

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> , LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 11 - 058
	)	(Enforcement - Water)
	)	
ZACHARY ISAAC d/b/a NU SHINE CAR	)	
WASH, and SAMUEL JOHNSON,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

TO: Thomas S. Yu  
 Attorney for S. Johnson  
 Jeep & Blazer, L.L.C.  
 24 North Hillside Ave., Suite A  
 Hillside, IL 60162

Mr. Bradley P. Halloran  
 Hearing Officer  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph, Suite 11-500  
 Chicago, IL 60601

Zachary Isaac  
 1048 Horizon Ridge  
 Lake in the Hills, IL 60156

PLEASE TAKE NOTICE that today, February 10, 2012, I have filed with the Office of the Clerk of the Pollution Control Board a Motion to Request Relief from Hearing and a Stipulation and Proposal for Settlement as to Respondent Samuel Johnson, copies of which are attached and hereby served upon you.

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

BY:   
 L. NICHOLE CUNNINGHAM  
 Assistant Attorney General  
 Illinois Attorney General's Office  
 69 W. Washington St., 18<sup>th</sup> Fl.  
 Chicago, Illinois 60602  
 (312) 814-3532

Date: February 10, 2012

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Respondents.	)	

**MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT AS TO  
RESPONDENT SAMUEL JOHNSON**

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 as to Respondent Samuel Johnson in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On March 4, 2011, the Pollution Control Board ("Board") accepted the People's Complaint for hearing in this matter.
2. On February 10, 2012, the Complainant and Respondent Johnson filed with the Board a "Stipulation And Proposal For Settlement As To Respondent Samuel Johnson" ("Stipulation and Proposal for Settlement"). If accepted, the Stipulation and Proposal for Settlement will dispose of the case as to Respondent Samuel Johnson.
3. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), 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. Section 31(c)(2) provides:

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).

3. No hearing is currently scheduled in the instant case.
4. Both parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such hearing as allowed 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, respectfully requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010).

Respectfully submitted,

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

BY:



L. NICHOLE CUNNINGHAM  
Assistant Attorney General  
Illinois Attorney General's Office  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Flr.  
Chicago, Illinois 60602  
(312) 814-3532  
ARDC # 6285988

Date: February 10, 2012

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ex rel., LISA MADIGAN, Attorney )  
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WASH, and SAMUEL JOHNSON, )  
 )  
Respondents. )

PCB 11 - 058  
(Enforcement - Water)

**STIPULATION AND PROPOSAL FOR SETTLEMENT AS TO THE COMPLAINANT  
AND RESPONDENT SAMUEL JOHNSON**

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 SAMUEL JOHNSON ("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 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 with regard to Respondent Johnson.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On March 4, 2011, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against the Respondent.

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

3. Respondent SAMUEL JOHNSON is a resident of the State of Connecticut. At all times relevant to the Complaint, Respondent Johnson owned property located at 1065 W. Algonquin Road, Algonquin, McHenry County, Illinois, where a car wash business known as Nu Shine Car Wash was operated by Respondent Isaac ("site").

**B. Allegations of Non-Compliance**

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

Count I: Water Pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);

Count II: Construction of a Sewer Line without a Permit in violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2010), and Section 309.202(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a) (2010);

Count III: Introduction of Non-Domestic Contaminants In Algonquin Sewer System in violation of Section 12(h) of the Act, 415 ILCS 5/12(h) (2010);

**C. Non-Admission of Violations**

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

**D. Compliance Activities to Date**

In October 2009, Nu Shine Car Wash ceased operations at the site.

**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).

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under 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 the Stipulation state the following:

1. As a result of the activities at the site, including introducing contaminants into the Algonquin sewer system without a permit from the Illinois EPA, human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered.
2. While in operation, there was social and economic benefit to the site.
3. Operation of a car wash at the site was suitable for the area in which it occurred.
4. Obtaining a permit prior to construction at the site and compliance with its terms is both technically practicable and economically reasonable.
5. The site is no longer contributing contaminants to the Algonquin sewer system because the facility is no longer in operation.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2010), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

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

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

1. Respondent failed to obtain a permit prior to constructing a sewer line connection leading from the site to the Algonquin sewer system and introduced contaminants from nondomestic sources without complying with the Act and Board Regulations and so as to cause water pollution in violation of the Act. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations. The violations began on or around July 2009 and were resolved around October 2009.
2. Respondent ceased and desisted from violations of the Act, Board regulations and

applicable federal regulations, once required to do so by the Illinois EPA and the McHenry County Department of Health.

3. Respondent received a nominal economic benefit from not incurring the cost of preparing and submitting a construction permit application to the Illinois EPA.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Four Thousand Dollars (\$4,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. The Illinois EPA has determined that Respondent Johnson has an inability to pay a higher penalty.

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

6. Self-disclosure is not at issue in this matter.

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 Four Thousand Dollars (\$4,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### **B. 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 case name and 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:

L. Nichole Cunningham, AAG  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602

**C. 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.

**D. Release from Liability**

In consideration of the Respondent's payment of the \$4,000.00 penalty, its commitment to cease and desist as contained in Section V.C above, completion of all activities required hereunder, 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 March 4, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent'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. Specifically, additional Respondent Zachary Isaac is not a party to this settlement.

**E. 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.

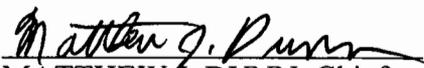
**F. Execution of Stipulation**

This Stipulation may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. 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.

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  
LISA MADIGAN, Attorney General of the      PROTECTION AGENCY  
State of Illinois

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

BY:   
MATTHEW J. DUNN, Chief

DATE: 1/30/12

BY:   
JOHN J. KIM, Interim Director

DATE: 1/20/12

RESPONDENT SAMUEL JOHNSON

BY: \_\_\_\_\_  
Samuel Johnson

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

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State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
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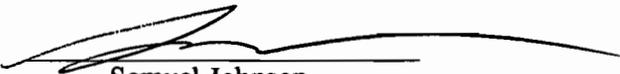
BY: \_\_\_\_\_  
MATTHEW J. DUNN, Chief

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

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

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

RESPONDENT SAMUEL JOHNSON

BY:   
Samuel Johnson

DATE: 2/2/2012

**CERTIFICATE OF SERVICE**

I, Lorren Nichole Cunningham, Assistant Attorney General, do certify that on the 10<sup>th</sup> day of February, 2012, I caused to be served upon Respondent Samuel Johnson the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing by depositing the same at the United States Postal Service facility located at 100 W. Randolph, Chicago, Illinois.

  
LORREN NICHOLE CUNNINGHAM  
Assistant Attorney General  
Illinois Attorney General's Office  
69 W. Washington St., 18<sup>th</sup> Flr.  
Chicago, Illinois 60602  
(312) 814-3532