

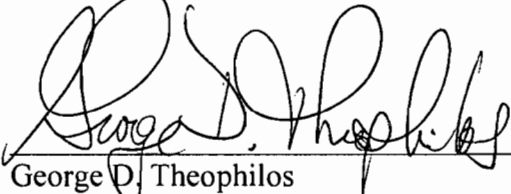
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB _____
)	(Enforcement)
)	
NORTHERN ILLINOIS UNIVERSITY,)	
)	
Respondent.)	

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 31st day of March, 2011, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and a **STIPULATION AND PROPOSAL FOR SETTLEMENT**, true and correct copies of which are attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

By: 

George D. Theophilos
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Fl.
Chicago, IL 60602
(312) 814-6986

DATE: March 31, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB _____
)	(Enforcement)
)	
NORTHERN ILLINOIS UNIVERSITY,)	
)	
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) (2010), and Section 103.300 of the Illinois Pollution Control Board (“Board”) Procedural Rules, 35 Ill. Adm. Code 103.300. In support of this Motion, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

* * *

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a

hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act

3. On March 31, 2011, the **Complaint** in this matter was filed with the Board.

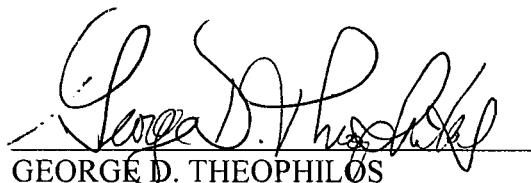
4. This motion is being filed concurrently with the **Complaint** since the parties to this action have reached a **Stipulation and Proposal For Settlement**. The **Stipulation and Proposal For Settlement** is being filed with the Board concurrently with this motion. No hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY:



GEORGE D. THEOPHILOS

Assistant Attorney General
Environmental Bureau/North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-6986

DATE: March 31, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB _____
)	(Enforcement)
)	
NORTHERN ILLINOIS UNIVERSITY,)	
)	
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 Northern Illinois University ("Respondent" or "NIU"), 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 to the Stipulation

1. On March 31, 2011, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2010).

3. At all times relevant to the Complaint, Respondent, a public teaching and research institution, was and is the owner and operator of the Northern Illinois University Campus located at 100 Stadium Drive, DeKalb, DeKalb County, Illinois ("Source").

4. On August 15, 1997, the Illinois EPA issued to Respondent, Clean Air Act Permit Program ("CAAPP") permit number 95060027 ("1997 CAAPP Permit"), pursuant to the Act, 415 ILCS 5/39.5. The expiration date of the 1997 CAAPP Permit was August 15, 2002.

5. The 1997 CAAPP Permit stated that Respondent was a major source of NO_x emissions generated by East and West Steam plants comprised of nine natural gas-fired boilers used to produce steam for the complex. The permit also stated that Respondent operates a gasoline storage tank for dispensing operations.

6. On December 19, 2002, the Illinois EPA received a CAAPP renewal application for permit number 95060027 from Respondent. The Illinois EPA granted the permit renewal on February 9, 2004 ("2004 CAAPP Permit"). The expiration date of the 2004 CAAPP Permit was February 8, 2009.

7. The 2004 CAAPP Permit stated that Respondent was a major source of NO_x emissions generated by East and West Steam plants comprised of nine natural gas-fired boilers used to produce steam for the complex. The permit also stated Respondent operates a gasoline storage tank for dispensing operations.

8. On April 5, 2007, the Illinois EPA issued a revision of Respondent's permit number 95060027 to include the operation of additional natural gas-fired boilers operated in the Convocation Center and Monsanto Building.

9. On August 30, 2007, the Illinois EPA sent a letter to Respondent stating that CAAPP permit number 95060027 would expire on February 8, 2009.

10. Respondent was required to submit its CAAPP permit renewal application no later than May 8, 2008, nine months prior to the expiration of its 2004 CAAPP Permit.

11. On November 19, 2009, Illinois EPA conducted a routine inspection of the Source and determined that since February 8, 2009, the Source was operating without the required CAAPP permit.

12. On March 18, 2010, the Illinois EPA sent a violation notice ("VN") letter to Respondent citing a violation of the Act resulting from operation of a major source without first timely applying for and obtaining a CAAPP permit issued by the Illinois EPA.

13. On April 27, 2010, the Illinois EPA received Respondent's CAAPP permit renewal application, approximately 23 months after the prescribed time period for the submission of a CAAPP permit renewal application.

14. By failing to timely submit its CAAPP permit renewal application, Respondent operates without the benefit of a CAAPP permit shield authorized by 415 ILCS 39.5(5)(1) (2010). Accordingly, Respondent failed to timely obtain from the Illinois EPA the requisite CAAPP permit, prior to February 8, 2009.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following

provisions of the Act:

Count I: By operating a CAAPP source without a CAAPP permit, Respondent has violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010).

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 above, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

On April 27, 2010, the Illinois EPA received Respondent's CAAPP permit renewal application.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA 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.

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 this Stipulation state the following:

1. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violation.
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. Submitting a CAAPP permit renewal application no later than nine months prior to the expiration of its 2004 CAAPP Permit and timely obtaining a CAAPP permit is both technically practicable and economically reasonable.
5. Respondent's renewal application is currently under technical review by the Illinois EPA.

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 this Stipulation state as follows:

1. From February 9, 2009, through the present, Respondent failed to obtain and operates without the requisite CAAPP permit issued by the Illinois EPA allowing the operation of an unpermitted major source. The gravity of the permit violation is enhanced given the Illinois EPA was not provided complete and accurate information in a timely manner, contained within a CAAPP permit application, relative to all emission sources operated by the source impeding the Illinois

EPA's ability to enforce and ensure compliance with the Act and Board regulations thereunder.

2. Respondent demonstrated an absence of due diligence in attempting to comply with the Act, prior to the issuance of the VN letter by the Illinois EPA as evidenced by its failure to timely apply for and obtain the requisite CAAPP permit.

3. Any economic benefit attributable to the noncompliance at issue would be minimal.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA's knowledge, Respondent has no previously adjudicated violations of the Act.

6. There was no self-disclosure of the violations contained within this referral.

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 Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to 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
69 West Washington Street
Chicago, Illinois 60602

D. Future Compliance

1. Effective immediately, Respondent shall at all times operate its facility consistent with conditions set forth within CAAPP Permit number 95060027, which expired February 8, 2009, until such time as it is issued an operating permit.

2. Effective immediately upon the issuance of an operating permit by the Illinois EPA, Respondent shall at all times operate its facility in compliance with all of the terms and conditions of the operating permit, including any and all special conditions contained therein.

3. Respondent shall at all times in the future timely submit to the Illinois EPA all CAAPP applications.

4. 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.

5. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

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

7. This Stipulation does not serve as a permit issued by the Illinois EPA authorizing operation of the Source and shall not be construed as such.

E. Release from Liability

In consideration of the Respondent's payment of the \$10,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant and the Illinois EPA release, waive and discharge 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 March 31, 2011. 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' 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 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.

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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

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


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

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

NORTHERN ILLINOIS UNIVERSITY

BY: 

Name: Dr. Eddie R. Williams

Title: Executive Vice President for Business and Finance
Chief of Operations

and

Treasurer of the NIU Board of Trustees

Stipulation and to legally bind them to it.

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

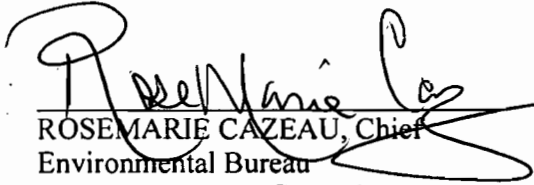
PEOPLE OF THE STATE OF ILLINOIS,


FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
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Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 3/31/11

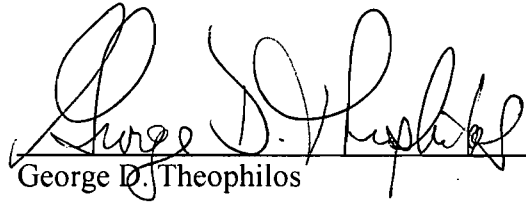
DATE: 3/25/11

NORTHERN ILLINOIS UNIVERSITY

BY: _____
Name: _____
Title: _____

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused the foregoing **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and **STIPULATION AND PROPOSAL FOR SETTLEMENT** to be electronically mailed to the persons listed on the attached Service List on this the 31st day of March, 2011.


George D. Theophilos