

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. Lisa Madigan, Attorney General of  
the State of Illinois,**

**Complainant,**

**v.**

**LASALLE STREET CAPITAL, INC., an  
affiliate of Bank of America, National  
Association,**

**Respondent.**

**PCB 12-125  
(Enforcement Air)**

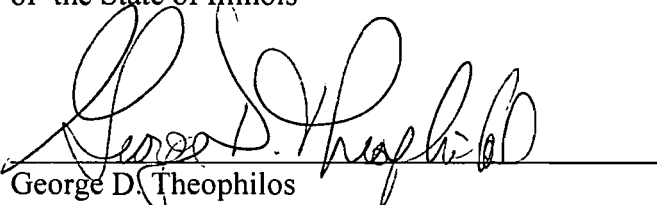
**NOTICE OF FILING**

To: See attached Service List

PLEASE TAKE NOTICE that on the 1st day of May, 2012, 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, 18<sup>th</sup> Fl.  
Chicago, IL 60602  
(312) 814-6986  
gtheophilos@atg.state.il.us

DATE: May1, 2012

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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**Respondent.**

PCB 12-125  
(Enforcement Air)

**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 May 1, 2012, the Complaint in this matter was filed with the Board.

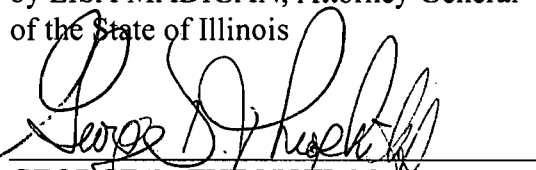
4. The parties to this action reached agreement on a Stipulation and Proposal For Settlement, which is being filed with the Board concurrently with this motion. No hearing is currently scheduled in this case.

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  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602  
312-814-6986  
[gtheophilos@atg.state.il.us](mailto:gtheophilos@atg.state.il.us)

DATE: May 1, 2012

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. Lisa Madigan, Attorney General of  
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**Complainant,**

v.

**LASALLE STREET CAPITAL, INC., an  
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**Respondent.**

**PCB 12-125  
(Enforcement Air)**

**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 LaSalle Street Capital, Inc., an affiliate of Bank of America, National Association (“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. 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 May 1, 2012, 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. Respondent, a Delaware corporation registered to do business in Illinois, has operated (and currently does operate) a facility at 540 West Madison Street, Chicago, Cook County, Illinois that includes the following emission units: seven emergency diesel electric generators, two 220-volt fuel heaters, and four fuel storage tanks ("Source"). The source has a potential to emit ("PTE") for nitrous oxides ("NO<sub>x</sub>") greater than 100 tons per year.

4. The Respondent acquired an interest in the Source on or about July 21, 2008.

5. Although the Respondent acquired an interest in the Source in July 21, 2008, Respondent did not submit a Clean Air Act Permit Program ("CAAPP") permit or Federally Enforceable State Operating Permit ("FESOP") application to the Illinois EPA until August 24, 2009.

6. On September 2, 2009 the Illinois EPA notified Respondent that its permit application was complete pursuant to Section 39.5(5) of the Act, 415 ILCS 5/39.5(5) (2010).

7. Since the Source has a PTE for NO<sub>x</sub> greater than 100 tons per year, the Source is subject to the CAAPP permit requirements set forth in Section 39.5 of the Act, 415 ILCS 5/39.5 (2010).

8. By operating a CAAPP source for approximately 13 months before applying for a CAAPP or FESOP permit, Respondent operated, and continues to operate, a CAAPP source

without a CAAPP permit in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010).

9. In addition, as an owner or operator of emission units and air pollution control equipment, Respondent is required to submit an Annual Emissions Report ("AER") to the Illinois EPA by May 1 of the year following the calendar year in which the emissions took place.

10. Respondent failed to timely submit its AER for the calendar year 2008.

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA allege 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).

Count II: By failing to timely submit AERs for 2008, Respondent has violated Sections 201.302(a), 254.137(a) and 254.132(a) of 35 Ill. Adm. Code, and thereby, violated Section 9(a) of the Act, 415 ILCS 5/9(a).

**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 an admission.

**D. Compliance Activities to Date**

1. On or about August 24, 2009, the Illinois EPA received Respondent's FESOP permit application on CAAPP forms. The application is undergoing technical review by the Illinois EPA.

2. On August 30, 2011, Respondent submitted the AER for calendar year 2008 to the Illinois EPA.

## **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 is suitable for the area in which it occurs.
4. Timely obtaining a CAAPP or FESOP permit and timely submitting AERs are both technically practicable and economically reasonable.
5. Respondent submitted a FESOP permit application on CAAPP forms, which 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.
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.



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

1. From July 21, 2008 through the present, Respondent failed to obtain, and therefore operated without, the requisite CAAPP or FESOP permit issued by the Illinois EPA and Respondent failed to timely submit the 2008 AER.

2. Respondent submitted a FESOP permit application on CAAPP forms prior to the issuance of the Violation Notice by the Illinois EPA. Respondent submitted its 2008 AER on August 30, 2011.

3. The economic benefit attributable to the noncompliance at issue is Three Thousand Six Hundred dollars (\$3,600), representing avoided air pollution site fees.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,600.00) 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.

8. A Compliance Commitment Agreement was proposed by Respondent, but rejected by the Illinois EPA.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Fifteen Thousand Dollars (\$15,600.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. Three Thousand Six Hundred dollars (\$3,600) of the civil penalty represents the economic benefit

obtained from avoided air pollution site fees. Payment of the civil penalty shall be made in accordance with the procedures set forth in paragraph V. C below.

**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. One payment of Twelve Thousand dollars (\$12,000) shall be directed for deposit into the Environmental Protection Trust Fund ("EPTF"); the second payment of Three Thousand Six Hundred dollars (\$3,600) shall be directed for deposit into the Permit and Inspection Fund. 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 checks or money orders. A copy of the certified checks or money orders 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. Respondent shall at all times operate its facility in compliance with the Act and applicable regulations.

2. Upon the issuance of the FESOP permit by the Illinois EPA, Respondent shall at all times operate its facility in compliance with all of the terms and conditions of the FESOP permit, including any and all special conditions contained therein. The Respondent may continue to operate the facility in compliance with the Act and Board regulations prior to the issuance of a FESOP.

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

4. Respondent shall at all times in the future timely submit to the Illinois EPA all required AERs.

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 payments of the \$15,600.00 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, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of 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 May 1, 2012. 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 and Modification of Stipulation**

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

**G. Execution of Stipulation**

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

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

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PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

JOHN J. KIM, Interim Director  
Illinois Environmental Protection Agency


BY: \_\_\_\_\_  
ELIZABETH WALLACE, Supervising  
Attorney, Environmental Enforcement  
Bureau North

BY: \_\_\_\_\_  
JOHN J. KIM,  
Interim Director

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

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

LASALLE STREET CAPITAL, INC., AN  
AFFILIATE OF BANK OF AMERICA,  
NATIONAL ASSOCIATION

BY:   
Name: Brian Astwood  
Title: VP, Property Director

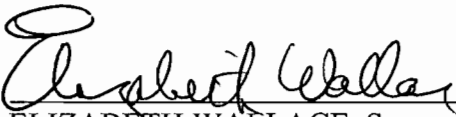
DATE: 5/1/12


PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

JOHN J. KIM, Interim Director  
Illinois Environmental Protection Agency

BY:   
ELIZABETH WALLACE, Supervising  
Attorney, Environmental Enforcement  
Bureau North

BY:   
JOHN J. KIM,  
Interim Director

DATE: 5/1/12

DATE: 4/20/12

LASALLE STREET CAPITAL, INC., AN  
AFFILIATE OF BANK OF AMERICA,  
NATIONAL ASSOCIATION

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

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

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

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

**SERVICE LIST**

Mr. Bradley Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
Chicago, IL 60601  
halloranb@ipcb.state.il.us]

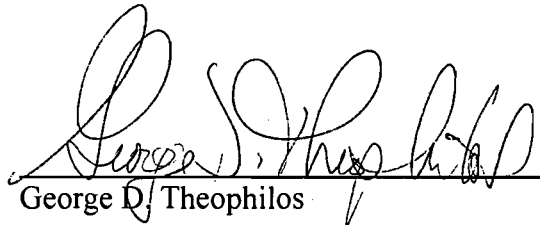
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Springfield, IL 62794-9276  
maureen.wozniak@illinois.gov



**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 1st day of May, 2012.

  
George D. Theophilos