

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No.
	)	(Enforcement)
HOME DEPOT U.S.A., INC.,	)	
a Delaware corporation,	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List


PLEASE TAKE NOTICE that on January 3, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a COMPLAINT, 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:   
Michael D. Mankowski  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 3, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I did on January 3, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



Michael D. Mankowski  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Michelle A. O'Brien, CHMM  
Sr. Specialist - Regulatory Compliance  
The Home Depot SSC  
2455 Paces Ferry Rd., C-19  
Atlanta, GA 30339

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Complainant,	)	
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vs.	)	PCB No.
	)	(Enforcement)
HOME DEPOT U.S.A., INC.,	)	
a Delaware corporation,	)	
	)	
Respondent.	)	

**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:

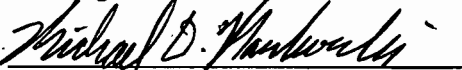
1. A Complaint and Stipulation and Proposal for Settlement are being filed simultaneously with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (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: 

Michael D. Mankowski  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 3, 2012



4. The Respondent, HOME DEPOT U.S.A., INC., ("Home Depot"), is a Delaware corporation in good standing with and licensed by the Illinois Secretary of State to do business in the State of Illinois.

5. At all times relevant to this Complaint, Respondent Home Depot owned and operated two stores in the State of Illinois which are the subject of this Complaint: Home Depot Store #1924 ("HD-1924") and Home Depot Store #6961("HD-6961").

6. HD-1924 is located at 1706 West Highway 50 in O'Fallon, St. Clair County, Illinois 62269.

7. HD-6961 is located at 1049 Collinsville Crossing, Collinsville, Madison County, Illinois 62234.

8. On November 26, 2007, the Illinois EPA inspected HD-1924.

9. On February 18 and 25, 2010, the Illinois EPA inspected HD-6961.

10. Section 3.535 of the Act, 415 ILCS 5/3.535 (2010), provides, in pertinent part, as follows:

\* \* \*

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities...

\* \* \*

11. Section 3.470 of the Act, 415 ILCS 5/3.470 (2010) provides as follows:

"Solid waste" means waste.

12. Section 3.220 of the Act, 415 ILCS 5/3.220 (2010), provides, in pertinent part, as follows:

"Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly

treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976...

13. Section 261.20(a) of the Code of Federal Regulations, 40 C.F.R. 261.20(a) provides, in pertinent part, as follows:

"A solid waste...is a hazardous waste if it exhibits any of the characteristics identified in this subpart."

14. Section 3.475(b) of the Act, 415 ILCS 5/3.475(b) (2010) provides, in pertinent part, as follows:

"Special waste" means any of the following:

\* \* \*

(b) hazardous waste, as determined in conformance with RCRA hazardous waste determination requirements set forth in Section 722.111 of Title 35 of the Illinois Administrative Code

\* \* \*

15. Section 3.205 of the Act, 415 ILCS 5/3.205 (2010), provides as follows:

"Generator" means any person whose act or process produces waste.

16. Home Depot is a "generator" as that term is defined under Section 3.205 of the Act, 415 ILCS 5/3.205 (2010).

17. Section 21(i) of the Act, 415 ILCS 5/21(i), provides as follows:

No person shall:

\* \* \*

(i) Conduct any process or engage in any act which produces hazardous waste in violation of any regulations or standards adopted by the Board under subsections (a) and (c) of Section 22.4 of this Act.

18. Section 722.111 of the Pollution Control Board's ("Board") Regulations, 35 Ill. Adm. Code 722.111 provides as follows:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste using the following method:



- a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- b) The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.

BOARD NOTE: Even if a waste is listed as a hazardous waste, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
  - 1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
  - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
- d) If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 724 through 728, 733, and 739 for possible exclusions or restrictions pertaining to the management of the specific waste.

19. Section 808.121(a) of the Board's Regulations, 35 Ill. Adm. Code 808.121(a), provides as follows:

- (a) Each person who generates waste shall determine whether the waste is a special waste.

20. Section 261.21(a) of the Code of Federal Regulations, 40 C.F.R. 261.21(a), lists the characteristics of ignitable hazardous wastes.

21. Section 261.21(b) of the Code of Federal Regulations, 40 C.F.R. 261.21(b) provides, in pertinent part, as follows:

- (b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

22. Section 261.24 of the Code of Federal Regulations, 40 C.F.R. 261.24, provides, in pertinent part, as follows:

- (a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section.
- (b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

Table 1 —Maximum Concentration of Contaminants for the Toxicity Characteristic

EPA HW No. <sup>1</sup>	Contaminant	CAS No. <sup>2</sup>	Regulatory Level (mg/L)
***	***	***	***
D018	Benzene	71-43-2	0.5
***	***	***	***

\* \* \*

- 23. At all times relevant to this Complaint, HD-1924 offered tool rental and maintained a tool rental department.
- 24. The HD-1924 Tool Rental Center prepares tools for customer rental and cleans them when they are returned to the store.
- 25. The HD-1924 Tool Rental Center generates used oil and gasoline waste.
- 26. The Tool Rental Center cleaning area located at HD-1924 contains a sump pit.
- 27. Waste from the HD-1924 sump pit ("sump pit water") typically contains used oil and water.
- 28. On or about September 13, 2007, Home Depot shipped approximately thirty five (35) gallons of sump pit water from HD-1924 to a Missouri treatment, storage and disposal ("TSD") facility.

<sup>1</sup> Hazardous waste number.

<sup>2</sup> Chemical abstracts service number.

29. The HD-1924 sump pit water arrived at the TSD on or about September 17, 2007.

30. On or about September 17, 2007, the HD-1924 sump pit water was determined to be contaminated with gasoline.

31. The HD- 1924 gasoline contaminated sump pit water was a waste as defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2010).

32. The HD-1924 gasoline contaminated sump pit water was characteristic, D001 and D018, hazardous waste as defined in 40 C.F.R. 261.20(a) , 40 C.F.R. 261.21(a), 40 C.F.R. 261.24, and Section 3.220 of the Act, 415 ILCS 5/3.220 (2010).

33. Prior to shipping the sump pit water from HD-1924 to the TSD, Home Depot failed to determine if the sump pit water was a hazardous waste.

34. Prior to shipping the sump pit water from HD-1924 to the TSD, Home Depot failed to determine if the sump pit water was a special waste.

35. At all times relevant to this Complaint, HD-6961 offered tool rental and maintained a tool rental department.

36. The HD-6961 Tool Rental Center prepares tools for customer rental and cleans them when they are returned to the store.

37. The HD-6961 Tool Rental Center generates used oil and gasoline waste.

38. The HD-6961 Tool Rental Center cleaning area located at HD-6961 contains a sump pit.

39. Waste from the HD-6961 sump pit typically contains used oil and water.

40. On or about September 12, 2007, Home Depot shipped approximately four hundred (400) pounds of sump pit water from the HD-6961 sump pit to a Missouri treatment, storage and disposal ("TSD") facility.

41. The HD-6961 sump pit water arrived at the TSD on or about September 17, 2007.

42. On or about September 17, 2007, the HD-6961 sump pit water was determined to be contaminated with gasoline.

43. The HD-6961 gasoline-contaminated sump pit water was waste as defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2010).

44. The HD-6961 gasoline-contaminated sump water was characteristic, D001, hazardous waste as defined in 40 C.F.R. 261.20(a), 40 C.F.R. 261.21(a), and Section 3.220 of the Act, 415 ILCS 5/3.220 (2010).

45. Prior to shipping the sump pit water from HD-6961 to the TSD, Home Depot failed to determine if the sump pit water was a hazardous waste.

46. Prior to shipping the sump pit waste from HD-6961 to the TSD, Home Depot failed to determine if the sump pit waste was special waste.

47. By failing to determine if the sump pit wastes from HD-1924 and HD-6961 were hazardous wastes, Home Depot violated Section 722.111 of the Board's Regulations and therefore violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2010).

48. By failing to determine if the sump pit wastes from HD-1924 and HD-6961 were special wastes, Home Depot violated Section 808.121(a) of the Board's Regulations and therefore violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, HOME DEPOT:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter.

E. Granting such other relief as the Board may deem appropriate.

**COUNT II**

**HAZARDOUS WASTE MANIFEST VIOLATIONS**

1-38. Complainant realleges and incorporates herein by reference paragraphs 1 through 17 and 21 through 40 of Count I as paragraphs 1 through 38 of this Count II.

39. Section 722.120(a) of the Board's Regulations, 35 Ill. Adm. Code 722.120(a), provides as follows:

- a) A generator that transports hazardous waste or offers a hazardous waste for transportation for off-site treatment, storage, or disposal or a treatment, storage, or disposal facility that offers for transport a rejected load of hazardous waste must prepare a manifest on USEPA Form 8700-22 (and, if necessary, on USEPA Form 8700-22A) according to the instructions included in the appendix to 40 CFR 262 (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

40. Section 809.501(a) of the Board's Regulations, 35 Ill. Adm. Code 809.501(a), provides in pertinent part, as follows:

- a) Any person who delivers special waste to a permitted nonhazardous special or hazardous waste transporter shall complete a uniform hazardous waste manifest to accompany the special waste from delivery to the destination of the special waste. The manifest form will be provided or prescribed by the Agency...

41. Home Depot failed to prepare a manifest for the HD-1924 sump pit water shipped in September of 2007.

42. By failing to prepare a manifest for the HD-1924 sump pit water shipped in September of 2007, Home Depot violated Section 722.120(a) of the Board's Regulations, 35 Ill. Adm. Code 722.120(a), and therefore violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2010).

43. Home Depot prepared manifest #001654744, dated September 12, 2007.

44. Home Depot improperly listed the HD- sump pit water as Non-RCRA on manifest #001654744.

45. By improperly listing the HD-6961 sump pit water as Non-RCRA on manifest #001654744, Home Depot violated Section 809.501(a) of the Board's Regulations, 35 Ill. Adm. Code 809.501(a), and therefore violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, HOME DEPOT:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter.

E. Granting such other relief as the Board may deem appropriate.

**COUNT III**

**FAILURE TO PROVIDE ONE-TIME WRITTEN NOTICE TO TSD**

1-38. Complainant realleges and incorporates herein by reference paragraphs 1 through 18 and 21 through 40 of Count I as paragraphs 1 through 38 of this Count III.

39. Section 728.107(a) of the Board's Regulations, 35 Ill. Adm. Code 728.107(a), provides, in pertinent part, as follows:

a) Requirements for generators.

1) A generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards

in Section 728.140, 728.145, or 728.149. This determination can be made concurrently with the hazardous waste determination required in 35 Ill. Adm. Code 722.111, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing determines the total concentration of hazardous constituents or the concentration of hazardous constituents in an extract of the waste obtained using Method 1311 (Toxicity Characteristic Leaching Procedure) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of 35 Ill. Adm. Code 724.113 and subsection (b) of this Section.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in Section 728.140 and Table T of this Part, and are described in detail in Table C of this Part. These wastes and soils contaminated with such wastes do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards must be tested). If a generator determines that it is managing a waste or soil contaminated with a waste that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, the generator must comply with the special requirements of Section 728.109 in addition to any applicable requirements in this Section.

- 2) If the waste or contaminated soil does not meet the treatment standard or if the generator chooses not to make the determination of whether its waste must be treated, the generator must send a one-time written notice to each treatment or storage facility receiving the waste with the initial shipment of waste to each treatment or storage facility, and the generator must place a copy of the one-time notice in the file. The notice must include the information in column "728.107(a)(2)" of the Generator Paperwork Requirements Table in Table I of this Part. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the USEPA hazardous waste numbers and manifest number of the first shipment, and it must include the following statement: "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility changes, in which case a new notification must be sent and a copy placed in the generator's file.

- 3) If the waste or contaminated soil meets the treatment standard at the original point of generation, the waste generator must do the following:
  - A) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in its own file. The notice must include the information indicated in column "728.107(a)(3)" of the Generator Paperwork Requirements Table in Table I of this Part and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in Subpart D of 35 Ill. Adm. Code 728. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

40. Home Depot failed to send a one-time notice to the TSD where the HD-6961 sump pit water was shipped.

41. By failing to send a one-time notice to the TSD where the HD-6961 sump pit water was shipped, Home Depot violated Section 728.107(a) of the Board's Regulations, 35 Ill. Adm. Code 728.107(a), and therefore violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, HOME DEPOT:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;



D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter.

E. Granting such other relief as the Board may deem appropriate.

#### COUNT IV

#### FAILURE TO FILE ANNUAL NONHAZARDOUS SPECIAL WASTE REPORTS

1-37. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 and 21 through 40 of Count I as paragraphs 1 through 37 of this Count IV.

38. Section 22.01 of the Act, 415 ILCS 5/22.01 (2010), requires generators to file annual reports with the Illinois EPA regarding the shipment of nonhazardous special waste out-of-state.

39. Section 809.501(h) of the Board's Regulations, 35 Ill. Adm. Code 728.107(h), provides as follows:

h) Every generator who delivers nonhazardous special waste via a transporter to a facility located outside Illinois shall file a report, on forms prescribed or provided by the Agency, summarizing all such activity during the preceding calendar year. Such reports shall, at a minimum, include the information specified in subsection (i) of this Section and should be received by the Agency no later than February 1.

40. Home Depot shipped nonhazardous special waste out-of-state, but did not file annual nonhazardous special waste reports with the Illinois EPA.

41. By failing to file annual nonhazardous special waste reports with the Illinois EPA for nonhazardous special waste shipped out-of-state, Home Depot violated Section 809.501(h) of the Board's Regulations, 35 Ill. Adm. Code 728.107(h), and Section 22.01 of the Act, 415 ILCS 5/22.01 (2010).

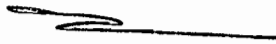
#### PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, HOME DEPOT:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter.
- E. Granting such other relief as the Board may deem appropriate.

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:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel

Michael D. Mankowski  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
217/557-0586

Date: 1/03/12

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
<b><u>ex rel.</u> LISA MADIGAN, Attorney General</b>	)	
<b>of the State of Illinois,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No.</b>
	)	<b>(Enforcement)</b>
<b>HOME DEPOT U.S.A., INC., a Delaware</b>	)	
<b>corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**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 HOME DEPOT U.S.A., INC., a Delaware corporation ("Respondent"), the Parties to the Stipulation and Proposal for Settlement ("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 this Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On the same day as this Stipulation, 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 this Stipulation, Respondent was and is a Delaware corporation authorized to transact business in the State of Illinois.

**B. Site Description**

1. Home Depot U. S. A., Inc., is the current owner and operator of two stores in the State of Illinois which are the subject of the Complaint: Home Depot Store #1924 ("HD-1924") and Home Depot Store #6961("HD-6961").

2. HD-1924 is located at 1706 West Highway 50 in O'Fallon, St. Clair County, Illinois 62269.

3. HD-6961 is located at 1049 Collinsville Crossing, Collinsville, Madison County, Illinois 62234.

**C. Complainant's Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations. The violations listed herein include violations alleged in Complainant's Complaint as well as additional violations which occurred after the filing of the Complaint.

Count I: Sections 722.111 and 808.121(a) of the Board's Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a) and Section 21(i) of the Act, 415 ILCS 5/21(i) (2010);

Count II: Sections 722.120(a) and 809.501(a) of the Board's Regulations, 35 Ill. Adm. Code 722.120(a) and 809.501(a) and 21(i) of the Act, 415 ILCS 5/21(i) (2010);

Count III: Section 728.107(a) of the Board's Regulations, 35 Ill. Adm. Code 728.107(a), and Section 21(i) of the Act, 415 ILCS 5/21(i) (2010).

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

**E. Compliance Activities to Date**

The Respondent and its waste hauler have implemented internal operating procedures and practices regarding the proper handling of waste from the Tool Rental Centers at all Home Depot stores located within the State of Illinois. The Respondent and its waste haulers direct and instruct their respective employees on these procedures at all Home Depot stores located within the State of Illinois.

**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 (2010).

### **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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the Respondent's stores located in Illinois.
3. Operation of the Respondent's stores, including the Tool Rental Centers, was suitable for the area in which it occurred.
4. Properly characterizing and manifesting the waste stream created by the sump pits in the Respondent's Tool Rental Centers was technically practicable and economically reasonable.

5. Respondent and its waste hauler have implemented internal operating procedures and practices regarding the proper handling of waste from the Tool Rental Centers at all stores located within the State of Illinois. Respondent and its waste haulers will continue to provide waste handling and disposal training to all employees in Home Depot stores located in Illinois.

#### **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 failed to properly characterize sump pit water generated by two of its stores. This resulted in some of the waste being shipped without the proper manifest. The violations began on or around September 12, 2007, and were resolved by September 17, 2007.

2. Once notified of its noncompliance, Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.

3. The Respondent realized no economic benefit from this incident of non-compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twelve Thousand Dollars (\$12,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. The Respondent was the subject of two prior enforcement cases for failure to permit or water pollution violations. In the two settlements, a \$50,000.00 civil penalty was ordered in PCB 02-161 while a \$15,000.00 penalty was assessed in PCB 05-168. No admissions were made in either case.

6. There was no self-disclosure of the violations involved in this matter.

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 Twelve Thousand Dollars (\$12,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.



**B. 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 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:

Michael D. Mankowski  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**C. Future Compliance**

1. The Respondent and its waste haulers shall continue to direct and instruct their respective employees on proper waste handling and disposal procedures in all Home Depot stores located within the State of Illinois.

2. The Respondent will comply with all applicable recordkeeping, reporting and documentation requirements found in the Act and related regulations.

3. 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 Respondent's facility 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.

4. 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.

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

**D. Release from Liability**

In consideration of the Respondent's payment of the \$ 12,000.00 penalty, its commitment to cease and desist as contained in Section V.C. 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 the same day as 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, or entity other than the Respondent.

**E. 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.

**F. 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.

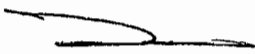
WHEREFORE, the Parties to the Stipulation\_request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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


BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
\_\_\_\_\_  
JOHN J. KIM  
Interim Director

DATE: 12/29/11

DATE: 12/20/11

HOME DEPOT U.S.A., INC.

BY:   
\_\_\_\_\_  
Name: Mike Maddocks  
Title: Director - EH&S

DATE: 11/30/2011