

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 APOLLO PLASTICS CORPORATION,)
 an Indiana corporation,)
)
 Respondent.)

**PCB NO. 09-108
(Enforcement - Air)**

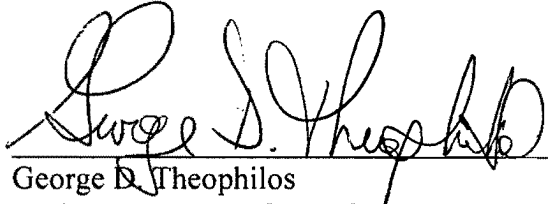
NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 1st day of June, 2011, 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
69 West Washington Street, 18th Fl.
Chicago, IL 60602
(312) 814-6986
gtheophilos@atg.state.il.us

DATE: June 1, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
Chicago, IL 60601
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Ms. Maureen Wozniak, Esq.
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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) (2010), 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 May 12, 2009, 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
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-6986
gtheophilos@atg.state.il.us

DATE: June 1, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Respondent.)	

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 Apollo Plastics Corporation (“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.* (2010), 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. On May 12, 2009, 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 (2010), 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 (2010).

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

At all times relevant to the Complaint, Respondent has operated a facility located at 5333 North Elston Avenue, Chicago, Cook County, Illinois ("site" or "facility").

4. Apollo is a manufacturer of automobile dashboard components.

5. Current emission units at the Facility include three coating lines (large C.O.E. line (line #1), small C.O.E. line (line #2), and robotic line (line #3)) and recip booth controlled by a regenerative thermal oxidizer (RTO); 12 pad printers; 26 injection molding machines; and a parts washer.

6. Some coatings utilized by Apollo in its manufacturing have volatile organic materials content greater than 3.2 lbs/gal for the color coating and 3.5 lbs/gal for the primer.

7. Beginning in September 2002 and continuing through December 2005, Apollo constructed 2 pad printers and 2 injection molding machines. In 2004, on dates best known to Apollo, Apollo installed new spray guns at the Facility.

8. Apollo did not apply for or receive a construction permit from the Illinois EPA for its spray gun. Apollo did not apply for or receive any construction permits from the Illinois EPA for its pad printers or its injection molding machines. Respondent denies construction permits were required.

B. Allegations of Non-Compliance

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

- Count I: By constructing emission sources without applying for and receiving construction permits, Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.
- Count II: By operating emission sources without applying for and receiving operating permits, Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143.
- Count III: By operating a CAAPP source without a CAAPP permit, Respondent has violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(b)(6).
- Count IV: By utilizing coating with a VOM content greater than 3.2 lbs/gal for color coat and 3.5 lbs/gal for primer, Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) and Section 218.204(n)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.204(n)(1).
- Count V: By failing to maintain the required records, Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) and Section 218.211(c) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.211(c).
- Count VI: By failing to timely submit its ERMS baseline application to the Illinois EPA by no later than December 1, 2004, Respondent has violated Section 9.8(b) of the Act, 415 ILCS 5/9.8(b) and Section 205.310 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310.
- Count VII: By failing to timely submit its annual emissions reports for calendar year 2001 through 2006, Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) and Section 201.302(a) of the Board's Air Pollution Regulations and Sections 254.137(a) and 254.132(a) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), 254.137(a) and 254.132(a).
- Count VIII: By failing to timely submit Seasonal Emission Reports for calendar years 2004 through 2007, Respondent has violated Section 9.8(b) of the Act,

415 ILCS 5/9.8(b) and Section 205.300(b)(2) of the Board's Air Pollution Regulations and Section 254.132(b) of the Illinois EPA's Air Pollution Regulations, 205.300(b)(2) and 254.132(b).

Count IX: By failing to hold ATU's in its Transaction Account for an amount not less than the level of VOMs emitted from 2005 through 2007, Respondent has violated Section 9.8(b) of the Act, 415 ILCS 5/9.8(b) and Section 205.150(c)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.150(c)(1).

C. 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 further 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 I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On or around September 29, 2006, Respondent submitted an application for a Federally Enforceable State Operating Permit (FESOP) to the Illinois EPA. On April 7, 2009, the Illinois EPA issued FESOP no. 06090078 to Respondent.

2. In February 2007, the exact date best known to Respondent, Respondent began utilizing an RTO to control VOM emissions from its Facility.

3. In May 2007, Illinois EPA issued Respondent a Violation Notice concerning the allegations set forth in the Complaint.

4. Respondent has begun keeping required records and complying with its FESOP.

5. On or around July 27, 2006, Respondent submitted an ERMS baseline application to the Illinois EPA. On April 7, 2009, the Illinois EPA issued FESOP no. 060900789 to Respondent which limits potential emissions of VOM from the Facility to less than 25 tons/year and excludes Respondent from ERMS.

6. On or around August 10, 2008, Respondent purchased 145 ATUS from the Alternative Compliance Market Account for its ERMS excursions in 2005 through 2007.

7. On or around July 27, 2007, Respondent submitted AERs for calendar years 2001 through 2006 and SERs for the 2004 through 2006 seasonal allotment periods to the Illinois EPA. On or around January 29, 2008, Respondent submitted an SER for the 2007 seasonal allotment period to the Illinois EPA.

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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2010), 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. Respondent's failure to obtain the requisite construction and to timely obtain the requisite operating permits, failure to demonstrate compliance with the Board's regulations, and failure to keep records and make reports, impeded the Complainant's ability to properly enforce this State's environmental laws and regulations and further, impeded the Illinois EPA's ability to gather information to determine compliance with those laws.
2. There is social and economic benefit to the Facility.
3. Respondent's operation was and is suitable for the area in which its operations occurred.
4. Obtaining the requisite permits prior to constructing and operating at the site and compliance with their terms, compliance with the Board's regulations, keeping records and making reports, are technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2010), 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 Respondent constructed several emission units without the requisite construction permits. It also operated its emission units without operating permits for a period of at least seven (7) years and utilized non-compliant coatings during this same period of time. Respondent failed to keep records and provide to the Illinois EPA the required reports.

2. By its own admission, Respondent became aware of the need for permits and the violations of the Board's coating regulations in 2004. However, Apollo failed to submit a permit application to the Illinois EPA until 2006 and failed to install an RTO to comply with the Pollution Control Board's coating regulations until 2007.

3. Respondent received an economic benefit through its failure to obtain the requisite construction and operating permits, its failure to pay the fees for such permits, and from its failure to comply with various reporting and recordkeeping requirements that would have applied to its operations. The penalty to be paid pursuant to this Stipulation captures any economic benefit that Respondent may have realized through this non-compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirty Thousand Nine Hundred and Forty Six Dollars (\$30,946.00) 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. The violations alleged in Complainant's Complaint are not based on the result of any self-disclosure by the Respondent.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Thirty Thousand Nine Hundred and Forty Six Dollars (\$30,946.00) according to the following payment schedule:

- (a) Fifteen Thousand Dollars (\$15,000.00) shall be paid within thirty (30) days from the date the Board adopts and accepts this Stipulation.
- (b) Ten Thousand Dollars (\$10,000.00) shall be paid within six (6) months from the date the Board adopts and accepts this Stipulation.
- (c) The remaining Five Thousand Nine Hundred and Forty Six Dollars (\$5,946.00) shall be paid within fifteen (15) months 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 \$100.00 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 certified or 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 number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

AAG George Theophilos
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall at all times in the future, timely apply for and obtain all required

permits prior to the construction and/or operation of any and all emission sources at its Facility.

2. Respondent shall operate its facility in accordance with the requirements of its FESOP no. 06090078 and all conditions contained therein.

3. Respondent shall comply with the Act and all applicable regulations.

4. Respondent shall timely submit all AERs to the Illinois EPA.

5. 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.

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

E. Correspondence, Reports, and Other Documents

Any and all correspondence, and any other documents, except for penalty payments, shall be submitted as follows:

As to Complainant

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

Manager
Compliance Unit
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

AAG George Theophilos
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

As to Respondent

Harvey M. Sheldon, Esq.
Hinshaw and Culbertson, LLP
222 North LaSalle Street, Suite 300
Chicago, IL 60601 – 1081

Apollo Plastics Corp.
c/o Mr. Donald Lucas
Specialty Manufacturers
2410 Executive Drive
Indianapolis, IN 46241

F. Release from Liability

In consideration of the Respondent's payment of the \$30,946.00 penalty, its commitment to cease and desist as contained in Section V.D.7 above, completion of all activities required hereunder, 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 on May 12, 2009. 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, or entity other than the Respondent.

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.E. 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.

[Remainder of this page intentionally left blank.]

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,

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

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

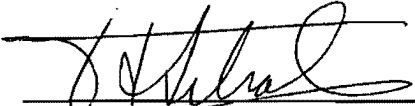
BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

APOLLO PLASTICS CORPORATION

BY:  _____

DATE: _____

Name: ALBERTO SILVA

Title: PRESIDENT

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

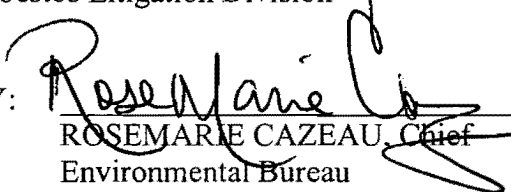
PEOPLE OF THE STATE OF ILLINOIS,


THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 5/27/11

DATE: 5/26/11

APOLLO PLASTICS CORPORATION

BY: _____

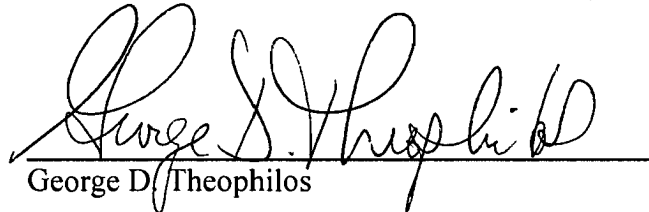
DATE: _____

Name: _____

Title: _____

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused the foregoing Motion For Relief From Hearing Requirement and Stipulation And Proposal For Settlement to be electronically mailed to the persons listed on the attached Service List on this the 1st day of June, 2011.


George D. Theophilos