

ILLINOIS POLLUTION CONTROL BOARD  
October 16, 2008

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 08-26  
) (Enforcement – Land)  
GARY CATES, d/b/a CHERRY STREET )  
AUTOMOTIVE, CALVIN BOOTH, d/b/a )  
AUTO SALVAGE ILLINOIS, and S.I. )  
PROMOTION FLORA, INC., )  
)  
Respondents. )

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On October 1, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint against Gary Cates, doing business as Cherry Street Automotive, and against Calvin Booth, doing business as Auto Salvage Illinois, an assumed name for S.I. Promotion Flora, Inc. (collectively, respondents). The complaint concerns alleged auto salvage operations at 810 Elm Street in Carmi, White County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 21(a) and 55(a)(1) of the Act (415 ILCS 5/21(a), 55(a)(1) (2006)) by causing or allowing the open dumping of, respectively, waste and used or waste tires.

On August 20, 2008, the People and respondents filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Carmi Times* on September 12, 2008. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2006); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements

include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondents' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. According to the stipulation, respondent Gary Cates owned and operated a business known as Cherry Street Automotive located at 810 Elm Street, Carmi, White County; respondent Calvin Booth owned and conducted an auto salvage operation at that location under the name of Auto Salvage Illinois, an assumed name for S. I. Promotion Flora, Inc., an Illinois for-profit corporation. Respondents neither admit nor deny the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Respondents agree to pay a civil penalty of \$8,000. The People and respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Respondents must pay a total civil penalty of \$8,000 (\$4,000 from each respondent) by November 17, 2008, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified checks or money orders payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and respondents' respective federal tax identification numbers must appear on the face of the respective certified checks or money orders.
3. Respondents must submit payment of the civil penalty to:

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

Respondents must send copies of the respective certified checks or money orders and any transmittal letters to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 16, 2008, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board