

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

vs.)

PCB No.)
(Enforcement - Land)

HERITAGE-CRYSTAL CLEAN, L.L.C.)
an Indiana limited liability company,)

Respondents.)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

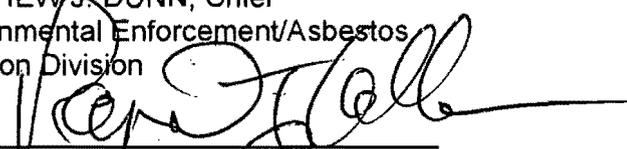
PLEASE TAKE NOTICE that on March 12, 2014, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a COMPLAINT, MOTION FOR RELIEF FROM HEARING 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: 

Raymond J. Callery
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 12, 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No.
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HERITAGE-CRYSTAL CLEAN, L.L.C.,)	
an Indiana limited liability company,)	
)	
Respondent.)	

COMPLAINT

The Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, HERITAGE-CRYSTAL CLEAN, L.L.C., an Indiana limited liability company, as follows:

COUNT I
FAILURE TO PROPERLY LABEL CONTAINERS

1. This Complaint is brought 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 at the request of the Illinois Environmental Protection Agency ("Illinois EPA").
2. This Complaint is brought pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2012), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.
3. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2012), and which is charged, *inter alia*, with the duty of enforcing the Act.
4. The Respondent is an Indiana limited liability company registered to do business in the State of Illinois.

5. At all times relevant to this Complaint, the Respondent owned and operated an used oil transfer facility located at 7334 U.S. Highway 50, Iuka, Marion County, Illinois. (the "Facility").

6. The Facility consists of an office and four 30,000 gallon above ground storage tanks.

7. The Facility utilizes two route trucks. One route truck picks up used oil and the other truck picks up oily water. The used oil is stored in Tank A and the oily water in Tank B. The used oil and oily water from Tank A and Tank B are transported to Respondent's re-refinery in Indiana on a weekly basis. A third driver off-loaded used oil into Tank 5 until this driver left employment in December 2011.

8. On August 9, 2012, the Illinois EPA inspected the Facility. Along the sides of the containment wall were seven drums containing oily rags, oily debris, used oil retain samples and debris filtered from the used oil during transportation. These drums were not labeled with the words "Used Oil." No used oil had been removed from Tank 5 since December 2011.

9. The Respondent did have a Contingency Plan at the Facility at the time of the Illinois EPA inspection but the administrative employee on-site was unable to locate it and the plan was provided to the Illinois EPA at a later date.

10. Section 21 of the Act, 415 ILCS 5/21 (2012), provides, in pertinent part, as follows:

No person shall:

* * *

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

* * *

(2) in violation of any regulations or standards adopted by the Board under this Act;

* * *

- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder

11. Section 739.122(c)(1) of the Illinois Pollution Control Board's ("Board's") Used Oil Management Standards, 35 Ill. Adm. Code 739.122(c)(1), states as follows:

- c) Labels.
 - 1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

12. By failing to have the seven drums along the sides of the containment wall labeled with the words "Used Oil," the Respondent violated Section 739.122(c)(1) of the Board's Used Oil Management Standards, 35 Ill. Adm. Code 739.122(c)(1), and Sections 21(d)(2) and (e) of the Act, 415 ILCS 5/21(d)(2) and (e) (2012).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, HERITAGE-CRYSTAL CLEAN, L.L.C.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2012) impose a civil penalty of not more than the statutory maximum; and

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

COUNT II
FAILURE TO HAVE CONTINGENCY PLAN

1-10. The Complainant realleges and incorporates herein by reference paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count II.

11. Section 739.145 of the Board's Used Oil Management Standards, 35 Ill. Adm. Code 739.145, provides, in pertinent part, as follows:

A used oil transporter is subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR 112) in addition to the requirements of this Subpart E. A used oil transporter is also subject to the Underground Storage Tank (35 Ill. Adm. Code 731) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subpart.

- a) Applicability. This Section applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. A transfer facility that store used oil for more than 35 days are subject to regulation under Subpart F [Standards For Used Oil Processors] of this Part.

* * *

12. Section 739.152(b) of the Board's Used Oil Management Standards, 35 Ill. Adm. Code 739.152(b), provides, in pertinent part, as follows:

- b) Contingency plan and emergency procedures. An owner or operator of a used oil processing or re-refining facility must comply with the following requirements:
- 1) Purpose and implementation of contingency plan.
- A) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any

unplanned sudden or non-sudden release of used oil
to air, soil, or surface water.

* * *

- 3) Copies of contingency plan. Copies of the contingency plan and all revisions to the plan must be disposed of as follows:
 - A) Maintained at the facility;

* * *

13. The Respondent was subject to the requirements of 35 Ill. Adm. Code Part 739, Subpart F, including the requirement for a Contingency Plan, because used oil had been stored in Tank 5 at the Facility for more than 35 days.

14. By failing to have available for inspection at the Facility a Contingency Plan, the Respondent violated Sections 739.152(b)(1) and (3) of the Board's Used Oil Management Standards, 35 Ill. Adm. Code 739. 152(b)(1) and (3), and Sections 21(d)(2) and (e) of the Act, 415 ILCS 5/21(d)(2) and (e) (2012).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, HERITAGE-CRYSTAL CLEAN, L.L.C.:

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

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2012) impose a civil penalty of not more than the statutory maximum; and

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,

BY: Matthew J. Dunn
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Of Counsel
Raymond J. Callery
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: March 12, 2014.

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an Indiana limited liability company,)	
)	
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) (2012), 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) (2012). In support of this motion, Complainant states as follows:

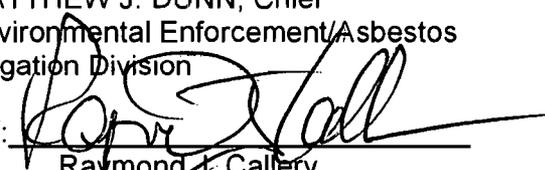
1. A Complaint and Stipulation and Proposal for Settlement are being filed simultaneously with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and 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) (2012).

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) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

Raymond J. Callery
Environmental Bureau
Assistant Attorney General

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an Indiana limited liability company,)	
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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 HERITAGE-CRYSTAL CLEAN, L.L.C., an Indiana limited liability company (Respondent) ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and its submittal 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.* (2012), 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 to the Stipulation

1. 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 (2012), 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 (2012).

3. The Respondent is an Indiana limited liability company registered to do business in the State of Illinois.

4. At all times relevant to this Complaint, the Respondent owned and operated a used oil transfer facility located at 7334 U.S. Highway 50, Iuka, Marion County, Illinois. (the "Facility").

5. The Facility consists of an office and four 30,000 gallon above ground storage tanks.

6. The Facility utilizes two route trucks. One route truck picks up used oil and the other truck picks up oily water. The used oil is stored in Tank A and the oily water in Tank B. The used oil and oily water from Tank A and Tank B are transported to Respondent's re-refinery in Indiana on a weekly basis. A third driver off-loaded used oil into Tank 5 until this driver left employment in December 2011.

7. On August 9, 2012, the Illinois EPA inspected the Facility. Along the sides of the containment wall were seven drums containing oily rags, oily debris, used oil retain samples and debris filtered from the used oil during transportation. These drums were not labeled with the words "Used Oil." No used oil had been removed from Tank 5 since December 2011.

8. The Respondent did have a Contingency Plan at the Facility at the time of the Illinois EPA inspection but the administrative employee on-site was unable to locate it and the plan

was provided to the Illinois EPA at a later date.

B. Allegations of Non-Compliance

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

COUNT I: FAILURE TO PROPERLY LABEL CONTAINERS,
Section 21(d)(2) and (e) of the Act, 415 ILCS 5/12(d) and
(e) (2010), and 35 Ill. Adm. Code 739.122(c)(1).

COUNT II: FAILURE TO HAVE CONTINGENCY PLAN,
Section 21(d)(2) and (e) of the Act, 415 ILCS 5/21(d)(2) and
(e) (2012), and 35 Ill. Adm. Code 739.152(b)(1) and (3).

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 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. The used oil was removed from Tank 5 upon Respondent being notified of this issue by the Illinois EPA.
2. Respondent has properly labeled all drums containing oily rags, oily debris, used oil retain samples and debris filtered from the used oil during transportation.

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) (2012), 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. There was low potential for impact to the environment and to soils and groundwater as a result of the violations.
2. There is social and economic benefit in the operation of Respondent's used oil transfer facility.
3. Respondent's used oil transfer facility is suitable for the area in which it is being operated.
4. Properly labeling containers and maintaining the required records were both

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) (2012), 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.
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

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

1. The Respondent's alleged violations were of low significance in relation to the potential for harm and moderately serious when considering the extent of deviation from the requirements of the Act and associated regulations. The potential for harm in this case relates to the potential for impact to the environment and the impact to soils and groundwater, as well as the allowing of waste to be stored on a site not permitted for such activity.

2. The Respondent has cooperated and was diligent in remedying the violations.

3. The Complainant does not allege that the Respondent received any economic benefit as a result of non-compliance in this matter.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of EIGHT THOUSAND DOLLARS (\$8,000.00) will serve to deter future alleged 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. Respondent did not voluntarily disclose the violations alleged in the Complaint.

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

8. No Compliance Commitment Agreement was accepted in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) within thirty (30) days from the date the Board adopts and accepts this

Stipulation.

B. Interest and Default

1. 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.

2. 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.

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 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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. 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.

2. The Respondent shall comply with the Act and Board Regulations which were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$8,000.00 penalty, its commitment to cease and desist as contained in Section V.D. 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. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and

- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

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.

G. Execution of Stipulation

The undersigned representatives for each party to this 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

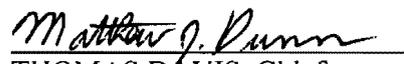
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Director
Illinois Environmental Protection Agency

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

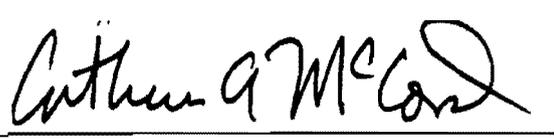
BY: 
JOHN J. KIM,
Chief Legal Counsel

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 3/6/14

DATE: 3/12/14

HERITAGE-CYRSTAL CLEAN, L.L.C.:

BY: 

Name (print): Catherine A. McCord

Title: Vice President – Environment, Health, and Safety

DATE: 3 February 2014

CERTIFICATE OF SERVICE

I hereby certify that I did on November 8, 2010, 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.



Raymond J. Callery
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Philip L. Comella
Seyfarth Shaw, LLP
131 South Dearborn Street, Ste. 2400
Chicago, IL 60603