December 2, 2009, FAEDF's NPDES permit was posted on the site. In addition, FAEDF's SWPPP was made available at the office of Fehr-Graham & Associates, 221, E. Main St., Freeport, Illinois.
5. On March 9, 2010, FAEDF submitted a Notice of Termination ("NOT") of coverage under its NPDES Permit.
6. On March 31, 2010, the Illinois EPA accepted FAEDF's NOT and terminated NPDES Permit No. ILR10G259.
7. FAEDF has entered into a five (5) year lease agreement with a local farmer beginning in September, 2010 for the purpose of returning the Site to agricultural production.
8. Respondent FAEDF performed the following additional compliance measures:
 - All areas with new topsoil have been seeded and erosion control/stabilization measures have been put in place;
 - All topsoil stockpiles have been seeded and erosion control/stabilization measures put in place;
 - The regraded waterway has been seeded;
 - Erosion control measures have been installed between the outfall culvert and the rock check dam ahead of Silver Creek; and
 - All sediment has been removed from between the culvert and the rock check dam.
9. On August 30, 2010, Respondent FAEDF submitted a report to the Complainant certifying all compliance measures have been undertaken and completed.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for

all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2008).

The Respondent shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. The environment was threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations.
2. There is social and economic benefit to the Site.
3. Activities at the Site are suitable for the area in which it occurred.
4. Performing compliance measures at the Site and maintaining compliance is both technically practicable and economically reasonable.
5. Respondent FAEDF has achieved substantial compliance with the Act and Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2008), provides as follows:

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the Respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the Respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the Respondent and to otherwise aid in enhancing voluntary compliance with this Act by the Respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the Respondent;
6. whether the Respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and

7. whether the Respondent has agreed to undertake a “supplemental environmental project,” which means an environmentally beneficial project that a Respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Parties to the Stipulation state as follows:

1. The violations were first noted during an inspection on August 16, 2007.

Violations continued through at least November 6, 2008. Remaining erosion control measures are being addressed through this Stipulation.

2. There was a lack of diligence to correct the structural problems at the Site. From August 16, 2007 through the inspection on November 6, 2008, adequate measures were not taken to stabilize the site.

3. Respondent delayed the costs of implementing erosion control measures.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Hundred and Forty Six Dollars (\$546.00) to FAEDF 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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent FAEDF shall pay a civil penalty in the sum of Five Hundred and Forty Six Dollars (\$546.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$50.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

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

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

is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

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

Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall in the future take all actions necessary to ensure that all future development at the Site is conducted in accordance with State law and requirements.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Site which is the subject of this Stipulation, at all reasonable

times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

3. 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.

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

E. Release from Liability

In consideration of the Respondent's payment of the \$546.00 penalty, their commitment to cease and desist as contained in Section V.D.4. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed in conjunction with this Stipulation. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), or entity other than the Respondent.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Andrew J. Nicholas
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

Chad M. Kruse
Assistant Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Charles E. Corley
Illinois EPA
Division of Water Pollution Control
4302 North Main Street
Rockford, Illinois 61103

As to the Respondent

Dan Fishburn
Fishburn Whiton Thruman
8 East Stephenson Street
Freeport, Illinois 61032

G. Enforcement and Modification of Stipulation

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

2. The Parties to the Stipulation 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 V.F. 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 the Parties to the Stipulation.

H. Execution of Stipulation

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

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

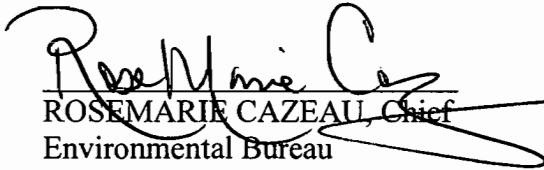
PEOPLE OF THE STATE OF ILLINOIS

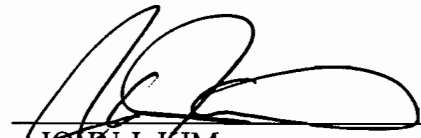
LISA MADIGAN
Attorney General
State of Illinois

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 10/5/10

DATE: 9/28/10

FREEPORT AREA ECONOMIC
DEVELOPMENT FOUNDATION d/b/a
Northwest Illinois Development Alliance

BY: _____
(PRINT)

(SIGNATURE)

(TITLE)

DATE: _____

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PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
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FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
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Illinois Environmental Protection Agency

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

FREEPORT AREA ECONOMIC
DEVELOPMENT FOUNDATION d/b/a
Northwest Illinois Development Alliance

BY: MICHAEL C. CLARK

(PRINT)



(SIGNATURE)

PRESIDENT

(TITLE)

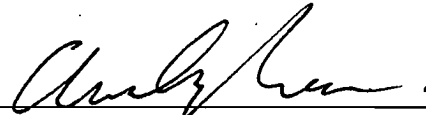
DATE: 9-25-2010

**People v. Freeport Area Economic Development Foundation, d/b/a Northern Illinois
Development Alliance & Weitz Industrial, LLC**

PCB No. 10-89

CERTIFICATE OF SERVICE

I, ANDREW J. NICHOLAS, an Assistant Attorney General, do certify that I caused to be served on this 7th day of October, 2010, the foregoing Motion for Relief From Hearing Requirement, Stipulation and Proposal for Settlement, and Notice of Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ANDREW J. NICHOLAS