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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JAN 06 2005

ADMINISTRATIVE CITATION

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF SANGAMON,)
)
 Complainant,)
)
 v.)
)
 Leland Cole,)
)
 Respondent.)

05-36
 AC 04
 SCDPH 04-AC-3
 ADMINISTRATIVE CITATION

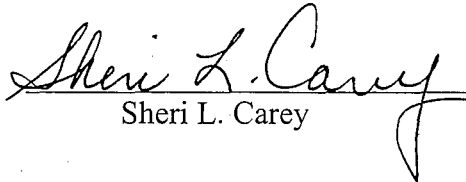
NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and the foregoing STIPULATION AND PROPOSAL FOR SETTLEMENT was served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon the following party of record by enclosing same in envelopes addressed to, and by delivering as specified below:

Dorothy Gunn, Clerk – U.S. Mail
 Illinois Pollution Control Board
 James R. Thompson Center
 100 W. Randolph St., Suite 11-500
 Chicago, IL 60601

John Narmont
 Attorney for Respondent, Leland Cole
 209 Bruns Lane
 Springfield, Illinois 62704

With postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on January 3, 2005


 Sheri L. Carey

Sheri L. Carey
 Assistant State's Attorney
 Sangamon County State's Attorney
 200 S. 9th Street, Room 402
 Springfield, Illinois 62701
 (217) 535-3100

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
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ADMINISTRATIVE CITATION

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Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Pursuant to 35 Ill. Adm. Code 103.180 (1994), the following Stipulation and Proposal for Settlement entered into between Complainant, COUNTY OF SANGAMON ("County"), and Respondent, Leland Cole ("Respondent"), is tendered for approval by the Illinois Pollution Control Board ("Board"). It is expressly understood and agreed to by and between the County and Respondent that the agreements, stipulations and statements herein contained are not binding on the parties, and shall be deemed null and void, in the event such approval by the Board is not obtained, or in the event additional terms or conditions which are unacceptable to the parties, are imposed by the Board. This Stipulation and Proposal for Settlement is made for the purposes of settlement only and putting an end to litigation, and neither the fact that a party has entered into this Stipulation and Proposal for Settlement, nor any of the facts stipulated herein, shall be introduced into evidence or construed as an admission of fact or law in any other proceedings conducted before the Board or outside of the jurisdiction of the Board except to enforce the terms hereof by the parties to this agreements and as evidence of previously

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adjudicated violations for purposes of Section 39(i) and 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39(i) and 42(h) (2000). Subject to the foregoing understanding and agreement, it is further agreed as follows:

I.

STIPULATION OF FACTS

1. Leland Cole is the owner of property located at 6208 Reinder, Springfield, Sangamon County, Illinois.
2. The Respondent did admit to starting the fire in the alleyway which is adjacent to the property mentioned in the Administrative Citation.
3. On November 5, 2004, the County filed the above-captioned Administrative Citation against Respondent alleging violations of Sections 21(p)(1) and 21(p)(3) of the Act, 415 ILCS 5/21(p)(1) and 21(p)(3) (2000).
4. On November 9, 2004, the Respondent signed for receipt of the Administrative Citation by certified mail.

II.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), provides:

- c. 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:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. 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;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance.

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

1. The County contends that the Respondent open dumped and open burned waste materials, but that such burning had minimal impact on human health and the environment.

2. The County contends that it would be technically practicable and economically reasonable for Respondent to cease open dumping and open burning.

3. The County and Respondent have met to discuss compliance issues, and Respondent has been in compliance since the filing of the above-captioned Administrative Citation.

4. Respondent denies the alleged violation of open dumping in the above-captioned Administrative Citation.

DETERMINATION OF APPROPRIATENESS OF CIVIL PENALTY

Section 42(h) of the Act, 415 ILCS 5/42(h) (2000), provides:

- h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3) or (b)(5) of 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 the 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 this violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and any 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.

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

1. The alleged violations occurred one time, and the potential impact on surrounding properties would not be considered major.
2. Respondent has attempted to comply with the Act since receiving the above-captioned Administrative Citation.
3. Some economic benefit may have been accrued by Respondent by not having to pay to deposit waste materials accumulated on the property, but such benefit would be deemed minimal.

4. Respondent denies violating the Act or regulations promulgated thereunder, but for the purpose of settlement, has agreed to make a payment in the sum of one-thousand five-hundred dollars (\$1,500.00) to the Sangamon County Department of Public Health. The County believes that such a payment will deter Respondent from future violations of the Act. Further, this payment will aid the County's enforcement of the Act and regulations, under its delegation agreement with the Illinois Environmental Protection Agency, against persons similarly subject to the Act.

5. Respondent has no previously adjudicated violations.

IV.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondent to comply with any other federal, state or local laws or regulations, including, but not limited to the Act, 415 ILCS 5/1 et seq. (2000), and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H (1994).

V.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act.

VI.

APPLICABILITY AND AUTHORIZATION

This Stipulation and Proposal for Settlement shall apply to and be binding upon Complainant, COUNTY OF SANGAMON, and Respondent, Leland Cole.

Respondent shall not raise as a defense to any action to enforce this Stipulation and Proposal for Settlement the failure of any of its officers, agents, employees, servants, successors and assigns to take such action as shall be required to comply with the provisions of this Stipulation and Proposal for Settlement. The undersigned representative 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.

VII.

COVERED MATTERS

This Stipulation and Proposal for Settlement covers all claims asserted in the Administrative Citation filed herein concerning violations of the Act, 415 ILCS 5/1 et seq. (2000), and the regulations promulgated thereunder. Covered matters do **not** include:

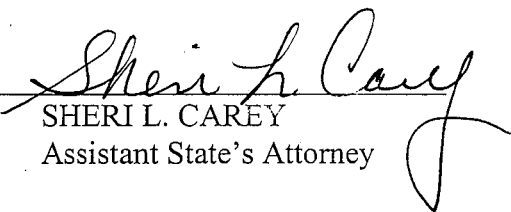
- i. Criminal liability;
- ii. Claims based upon Respondent's failure to meet the requirements of this Stipulations and Proposal for Settlement;
- iii. Liability for future violation of federal, state, local or common laws and/or regulations; and
- iv. Any future liability for natural resource damage or for removal, cleanup, or remedial action as a result of a release of hazardous substances or the liability of Respondent under Section 22.2(f) of the Act, 415 ILCS 5/22.2(f) (2000), or under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 9601-9675.

3. In consideration of the payment by Respondents of \$1,500.00, the County releases, waives and discharges Respondent from any violations of the Act or the Board's regulations which were the subject matter of the Administrative Citation herein.

Respectfully Submitted,

COUNTY OF SANGAMON

JOHN SCHMIDT
State's Attorney for Sangamon County

BY: 
SHERI L. CAREY
Assistant State's Attorney

LELAND COLE


BY: _____
JOHN NARMONT
Attorney for Respondent