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MAY 11 2009

OFFICE OF THE ATTORNEY GENERAL, STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

May 7, 2009

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

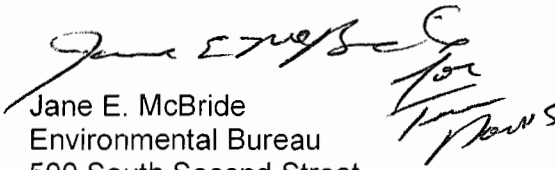
Re: ***People v. Yetter Manufacturing Company, et al.***
PCB No. 09-32

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,


Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
WHALEN MANUFACTURING COMPANY,)
an Illinois corporation, and YETTER)
MANUFACTURING COMPANY, an)
Illinois corporation,)
)
Respondent.)

PCB No. 09-32
(Enforcement - Water)

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NOTICE OF FILING

STATE OF ILLINOIS
Pollution Control Board

To: William H. Campbell
Davis & Campbell L.L.C.
401 Main Street
Suite 1600
Peoria, IL 61602-1241

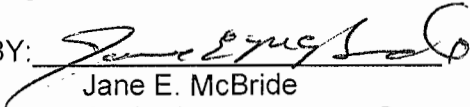
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:  for
Jane E. McBride
Sr. Assistant Attorney General
Environmental Bureau
*for
Tom
Davis*

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 7, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on May 7, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: William H. Campbell
Davis & Campbell L.L.C.
401 Main Street
Suite 1600
Peoria, IL 61602-1241

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therrault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


Jane E. McBride
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
WHALEN MANUFACTURING COMPANY,)
an Illinois corporation, and YETTER)
MANUFACTURING COMPANY, an)
Illinois corporation,)
)
Respondent.)

PCB No. 09-32
(Enforcement - Water)

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Pollution Control Board

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) (2006), moves that the Illinois Pollution Control 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) (2006). In support of this motion, Complainant states as follows:

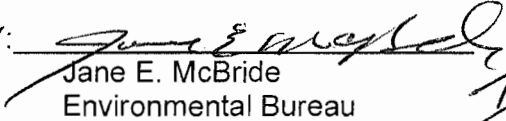
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not 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) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
Jane E. McBride
Environmental Bureau
Sr. Assistant Attorney General

*for
To
Paris*

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 7, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
YETTER MANUFACTURING COMPANY,)
an Illinois corporation, &)
WHALEN MANUFACTURING COMPANY,)
an unincorporated division of Yetter,)
)
Respondents.)

PCB NO. 09-32
(Enforcement - Water)

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STATE OF ILLINOIS
Pollution Control Board

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"), YETTER MANUFACTURING COMPANY and WHALEN MANUFACTURING COMPANY ("Yetter" and "Whalen" individually, "Respondents" collectively) ("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.* (2006), 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 November 12, 2008, 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 (2006), 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 (2006).
3. At all times relevant to the Complaint, Respondent Yetter was an Illinois corporation authorized to transact business in the State of Illinois and Respondent Whalen was an unincorporated division of Yetter. At all times relevant to the Complaint, Respondent Yetter owned and operated a manufacturing facility located at 109 S. McDonough, Colchester, McDonough County, Illinois ("Yetter site"). At all times relevant to the Complaint, Respondent Whalen owned and operated a manufacturing facility located at 1270 East Murray Street, Macomb, McDonough County, Illinois ("Whalen site").
4. On February 8, 2006, the Illinois EPA inspected the Yetter site. The inspector observed a 300-gallon plastic tank filled with liquid industrial waste. It was learned that wastes from the parts washer and the wash bay were collected into the 300-gallon plastic tank and hauled by Yetter to the Whalen site in Macomb, Illinois.
5. As of February 8, 2006, Yetter transported approximately 600 gallons of industrial waste solution every 30 to 60 days to the Whalen site. At the Whalen site, the liquid waste was

dumped into a sanitary sewer that is a tributary to the Macomb sanitary sewer system.

6. As of February 8, 2006, Yetter did not have a valid nonhazardous special waste hauling permit issued by the Illinois EPA.

7. As of February 8, 2006, Yetter did not use a manifest to ship the nonhazardous special waste to the Whalen site.

8. As of February 8, 2006, Whalen did not have a special waste permit to store special waste.

9. As of February 8, 2006, Whalen did not have a Development Permit to develop a new solid waste facility.

10. As of February 8, 2006, Whalen did not have an operating permit to use or operate a new solid waste facility.

11. As of February 8, 2006, Yetter and Whalen did not have a National Pollutant Discharge Elimination System ("NPDES") permit.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: Special Waste Permit Violations - Yetter Manufacturing

By hauling or otherwise transporting nonhazardous special waste generated within Illinois without a current, valid nonhazardous special waste hauling permit, Yetter violated Section 809.201 of the Board's Regulations, 35 Ill. Adm. Code 809.201 (2005).

By delivering nonhazardous special waste generated within Illinois without concurrently delivering a

manifest to a special waste transporter, Yetter violated Section 809.301 of the Board's Regulations, 35 Ill. Adm. Code 809.301 (2005).

By delivering nonhazardous special waste in Illinois for disposal, storage, or treatment to a person who does not have a current, valid operating permit issued by the Illinois EPA, Yetter violated Section 809.302(b) of the Board's Regulations, 35 Ill. Adm. Code 809.302(b) (2005).

By conducting a special waste transportation operation in violation of regulations, standards or permit requirements adopted by the Board under the Act, Yetter violated Section 21(j) of the Act, 415 ILCS 5/21(j) (2006).

Count II: Special Waste Permit Violations - Whalen Manufacturing

By operating, causing or allowing the development of a solid waste management site without a Development Permit, Whalen violated Sections 807.201(a) and 807.202(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 807.201(a) and 807.202(a) (2005).

By accepting special waste for disposal, storage or treatment within Illinois from a special waste transporter who does not have a valid nonhazardous special waste hauling permit, Whalen violated Section 809.302(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 809.302(a) (2005).

By conducting a waste storage operation without a permit granted by the Agency, Whalen violated Section 21(d) of the Act, 415 ILCS 5/21(d) (2006).

By disposing, treating, storing or abandoning waste at a site or facility that does not meet the requirements of the Act, Whalen violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2005).

Count III: NPDES Permit Violations - Whalen Manufacturing & Yetter Manufacturing

By causing, threatening or allowing the discharge of

contaminants into waters of the State without a valid NPDES permit, Whalen and Yetter violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2005).

By causing or allowing the use or operation of a treatment works, pretreatment works or wastewater source without an NPDES permit, Whalen and Yetter violated Section 309.204(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a) (2005).

C. Admission of Violations

The Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Section I.B. herein.

D. Compliance Activities to Date

On February 9, 2006, Yetter stopped hauling its industrial wastewater to the Whalen site. Yetter's wastewater is recycled and reused until cleaning effectiveness is compromised. Once compromised, the contaminated wastewater is hauled away by a third party contractor for proper disposal.

On November 29, 2006, Whalen obtained a Water Pollution Control Permit to discharge metal finishing wastewater to the Macomb sanitary sewer system.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. 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. 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 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 (2006).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Yetter's cessation of transporting liquid industrial waste to the Whalen site and Whalen's compliance with permit requirements is both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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. Whalen had been discharging industrial wastewater received from Yetter to the Macomb sanitary sewer without a permit for approximately ten (10) years. It was not until the Illinois EPA inspected the facility on February 9, 2006 that it stopped.
2. Whalen and Yetter diligently responded following the Illinois EPA’s February 9, 2006 inspection. Yetter stopped transporting industrial wastewater to the Whalen site and Whalen stopped dumping it into the Macomb sewer system. In addition, Whalen obtained the necessary permit to discharge sanitary waste to the Macomb sewer system.
3. Whalen and Yetter did not receive an economic benefit from the violations.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) against both Whalen and Yetter 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, no previous enforcement action has been taken against Respondent Whalen. There was a previous enforcement action, however, against Yetter. In 1998, the Illinois EPA referred Yetter to the Office of Attorney General for air pollution violations that included operating without a permit and improper record

keeping.

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. Respondent Whalen 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.

Respondent Yetter 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.

B. Stipulated Penalties, Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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 Respondents 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 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 name, case number and the Respondents' federal tax identification numbers 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:

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

D. Future Compliance

1. Respondent Yetter shall no longer transport industrial wastewater to the Whalen site. Whalen shall no longer receive Yetter's industrial waste and discharge it into the Macomb sewer system. Whalen shall only discharge industrial wastewater to the Macomb sanitary sewer system as per the terms and conditions of its Water Pollution Control Permit Number 2006-EA-2426. Whalen shall comply with the monitoring and reporting requirements of its permit.

2. 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 Respondents' 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.

3. 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.

4. The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondents' collective payment of the \$20,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 November 12, 2008. 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 (2006), or entity other than the Respondents.

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 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

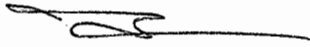
LISA MADIGAN
Attorney General
State of Illinois

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

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:

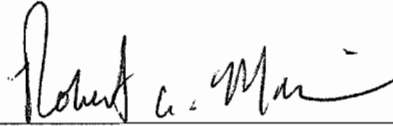


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

5/07/09

BY:




ROBERT A. MESSINA
Chief Legal Counsel

DATE:

5/4/09

YETTER MANUFACTURING, CO.
and WHALEN MANUFACTURING, CO.

BY:



BERNARD F. WHALEN
President

DATE:

4/1/09