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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD DEC - 5 2003

PEOPLE OF THE STATE OF ILLINOIS,)	STATE OF ILLINOIS
)	<i>Pollution Control Board</i>
Complainant,)	
)	
-vs-)	PCB No. 02-162
)	(Enforcement-Land)
FOX VALLEY DRY WALL, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

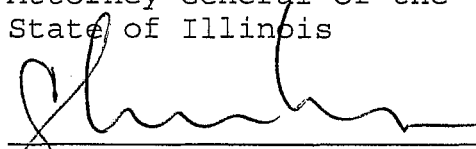
NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, December 5, 2003, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of a Stipulation and Proposal for Settlement, and Motion to Request Relief from Hearing Requirement, copies of which are attached herewith and served upon you.

PEOPLE OF THE STATE OF ILLINOIS

ex rel. LISA MADIGAN
Attorney General of the
State of Illinois

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

PEOPLE OF THE STATE OF ILLINOIS,

DEC - 5 2003

Complainant,

STATE OF ILLINOIS
Pollution Control Board

-vs-

PCB No. 02-162
(Enforcement-Land)

FOX VALLEY DRY WALL, INC.,
an Illinois corporation,

Respondent.

MOTION TO REQUEST 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
requests relief from the requirement of a hearing in this matter.
In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a
Stipulation and Proposal for Settlement executed between
Complainant and Respondent, FOX VALLEY DRY WALL, INC.

2. The Parties' Stipulation calls for continued
remediation of the subject property, and payment of penalty and
costs.

3. Section 31 of the Act, 415 ILCS 5/31 (2002), provides, in
pertinent part, as follows:

* * *

(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).

* * *

4. No hearing is now scheduled in this matter.

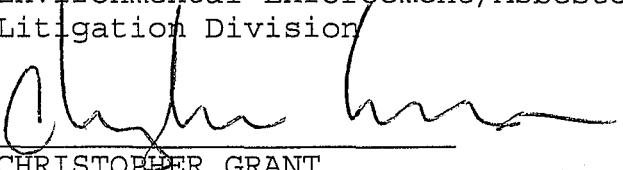
5. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2002).

Respectfully submitted,

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

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

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., #2001
Chicago, Illinois 60601
(312) 814-5388

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DEC - 5 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
)	
-vs-)	PCB No. 02-162
)	(Enforcement-Land)
FOX VALLEY DRY WALL, 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, on her own motion and at the request of the Illinois Environmental Protection Agency, and Respondent, FOX VALLEY DRY WALL, INC., an Illinois corporation, do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). 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 full 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 this or any other proceeding except to enforce the terms of this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be

used in any future enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2002).

I.
JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2002).

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 Proposal for Settlement and to legally bind them to it.

III.
APPLICABILITY

A. 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, or employees to take such action as shall be required to comply with the provisions of this Stipulation.

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a contemplated future owner or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent.

C. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make the prospective purchaser or successor's compliance with this Stipulation a condition of any such sale or transfer and shall provide a copy of this Stipulation to any such successor in interest. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

D. The Respondent shall notify each prime contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than 30 days after the date of entry of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brought this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, FOX VALLEY DRY WALL, INC., is an Illinois corporation, authorized to do business under the laws of the State of Illinois.

B. Facility Description

At all times relevant to the Complaint, the Respondent owned and operated a 1,000 gallon underground petroleum storage tank ("UST") located at 707 North Highland Avenue, Aurora, Kane County Illinois ("Site"). On September 2, 1998, the Respondent reported the release of petroleum from the UST.

C. Noncompliance

Complainant has alleged the following violations of the Act against the Respondent:

COUNT I: FAILURE TO PERFORM TIMELY SITE CLASSIFICATION,
Violation of Sections 57.6 and 57.7(b) of the Act,
415 ILCS 5/57.6 and 5/57.7(b) (2002), and 35 Ill.
Adm. Code 732.300(a), 732.100(c) and 732.307(b);

COUNT II: FAILURE TO PERFORM EARLY ACTION REQUIREMENTS,
Violation of Section 57.6 of the Act, 415 ILCS
5/57.6 (2002), and 35 Ill. Adm. Code 732.202.

D. Response to allegations

The Respondent admits the allegations in the complaint.

V.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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.

ANALYSIS:

The parties mutually state as follows:

1. Character and Degree of Injury:

The impact to the public from the alleged violations of the Act was a delay in characterizing the extent of contamination from the release and the threat of migration of petroleum off of the Site.

2. Social and Economic Benefit:

The parties agree that operation of the Respondent's business at the Site is of social and economic benefit.

3. Suitability to the Area:

Operation of the Respondent's business is suitable to the area, provided that releases of petroleum are addressed quickly and in conformance with the requirements of the Act and Board UST response regulations.

4. Technical Practicability:

Responding to the release of petroleum pursuant to the requirements of the Act and Board Underground Storage Tank regulations, is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

The Respondent has submitted the overdue 20 and 45 day reports. The Respondent also has submitted, and Illinois EPA has approved, an Amended Corrective Action Plan ("Amended CAP"). The Respondent has begun remediation of on-site and off-site petroleum contamination pursuant to the approved Amended CAP.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), 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 violator 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 violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons

similarly subject to the Act; and

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

Count I: The violations continued from September 2, 1998 until April 16, 2000.

Count II: The violations continued from September 22, 1998 until April 24, 2000.

2. *Diligence of Respondent:*

Since December, 2000, the Respondent has been diligent in submitting a Site Classification Work Plan, Corrective Action Plan, and Amended Corrective Action Plan, and is remediating the Site pursuant to Illinois EPA approved plans.

3. *Economic Benefit of Noncompliance:*

The Respondent received some economic benefit by failing to arrange for and submit the required reports to Illinois EPA. However, the Respondent has now submitted all reports and has begun corrective action. The Respondent therefore only delayed the cost of complying with the pertinent regulations. Although the Respondent realized some economic benefit through this delay, the amount of economic benefit is difficult to determine.

4. *Deterrence:*

A penalty of Eight Thousand Dollars (\$8,000.00) against the

Respondent, and costs and fees of Two Thousand Dollars (\$2,000.00) will deter future noncompliance by the Respondent and others.

5. *Compliance History:*

The Respondent has no previously adjudicated violations of the Act and Board Regulations.

VII.

TERMS OF SETTLEMENT

A. CIVIL PENALTY AND COSTS

1. The Respondent shall pay a civil penalty of Eight Thousand Dollars (\$8,000.00), and costs and fees of Two Thousand Dollars (\$2,000.00), within thirty (30) days of the date upon which the Board issues a final Order accepting this Stipulation and Proposal for Settlement.

2. Payment of civil penalty shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund ("EPTF"), and shall be sent by first class mail to:

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

The name and number of the case and the Respondent's Federal Employers Identification Number ("FEIN") number shall appear on the face of the check. A copy of the check and the transmittal letter shall be sent by first class mail to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

3. Respondent shall pay fees and costs of Two Thousand Dollars (\$2,000.00) within 30 days of the date upon which the Board issues a final Order accepting this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the "Attorney General State Projects and Court Ordered Distribution Fund", and shall be sent by first class mail to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

4. For purposes of payment and collection, Respondent's attorney may be reached at the following address:

Gretta E. Bieber
Alschuler, Simantz & Hem, LLC
1961 W. Downer Place
Aurora, IL 60506-4384

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

707 North Highland Avenue
Aurora, Illinois 60506

6. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

B. FUTURE COMPLIANCE

1. The Respondent submitted a corrective action plan to the Illinois EPA that was received on January 22, 2002, and approved by the Illinois EPA on February 7, 2002. In accordance with the request of the Illinois EPA, the Respondent submitted an Amended High Priority Correction Action Plan and Budget ("Approved Amended CAP") that was received by the Illinois EPA on May 15, 2002 and approved on May 31, 2002. The Amended CAP had two soil remediation components: soil removal on the adjacent property formerly owned by John Bradley ("Bradley Property"), and soil bio-remediation for the Site.

2. The Respondent shall complete remediation of the Site and the Bradley Property in accordance with the Approved Amended CAP, according the schedule contained therein.

3. The Approved Amended CAP may be modified upon application by Respondent and approval by Illinois EPA. In addition, if at any time the Illinois EPA determines upon its review of the progress of remediation that further modifications to the Approved Amended CAP are necessary to achieve established cleanup objectives, the Illinois EPA may require the Respondent to submit a modified Corrective Action Plan. Upon such notice from Illinois EPA, Respondent shall submit a modified Corrective Action Plan within the time specified by Illinois EPA.

4. Within 45 days after completing performance of the

Approved Amended CAP, or an Illinois EPA-approved modification thereto, the Respondent shall submit to Illinois EPA a Final Corrective Action Completion Report ("Completion Report") that complies with 35 Ill. Adm. Code 732.409, and shall perform any additional work to achieve Illinois EPA acceptance of the Completion Report.

5. Upon Illinois EPA approval of the Completion Report, Illinois EPA shall issue a 'no further remediation' letter to Respondent, in accordance with 35 Ill. Adm. Code Part 732, Subpart G. Upon receipt, Respondent shall comply with 35 Ill. Adm. Code 732.703.

6. Unless otherwise extended by Illinois EPA in writing, Respondent shall complete all of the activities required herein by January 2, 2006.

C. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VII.A. and D. of this Stipulation shall be submitted as follows:

As to the Complainant
Mr. Scott McGill
Illinois Environmental Protection Agency
Bureau of Land-LUST Section #24
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondents
Mr. Trent Schleifer
Fox Valley Dry Wall, Inc.
707 North Highland Avenue
Aurora, Illinois 60506

D. Stipulated Penalties

1. If the Respondent fails to complete any activity by the dates specified in Section VII.B. of this Stipulation and Proposal for Settlement, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and Proposal for Settlement. In addition, the Respondent shall pay to the Complainant, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of One Hundred Dollars (\$100.00) until such time that compliance is achieved. However, In the event that compliance date(s) are extended or modified pursuant to Paragraph VII.B.3., the extended or modified compliance schedule shall apply for the purpose of determining whether stipulated penalties shall be assessed.

2. Following the Complainant's determination that the Respondent has failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Complainant may make a demand for stipulated penalties upon Respondent for its noncompliance with this Stipulation and Proposal for Settlement. Failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties.

3. All penalties owed the Complainant under this section of this Stipulation and Proposal for Settlement that have not been paid shall be payable within thirty (30) days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation and Proposal for Settlement.

4. a. All stipulated penalties shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF and delivered to:

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

b. The name and number of the case and the Respondent's FEIN number shall appear on the face of the check. A copy of the check(s) and the transmittal letter shall be sent to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

5. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation and Proposal for Settlement.

E. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN number shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

VIII.

CEASE AND DESIST

Respondent shall cease and desist from future violations of

the Act and Board regulations, including but not limited to, those sections of the Act and Board regulations that were the subject matter of the complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any other federal state or local regulations, including but not limited to the Act and Board regulations.

X.

Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, his agents 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 carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives may take photographs, samples, and collect information, as they deem necessary.

XI.

Release from Liability

In consideration of the Respondent's payment of a \$8,000.00 penalty, fees and costs of \$2,000.00, and upon the completion of all activities required hereunder, the Complainant releases,

waives and discharges the Respondent, its officers, directors, agents, employees, successors and assigns, 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 April 2, 2002. 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 3.26 of the Act, 415 ILCS 5/3.26 (2002), or entity other than the Respondent.

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

AGREED:

FOR THE COMPLAINANT:

LISA MADIGAN
Attorney General of
the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 11/6/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 10-30-03

FOR RESPONDENT FOX VALLEY DRYWALL, INC.

BY: 

TITLE Resident

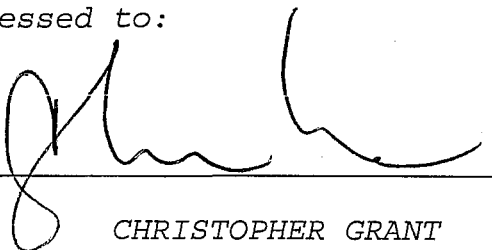
Dated: 11-25-03

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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-vs-)	PCB No. 02-162
)	(Enforcement-Land)
FOX VALLEY DRY WALL, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 5th of December, 2003, the foregoing Stipulation and Proposal for Settlement, Motion to waive the Requirement of a Hearing, and Notice of Filing, upon the person listed below, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois and addressed to:


CHRISTOPHER GRANT

Service List:

Ms. Gretta Bieber
Alshuler Simantz & Hem LLC
1961 W. Downer Place
Aurora, IL 60506-4384