

\* \* \* \* \* PCB 2011-018 \* \* \* \* \*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. _____
	)	
SUB SOURCE, INC., an Illinois corporation,	)	(Enforcement-RCRA)
	)	
Respondent.	)	

NOTICE OF ELECTRONIC FILING

TO: Timothy A. Miller  
Law Office of Timothy A. Miller P.C.  
6957 Olde Creek Road Suite 2300  
Rockford, IL 61114-7425

PLEASE TAKE NOTICE that today, October 27, 2010, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, Stipulation and Proposal for Settlement, and a Motion to Request Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.


\*\*\*\*\* PCB 2011-018 \*\*\*\*\*

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 *et seq.*) to correct the alleged pollution.

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

BY:

  
\_\_\_\_\_  
NANCY J. TIKALSKY  
Assistant Attorney General  
Environmental Bureau North  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602  
312-814-8567

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Dated: October 27, 2010

\* \* \* \* \* PCB 2011-018 \* \* \* \* \*

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SUB SOURCE, INC., an Illinois corporation,	)	(Enforcement-RCRA)
	)	
Respondent.	)	

**COMPLAINT FOR CIVIL PENALTIES**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, SUB SOURCE, INC., an Illinois corporation, as follows:

**NATURE OF THE ACTION**

1. This action is brought 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") pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010). Plaintiff seeks injunctive relief and civil penalties for the improper storage of hazardous waste at a metal finishing and coating facility located at 600 18th Avenue, Rockford, Winnebago County, Illinois ("Facility").

**THE PARTIES**

2. The Illinois EPA is an administrative agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this complaint, Respondent Sub Source, Inc. has been and is an Illinois corporation, duly authorized to do business in the State of Illinois.

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4. At all times relevant to this complaint, Respondent owned and conducted operations at the Facility.

**FACTUAL ALLEGATIONS**

5. The Facility provides metal finishing, nondestructive testing, powder coating and painting to various industries including aerospace, agricultural, automotive, construction, energy and machine tool manufacturers.

6. The Facility houses several paint booths, powder booths, and metal finishing tanks and maintains its own wastewater treatment system.

7. The Respondent uses several types of chemicals at the Facility, including oil, acids, wet paint, powder paint, water treatment chemicals, cleaning solvents, and general chemicals used for maintenance and cleaning.

8. As part of the manufacturing processes, the Respondent generates spent paint booth filters ("paint filters") that are stored in 55-gallon steel drums. Respondent also generates wastewater treatment sludge ("filter cakes"), a byproduct from the chemical conversion coating of aluminum that is stored in fiber bags and placed on wooden pallets or inside bins.

9. On August 20, 2009, the Illinois EPA received a complaint that Respondent's Facility had four large fiber bags containing filter cakes with hazardous waste labels on them at the loading dock. The complainant stated that one of the bags was leaking.

10. On August 29, 2009, the Illinois EPA inspected the Facility ("August Inspection"). During the August Inspection, there were four one-cubic yard fiber bags containing filter cakes sitting on wooden pallets at the loading dock on the south side of

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the Facility. All the bags were in various stages of decay and had leaked. All four bags had hazardous waste labels that were dated January 28, 2009.

11. During the August Inspection, there was an open bin of filter cakes with a hazardous waste label on it at the Facility's wastewater treatment plant filter press.

12. During the August Inspection, two 55-gallon steel drums with hazardous waste labels on them, one open and one closed, contained paint filters that were located on the east side of the Facility.

13. During the August Inspection, the Illinois EPA inspector ("Inspector") reviewed the Respondent's most recent hazardous waste manifests. The most recent manifest showed that one bag of filter cakes was shipped from the Facility on January 28, 2009. The Respondent also shipped from the Facility twelve drums of paint filters on January 28, 2009. The manifest listed all of the paint filters and filter cakes as "F005 and D007 for chrome content".

14. Upon information and belief, the Respondent accumulated and stored containers of hazardous waste consisting of paint filters and filter cakes at the Facility prior to the August Inspection.

15. On September 1, 2009, the Inspector returned to the Facility to complete a full compliance evaluation inspection ("September Inspection"). During the September Inspection, the Inspector was provided with copies of manifests dated August 31, 2009 showing that the fiber bags of filter cakes observed during the August Inspection, and drums of paint filters, had been shipped off-site to Bellville, Michigan.

16. In a letter from Respondent to the Illinois EPA dated October 16, 2009, Respondent stated: "Two types of hazardous waste are generated at the company: spent

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paint booth filters containing chromium (D007) and wastewater treatment sludge from the chemical conversion coating of aluminum (F019).”

**CLAIM FOR RELIEF**

**COUNT I**  
**CONDUCTING A HAZARDOUS WASTE STORAGE**  
**OPERATION WITHOUT A RCRA PERMIT**

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 16 of the foregoing sections of this Complaint entitled “Nature of the Action,” “The Parties,” and “Factual Allegations,” as paragraphs 1 through 16 of this Count 1.

17. Section 721.102 of the Illinois Pollution Control Board (“Board”) Waste Disposal Regulations, 35 Ill. Adm. Code 721.102, provides in pertinent part, as follows:

**Definition of Solid Waste**

a) Solid waste.

1) A solid waste is any discarded material that is not excluded by Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131.

2) A discarded material is any material that is described as follows:

A) Abandoned, as explained in subsection (b) of this Section;

\* \* \*

b) A material is a solid waste if it is abandoned in one of the following ways:

1) It is disposed of;

2) It is burned or incinerated; or

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3) It is accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

\* \* \*

18. The materials at the Facility during the August Inspection were accumulated and stored in lieu of being disposed, and were "solid waste" as that term is defined in Section 721.102 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102, as they are not excluded pursuant to Sections 721.104(a), 721.130, and 721.131, 35 Ill. Adm. Code 721.104(a), 721.130, and 721.131.

19. Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.103, provides in pertinent part, as follows:

**Definition of Hazardous Waste**

a) A solid waste, as defined in Section 721.102, is a hazardous waste if the following is true of the waste:

1) It is not excluded from regulation as a hazardous waste pursuant to Section 721.104(b); and

2) It meets any of the following criteria:

A) It exhibits any of the characteristics of hazardous waste identified in Subpart C of this Part....

B) It is listed in Subpart D of this Part and has not been excluded from the lists in Subpart D of this Part pursuant to 35 Ill. Adm. Code 720.120 and 720.122.

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20. Section 721.120 of Subpart C of Part 721 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.120, provides in pertinent part, as follows:

**General**

a) A solid waste, as defined in Section 721.102, which is not excluded from regulation as a hazardous waste under Section 721.104(b), is a hazardous waste if it exhibits any of the characteristics identified in this Subpart C.

21. Section 721.124 of Subpart C of Part 721 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.124, provides in relevant part as follows:

**Toxicity Characteristic**

a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using Method 1311 (Toxicity Characteristic Leaching Procedure (TCLP)) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA publication number EPA 530/SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111(a), the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) of this Section at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this Section.

b) A solid waste that exhibits the characteristic of toxicity has the USEPA hazardous waste number specified in the following table that corresponds to the toxic contaminant causing it to be hazardous.

**MAXIMUM CONCENTRATION OF CONTAMINANTS  
FOR THE TOXICITY CHARACTERISTIC**

USEPA Hazardous Waste No.	Contaminant	CAS Number	Note	Regulatory Level (mg/ℓ)
D007	Chromium	7440-47-3		5.0



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22. In its October 16, 2009 letter to the Illinois EPA, Respondent admitted that the paint filters at the Facility during the August Inspection were a hazardous waste “containing chromium (D007).”

23. The paint filters at the Facility during the August Inspection exhibited the characteristic of toxicity for chromium as it is listed as U.S. EPA Hazardous Waste No. D007 pursuant to Section 721.124(b) of Subpart C of Part 721 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.124(b). Accordingly, the paint filters are a “hazardous waste” as that term is defined in Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.103, as they are not excluded pursuant to Section 721.104(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.104(b).

24. Section 721.131 of Subpart D of Part 721 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.131, provides in relevant part as follows:

**Hazardous Waste from Nonspecific Sources**

a) The following solid wastes are listed hazardous wastes from non-specific sources, unless they are excluded under 35 Ill. Adm. Code 720.120 and 720.122 and listed in Appendix I of this Part.

USEPA Hazardous Waste No.	Industry and Hazardous Waste	Hazard Code
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)

\* \* \*

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25. In its October 16, 2009 letter to the Illinois EPA, Respondent admitted that the filter cakes located at the Facility during the August Inspection were “generated ... from the chemical conversion coating of aluminum (F019).”

26. The filter cakes located at the Facility during the August Inspection generated by the process of chemical conversion coating of aluminum are listed as U.S. EPA Hazardous Waste No. F019 pursuant to 35 Ill. Adm. Code 721.131(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.131(a).

27. The filter cakes generated by the Respondent have not been excluded by rulemaking pursuant to 35 Ill. Adm. Code 720.120 and have not been delisted as a hazardous waste pursuant to 35 Ill. Adm. Code 720.122.

28. Therefore, the filter cakes generated by the Respondent at the Facility and listed as U.S. EPA Hazardous Waste No. F019 are “hazardous waste” as that term is defined in Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.103, as they are not excluded pursuant to Section 721.104(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.104(b).

29. Section 21(f)(1) and (2) of the Act, 415 ILCS 5/21(f)(1) and (2)(2010), provides, in pertinent part, as follows:

No person shall:

\* \* \*

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

- (1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit...; or
- (2) in violation of any regulations or standards adopted by the Board under this Act;

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30. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

31. Respondent is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

32. Section 703.121(a)(1) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a)(1) and (b), provides as follows:

**RCRA Permits**

(a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:

(1) Without a RCRA permit for the HWM (hazardous waste management) facility; or

\* \* \*

(b) An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit.

\* \* \*

33. Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 702.110, provides the following definitions:

"Disposal" (RCRA) means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

"Facility or activity" (RCRA and UIC) means any HWM facility, UIC injection well, or any other facility or activity (including land

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or appurtenances thereto) that is subject to regulations under the Illinois RCRA or UIC program.

"Hazardous waste" (RCRA and UIC) means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.

"Hazardous waste management facility" or "HWM facility" (RCRA) means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the RCRA or UIC program.

"RCRA permit" (RCRA) means a permit required pursuant to Section 21(f) of the Act [415 ILCS 5/21(f)].

"Storage" (RCRA) means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

34. From January 28, 2009 through August 31, 2009, or a date or dates better known to the Respondent, the Respondent held hazardous waste at the Facility for a temporary period, and thereby conducted "storage" of hazardous waste as that term is defined in Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 702.110.

35. From January 28, 2009 through the date of filing of this complaint, or a date or dates better known to the Respondent, Respondent was the "owner and/or operator" of a "hazardous waste management facility" as those terms are defined in Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 702.110.

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36. From January 28, 2009 through August 31, 2009, or a date or dates better known to the Respondent, Respondent conducted a hazardous waste storage operation at the Facility.

37. From January 28, 2009 through August 31, 2009, or a date or dates better known to the Respondent, Respondent did not have a RCRA permit when the Facility was used as a hazardous waste management facility.

38. From January 28, 2009 to August 31, 2009, or a date better known to the Respondent, the Respondent failed to obtain a RCRA permit for the Facility in violation of Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1)(2010), and Sections 703.121(a)(1) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a)(1) and (b).

39. By violating Sections 703.121(a)(1) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a)(1) and (b), Respondent violated Section 5/21(f)(2) of the Act, 415 ILCS 5/21(f)(2)(2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, SUB SOURCE, INC.:

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

2. Finding that Respondent violated Sections 21(f)(1) and (2) of the Act, 415 ILCS 5/21(f)(1) and (2)(2010), and Sections 703.121(a)(1) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a)(1) and (b);

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3. Ordering the Respondent to cease and desist from any further violations of Sections 21(f)(1) and (2) of the Act, 415 ILCS 5/21(f)(1) and (2)(2010), and Sections 703.121(a)(1) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a)(1) and (b);

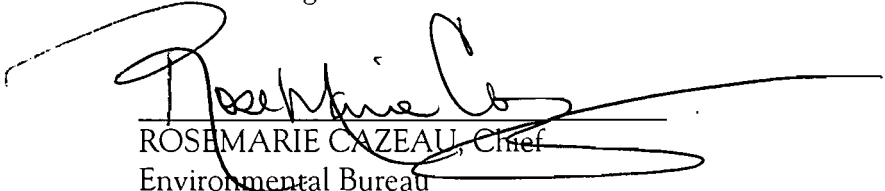
4. Assessing against Respondent pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3)(2010), a civil penalty of twenty-five- thousand dollars (\$25,000.00) for each day of violation for each and every violation of the Act and related RCRA regulations;

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

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

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



ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO.
	)	(Enforcement)
	)	
SUB SOURCE, 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 SUB SOURCE, INC. ("Respondent") ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2010), and the Board's Waste Disposal Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

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## I. STATEMENT OF FACTS

### A. Parties

1. On October 27, 2010, 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 was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a metal finishing and coating facility located at 600 18<sup>th</sup> Avenue, Rockford, Winnebago County, Illinois ("Facility").

4. On August 29, 2009, the Illinois EPA inspected the Facility ("August Inspection"). During the August Inspection, there were four one-cubic yard fiber bags containing filter cake sitting on wooden pallets at the loading dock on the south side of the Facility. All the bags were in various stages of decay and had leaked. All four bags had hazardous waste labels that were dated January 28, 2009.

5. On September 1, 2009, the Inspector returned to the Facility to complete a full compliance evaluation inspection ("September Inspection").

6. On September 9, 2009, the Illinois EPA issued a Violation Notice to Respondent.



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7. On October 16, 2009, Respondent submitted a proposed Compliance Commitment Agreement ("CCA"). On November 6, 2009, the Illinois EPA rejected the proposed CCA.

8. On January 7, 2010, the Illinois EPA sent a Notice of Intent to Pursue Legal Action ("NIPLA"). Pursuant to the January 7, 2010 NIPLA, a teleconference was scheduled and held on January 21, 2010 between the Illinois EPA and the Respondent.

**B. Allegations of Non-Compliance**

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

**COUNT I: CONDUCTING A HAZARDOUS WASTE STORAGE OPERATION WITHOUT A RCRA PERMIT**

Sections 21(f)(1) and (2) of the Act, 415 ILCS 5/21(f)(1) and (2) (2010), and Sections 703.121(a)(1) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a)(1) and (b).

**C. 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**

During the September Inspection, the Inspector was provided with copies of manifests dated August 31, 2009 showing that the fiber bags of filter cake observed during the August

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Inspection, and drums of paint filters, had been shipped off-site to Bellville, Michigan. In a letter dated October 16, 2009, Respondent stated that a weekly inspection schedule had been established and executed for all hazardous waste accumulation areas.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

## III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2010), provides as follows:

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

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

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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. The Respondent failed to obtain a permit to temporarily store hazardous waste material at the Facility. Additionally, the source failed to maintain the hazardous waste in a manner that protects public health and safety when it allowed hazardous waste storage bins to be uncovered and when it did not package hazardous waste in a manner to prevent hazardous waste from discharging into the environment at the Facility. The unpermitted operations began on or around January 28, 2009. The Respondent shipped the hazardous waste from the Facility more than 270 miles to Bellville, MI for disposal on August 31, 2009.

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 requisite permit or complying with the regulatory requirements of the small waste generator exemption prior to operation of a hazardous waste storage operation 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)(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:

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1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

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

1. The Respondent failed to obtain a permit for operation of a hazardous waste storage operation or to comply with the regulatory requirements of the small waste generator exemption prior to operation of a hazardous waste storage operation. The violations began on or around January 28, 2009 and continued through on or about August 31, 2009. Violations were resolved on or around August 31, 2009.

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2. Respondent was not diligent in preventing the violations of the Act, Board regulations and applicable federal regulations. Respondent was cooperative when attempting to come back into compliance with the Act and regulations thereunder, once the Illinois EPA notified it of its noncompliance.

3. Respondent did not recognize an economic benefit because any economic benefit would have been as a result of a delayed expenditure, which would have been minimal.

4. Complainant has 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 knowledge, Respondent has no previously adjudicated violations of the Act.

6. Respondent did not self-disclose.

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

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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:

Nancy J. Tikalsky  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

\* \* \* \* \* PCB 2011-018 \* \* \* \* \*

**D. Future Compliance**

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. 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.

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

**E. Release from Liability**

In consideration of the Respondent's payment of the \$10,000.00 penalty and any specified costs and accrued interest, its commitment to cease and desist as contained in Section V.D.2. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on October 27, 2010. The Complainant reserves, and this

\* \* \* \* \* PCB 2011-018 \* \* \* \* \*

Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

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

**F. Enforcement 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 the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.



\* \* \* \* \* PCB 2011-018 \* \* \* \* \*

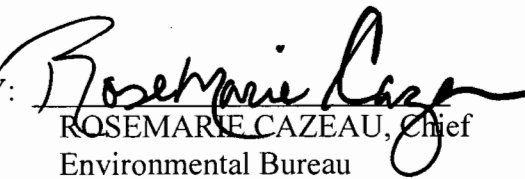
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 10/21/10

DATE: 10/19/10

SUB SOURCE, INC.

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\* PCB 2011-018 \*\*\*\*\*

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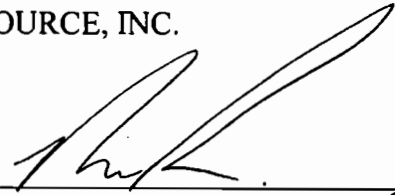
BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SUB SOURCE, INC.

BY:   
Name: MICHAEL REINHART  
Title: V.P.

DATE: 10-22-10

\* \* \* \* \* PCB 2011-018 \* \* \* \* \*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. _____
	)	
SUB SOURCE, INC., an Illinois corporation,	)	(Enforcement-RCRA)
	)	
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 hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On October 27, 2010, Complaint number PCB \_\_\_\_\_ was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. On October 27, 2010, a Stipulation and Proposal for Settlement was filed with the Board.
3. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.

\* \* \* \* \* PCB 2011-018 \* \* \* \* \*

4. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2010), provides as follows:

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).


5. No hearing is currently scheduled in the instant case.

6. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2)(2010).

Respectfully submitted,

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

BY:   
NANCY J. TIKALSKY  
Assistant Attorney General  
Environmental Bureau North  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602  
312-814-8567

\*\*\*\*\* PCB 2011-018 \*\*\*\*\*

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. _____
	)	
SUB SOURCE, INC., an Illinois corporation,	)	(Enforcement-RCRA)
	)	
Respondent.	)	

**CERTIFICATE OF SERVICE**

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Stipulation and Proposal for Settlement and Plaintiff's Motion to Request Relief from Hearing Requirement and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on October 29, 2010.

BY:   
NANCY J. TIKALSKY