

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-226
)	(Enforcement-Land)
P & J SUPER AUTO BODY SHOP, INC.)	
an Illinois corporation, and JULIO)	
GALLEGOS, an Illinois resident,)	
)	
Respondents.)	

NOTICE OF FILING


TO: See Attached Service List.

PLEASE TAKE NOTICE that today, on October 11, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board by electronic filing a Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
 BRIDGET M. CARLSON
 Assistant Attorney General
 Environmental Bureau
 188 W. Randolph Street, Suite 2001
 Chicago, Illinois 60601
 (312) 814-0608

SERVICE LIST

Mr. Ross J. Helfand
555 Skokie Boulevard, Suite 595
Northbrook, Illinois 60062

Ms. Melanie Jarvis
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

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)	
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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2)(2004), moves that the Illinois Pollution Control Board ("Board") grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1)(2004). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges: Used Tire Violations, in violation of Section 55(c) of the Act, 415 ILCS 5/55(c)(2004); Failure to Post Written Notice for Used Tire Recycling, in violation of Section 55.8(a)(3) of the Act, 415 ILCS 5/55.8(a)(3)(2004); Allowing Used Tires to Accumulate for More than 90 Days, in violation of Section 55.8(b) of the Act, 415 ILCS 5/55.8(b)(2004).

2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.

3. The parties have reached agreement on all outstanding issues in this matter.

4. This agreement is presented to the Board in a Stipulation and Proposal for

Settlement filed this same date.

5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby 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)(2004).

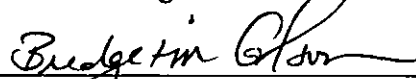
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:


BRIDGET M. CARLSON
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0608

DATE: October 11, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

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)

Complainant,)

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v.)

PCB 04-226
(Enforcement - Land)

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P&J SUPER AUTO BODY SHOP, INC., an)

Illinois corporation, and JULIO GALLEGOS, an)

Illinois resident,)

)

Respondents.

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 P&J SUPER AUTO BODY SHOP, INC. and JULIO GALLEGOS ("Respondents"), 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. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondents agree to be bound by the Stipulation and Board Order and not to contest

their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2002).

II. AUTHORIZATION

The undersigned representatives 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 to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On June 29, 2004, 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(2002), against the Respondents.

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 (2002).

3. Respondent P & J SUPER AUTO BODY SHOP, INC. ("P & J") was an Illinois corporation that was authorized to do business in the State of Illinois until January 2, 2004, when the corporation was involuntarily dissolved by the Illinois Secretary of State.

4. Respondent JULIO GALLEGOS was and is an Illinois resident and is the President of P & J.

B. Site Description

1. At all times relevant to the Complaint, Respondent P & J owned and operated a tire retail business located at 6809 North Clark Street, Chicago, Cook County, Illinois ("Site").

2. At all times relevant to the Complaint, Respondent Julio Gallegos was the owner and operator of P & J. Gallegos is the president and registered agent of P & J, and directs the day-to-day operations of the Site, including the direction and placement of used tires at the Site.

3. The Site is an automotive repair services facility and a new and used tire retailer that stores and sells new and used tires. The Respondents also accept tires for recycling.

4. On or before April 24, 2003, or at a time better known to Respondents, the Respondents commenced a retail tire business which stored more than fifty (50) used tires on-Site. The Respondents had not notified the Illinois EPA of the tire storage activity as of the date of an April 2003, Illinois EPA inspection. Respondents had failed to post a written notice identifying that they received used tires for recycling. Respondents had not kept tire accumulation documentation to ensure that the used tires were not accumulating on-Site for more than 90 days. As of the most recent Illinois EPA inspection on June 4, 2004, Respondents stored approximately 250 used tires on-Site.

C. Allegations of Non-Compliance

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

- Count I: Failure to notify Illinois EPA of operation of tire storage site within 30 days of commencing business, in violation of Section 55(c) of the Act, 415 ILCS 5/55(c)(2002).
- Count II: Failure to post written notice for used tire recycling, in violation of Section 55.8(a)(3) of the Act, 415 ILCS 5/55.8(a)(3)(2002).
- Count III: Allowing used tires to accumulate for more than 90 days, in violation of Section 55.8(b) of the Act, 415 ILCS 5/55.8(b)(2002).

D. Admission of Violations

The Respondent admits to the violation(s) alleged in the Complaint filed in this matter and referenced within Section III.C herein.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondents 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.

1. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

2. In the event that the Respondents propose to sell or transfer any real property or operations subject to any Order accepting and adopting the terms of this Stipulation and Proposal for Settlement, the Respondents shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make the prospective purchaser or successor's compliance with any Order accepting and adopting the terms of this Stipulation a condition of any such sale or transfer and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to any such successor in interest. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

3. The Respondents shall notify each contractor to be retained to perform work required by any Order accepting and adopting the terms of this Stipulation of each of the requirements of said Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to each contractor already retained no later

than 30 days after the date of adoption of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by any Order accepting and adopting the terms of this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), 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 state the following:

1. Human health and the environment were minimally threatened by the Respondents' violations. The used tires were indoor and protected from rodents and rain.
2. There is a social and economic benefit to the auto body shop operated by Respondents.
3. Operation of the facility was suitable for the area in which it occurred.
4. Notifying the Illinois EPA of the tire storage site and documenting the accumulation of used and waste tires is both technically practicable and economically reasonable. Posting written notification informing customers of the proper method of the disposal of used tires is also technically practical and economically reasonable.
5. P & J has notified the Illinois EPA of its ongoing tire storage activities, posted written notice that P & J will accept used tires for recycling in accordance with Section 55.8(a)(3) of the Act, 415 ILCS 5/55.8(a)(3)(2002), are removing stored used tires from the site within 90 days through use of a registered tire transporter and documenting their accumulation in accordance with Section 55.8 (b) of the Act, 415 ILCS 5/55.8(b)(2002).

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), 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 state as follows:

1. The Respondents failed to notify the Illinois EPA of their operation of a tire storage/disposal site. The Respondents failed to post written notification to customers that P & J accepted used tires for recycling. The Respondents allowed waste tires to accumulate for more than 90 days. Upon the Illinois EPA's request, Respondents failed to provide tire accumulation documentation. The violations began on or about April 24, 2003, and continued for a time better known to Respondents. Respondents' actions were a substantial deviation from the requirements imposed by the Act, but represented minor potential harm to the environment.

prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and be submitted to:

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

The name and number of the case and Respondents' Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Ms. Bridget M. Carlson
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Ms. Melanie Jarvis
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest

on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondents may be reached at the following address:

Ross J. Helfand
Attorney
555 Skokie Boulevard, Suite 595
Northbrook, Illinois 60062

P & J Super Auto Body Shop, Inc.
Registered Agent: Julio Gallegos
4200 West Palmer
Chicago, Illinois 60639

Julio Gallegos
2900 West Cermak Road
Chicago, Illinois 60623

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondents hereby agree that this Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board

2. The Respondents were diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified it of its noncompliance. The Respondents will continue to document used tire accumulation and used tire removal from the Site.

3. Respondent's economic benefit from alleged non-compliance was nominal and the penalty obtained in this matter includes any economic benefit received.

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 will aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. The Respondents failed to self-disclose the violations at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents 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. The Respondents stipulate that payment has been tendered to Respondents' attorney of record in this matter in a form acceptable to that attorney. Further, the Respondents stipulate that said attorney has been directed to make the penalty payment on behalf of the Respondents, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner

Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2002). Further, Respondents agree to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (“Allegations of Non-Compliance”) of this Stipulation.

D. Release from Liability

In consideration of the Respondents’ payment of the \$10,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board’s acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for 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 June 29, 2004. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' 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 Respondents.

E. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents 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 carrying out inspections. 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.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") of this

Stipulation shall be submitted as follows:

As to the Complainant

Ms. Bridget Carlson
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Ms. Melanie Jarvis
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondents

Ross J. Helfand
555 Skokie Boulevard, Suite 595
Northbrook, Illinois 60062

P & J Super Auto Body Shop, Inc.
Registered Agent: Julio Gallegos
4200 West Palmer
Chicago, Illinois 60639

Julio Gallegos
2900 West Cermak Road
Chicago, Illinois 60623

G. Enforcement of Board Order

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

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

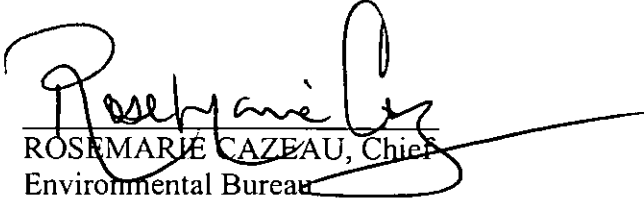
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WHEREFORE, Complainant and Respondents request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

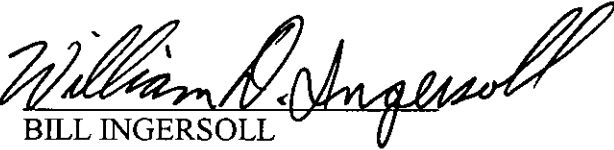
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

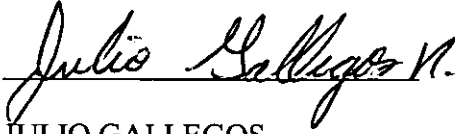
DATE: 6/2/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
BILL INGERSOLL
Acting Legal Counsel

DATE: May 31, 2005

P & J SUPER AUTO BODY, INC. AND
JULIO GALLEGOS

BY: 
JULIO GALLEGOS
President and Individually

DATE: 08-24-05

CERTIFICATE OF SERVICE

I, BRIDGET M. CARLSON, an Assistant Attorney General, certify that on the 11th day of October 2005, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


BRIDGET M. CARLSON