

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

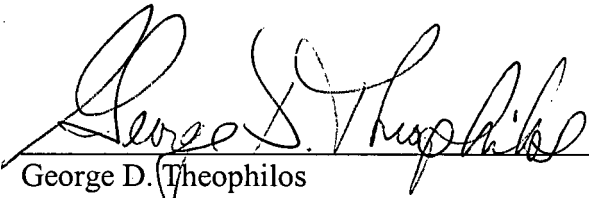
PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois)	
)	
Complainant,)	
)	
v.)	No. PCB 04-9
)	
AARGUS PLASTICS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 31st day of May, 2006, 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
188 West Randolph Street, 20th Fl.
Chicago, IL 60601
(312) 814-6986

DATE: May 31, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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

Ms. Maureen Wozniak, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Mr. Leo P. Dombrowski
Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606

Mr. Thomas B. Golz
Fagel Haber LLC
55 E. Monroe Street, 40th Floor
Chicago, Illinois 60603
facsimile (312) 580-2201

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois)	
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Complainant,)	
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v.)	No. PCB 04-9
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AARGUS PLASTICS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

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) (2004), 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 July 17, 2003, 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

188 West Randolph Street, Suite 2001

Chicago, Illinois 60601

312-814-6986

DATE: May 31, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois)	
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AARGUS PLASTICS, INC.,)	
an Illinois corporation,)	
)	
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 AARGUS PLASTICS, INC. ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

II. AUTHORIZATION

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

III. STATEMENT OF FACTS

A. Parties

1. On July 17, 2003, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2004), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

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

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a

polyethylene bag manufacturing plant at 1415 Redeker Road, Des Plaines, Cook County, Illinois ("facility" or "site"). The Respondent operated its plant in Des Plaines until May, 2003, the exact date best known to Respondent, when it moved its operations to Wheeling, Illinois.

2. As part of its operations at the facility, Respondent printed ink images onto polyethylene bags using flexographic printing presses.

3. The facility emitted volatile organic material ("VOM") into the environment from 16 flexographic printing presses and associated dryers.

4. Illinois EPA issued Clean Air Act Permit Program Operating Permit No. 95110088 ("CAAPP Permit 95001188") to Respondent, a Clean Air Act Permit Program source ("CAAPP source"), on February 10, 2000 pursuant to Section 39.5 of the Act, 415 ILCS 5/39.5 (2004). CAAPP Permit 95001188 expired on February 10, 2005.

5. Since at least March 15, 1995 and continuing to May, 2003 or dates better known to Respondent, Respondent, at times, was applying inks to polyethylene bags at its facility that contained over 40% VOM by volume.

C. Allegations of Non-Compliance

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

Count I: Application of non-compliant inks in violation of Sections 9(a) and 39.5(6)(b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9(a) and 39.5(6)(b) (2004), Section 218.401(a) of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 218.401(a), and Condition 7.1.3(c) of Aargus' Clean Air Act Permit Program ("CAAPP") permit.

Count II: Failure to achieve milestones for flexographic printing operations in violation

of Sections 9(b) and 39.5(6)(b) of the Act, 415 ILCS 5/9(b) and 39.5(6)(b)(2004); and Conditions 7.1.13(b), (c), and (d) of Aargus' CAAPP permit.

- Count III: Violation of volatile organic material emission standards in violation of Sections 9(a) and 39.5(6)(b) of the Act, 415 ILCS 5/9(a) and 39.5(6)(b)(2004); Condition 1 of Aargus' former air permit; and Conditions 5.5.1 and 7.1.6 of Aargus' CAAPP permit.
- Count IV: Submission of inaccurate and incomplete annual emission reports in violation of Section 9(b) of the Act, 415 ILCS 5/9(b)(2004), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.303 of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.303
- Count V: Violations of Emission Reduction Market System regulations in violation of Sections 9(b) and 39.5(6)(b) of the Act, 415 ILCS 5/9(a) and 39.5(6)(b)(2004); Sections 205.300(b)(1) and 205.150(c)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.300(b)(1) and 205.150(c)(1); and Conditions 6.7(a)(i) and 6.3(a) of Aargus' CAAPP permit
- Count VI: Failure to submit annual compliance certifications to Illinois EPA in violation of Sections 9(b) and 39.5(6)(b) of the Act, 415 ILCS 5/9(b) and 39.5(6)(b)(2004), and Condition 9.8 of Aargus' CAAPP permit.
- Count VII: Failure to notify Illinois EPA of noncompliance with Aargus' CAAPP permit in violation of Sections 9(b) and 39.5(6)(b) of the Act, 415 ILCS 5/9(b) and 39.5(6)(b)(2004), and Condition 5.7.1 of Aargus' CAAPP permit.
- Count VIII: Failure to comply with terms and conditions of Aargus' CAAPP permit in violation of Sections 9(b) and 39.5(6)(b) of the Act, 415 ILCS 5/9(b) and 39.5(6)(b)(2004), and Condition 9.2.1 of Aargus' CAAPP permit.

D. Admission of Violations

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

E. Compliance Activities to Date

On February 2, 2003, Respondent applied for a construction permit to move its operations to a site in Wheeling, Illinois. A construction permit limiting Respondent's emissions to below major source levels and exempting the source from the requirements of 35 Ill. Adm. Code 218.401 was issued by the Illinois EPA on May 6, 2003. Additionally, Respondent applied for a Federally Enforceable State Operating Permit (FESOP) for its operations in Wheeling, Illinois on February 6, 2003.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), provides as follows:

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

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

In response to these factors, the parties state the following:

1. Complainant asserts that the environment was threatened by the Respondent's alleged violations and the Illinois EPA's information gathering responsibilities were hindered. Further, the Respondent's alleged violations were contrary to the goals and purpose of the Act which establishes a unified state-wide program "to restore, protect and enhance the quality of the environment, and to

assure that adverse effects upon the environment are fully considered and borne by those who cause them.” See Section 2(b) of the Act, 415 ILCS 5/2(b) (2004).

2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Obtaining the proper permits for operation of the facility and compliance with the terms thereof, and compliance with the Act and the Board’s regulations for flexographic printing, was both technically practicable and economically reasonable.
5. Respondent represents that it has closed the subject facility and terminated the operation of all emission units at the facility. Respondent’s operations were moved to Wheeling , Illinois. Respondent’s operations in Wheeling, Illinois are compliant with the Act and applicable regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), provides as follows:

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. Complainant contends that Respondent violated provisions of its CAAP permit, the Act, and Board regulations. The alleged violations began in 1994 and ended in May, 2003 when Respondent moved its operations to Wheeling, Illinois.
2. Complainant contends that Respondent was not diligent in attempting to come back into compliance with the Act, Board regulations and permit requirements, once the Illinois EPA notified it of its noncompliance.
3. Complainant contends that Respondent obtained an economic benefit as a result of its violation of the Act, Board regulations, and permit requirements. However, the penalty obtained negates the economic benefit accrued.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) 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. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN) shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

George D. Theophilos
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

and

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

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondent may be reached at the following address:

Mr. Leo P. Dombrowski
Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606

and

Mr. Thomas B. Golz
Fagel Haber LLC
55 E. Monroe Street, 40th Floor
Chicago, Illinois 60603

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Compliance Plan

Respondent agrees to comply with all the terms and conditions of its FESOP as issued by the Illinois EPA.

C. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.E, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or

42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2004). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

D. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (“Allegations of Non-Compliance”) of this Stipulation.

E. Release from Liability

In consideration of the Respondent’s payment of the \$125,000.00 penalty and any specified costs and accrued interest, to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board’s acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant’s Complaint filed on July 17, 2003. 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, or entity other than the Respondent.

F. Enforcement of Board Order

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

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

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

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

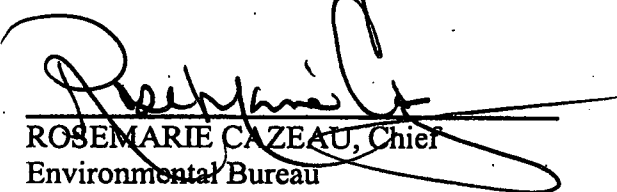
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE:

5/11/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

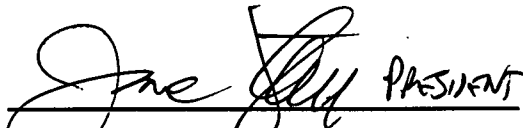
BY:


ROBERT A. MESSINA
Chief Legal Counsel

DATE:

5/3/06

AARGUS PLASTICS, INC.

BY:  PRESIDENT

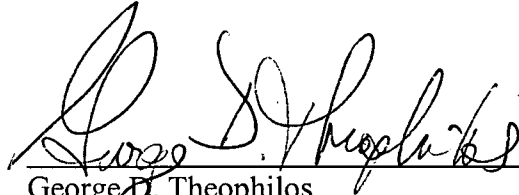
DATE: 5/23/06

Name: JAMES STARR

Title: PRESIDENT

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused to be mailed, this 31th day of May, the foregoing **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and **STIPULATION AND PROPOSAL FOR SETTLEMENT** to the persons listed on the attached Service List by first class mail, with postage pre-paid.



George D. Theophilos