

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KAPP, INC., an Illinois Corporation,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 05 - 196
	)	
HARTLEY CARLTON, individually, and d/b/a ONE HOUR CLEANERS,	)	(Enforcement – Land)
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Mr. John Therriault	Carol Webb, Esq.
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT**, copies of which are herewith served upon you.

Respectfully submitted,

KAPP, INC.,  
Complainant,

Dated: August 15, 2013

By: /s/ Edward W. Dwyer  
Edward W. Dwyer

Edward W. Dwyer  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

THIS FILING SUBMITTED ON RECYCLED PAPER

**CERTIFICATE OF SERVICE**

I, Edward W. Dwyer, the undersigned, certify that I have served the attached  
STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF  
FROM HEARING REQUIREMENT, upon:

Mr. John Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on August 15, 2013 and, upon:

Jeffrey R. Diver, P.C.  
2S741 Crimson King Lane  
Glen Ellyn, Illinois 60137

Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, Illinois 62794-9274

by placing said copies in the United States Mail, postage prepaid, in Springfield, Illinois  
on August 15, 2013.

By: /s/ Edward W. Dwyer  
Edward W. Dwyer

KAPP:001/Fil/NOF & COS – Stipulation and Motion for Relief

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KAPP, INC., an Illinois Corporation,	)	
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Complainant,	)	
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v.	)	PCB 05 - 196
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HARTLEY CARLTON, individually, and d/b/a ONE HOUR CLEANERS,	)	(Enforcement – Land)
	)	
Respondents.	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, KAPP, INC., by its attorneys, HODGE DWYER & DRIVER, and the Respondents, HARTLEY CARLTON, individually and d/b/a ONE HOUR CLEANERS, by their attorney JEFFREY R. DIVER, P.C., 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 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 claims asserted 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.

**I. STATEMENT OF FACTS**

**A. Parties to the Stipulation**

1. On May 13, 2005, Complainant filed a Complaint with the Board, pursuant to Section 31(d) of the Act, against Respondents.

2. At all times relevant to the Complaint, until voluntary dissolution on April 20,2011, Complainant was an Illinois Corporation in good standing. Respondent HARTLEY

CARLTON is an individual person, and at all times relevant to the Complaint, prior to 2002, was doing business as ONE HOUR CLEANERS.

3. At all times relevant to the Complaint, real estate located at the southwest corner of West Grand Avenue and North Oakland Avenue in Decatur, Macon County, Illinois (the "Site") was owned by Lucien C. Kapp, who was the President of Complainant prior to its dissolution.

4. The Site encompasses more than one (1) acre and is composed of eight (8) parcels.

5. At all times relevant to the Complaint, Complainant rented commercial retail and office space to various businesses and not-for-profit entities at each of the five (5) addresses at the Site. From 1963 through 1979, Complainant leased the space at 1285 North Oakland to a number of tenants, who operated that space as a coin-operated laundromat ("the coin-operated facility"). From 1961 through 1988, Complainant leased the space at 1133 West Grand to a tenant, who operated that space as a dry cleaning business ("the dry cleaning facility").

6. Starting on or before 1979, Respondents took over operation of the coin-operated facility at the 1285 North Oakland address, and from 1989 to November 2001, Respondents took over operation of the dry cleaning facility at the 1133 West Grand address, both of which spaces they rented from Complainant.

7. On or about May 2000, Complainant entered into negotiations with a potential buyer to purchase all or a portion of the Site from Complainant.

8. Preliminary to the sale of the Site, environmental investigations were performed at the Site and it was determined that soil and groundwater contamination, consisting of tetrachloroethylene ("PERC"), trichloroethene ("TCE") and chloroform, existed at the Site. It

was also determined that groundwater contamination, consisting of high concentrations of PERC, existed at the adjoining property.

9. The environmental investigation also determined that the primary source of the PERC and TCE contamination was the dry cleaning facility and the secondary source of the PERC and TCE contamination was the former coin-operated facility, sanitary sewer lines and the former dry cleaning machine and hazardous waste storage associated with the coin-operated facility and dry cleaning facility.

10. At the time the Complainant filed the Complaint in 2005, Respondents had not prepared a final corrective action plan that had been approved by the Illinois Environmental Protection Agency ("Illinois EPA") for the remediation of the PERC, TCE and chloroform contaminating the Site and the property adjoining it.

11. The contamination on the Site likely occurred over a period of time due to the presence of multiple dry cleaning operations at the Site over time, some of which preceded Complainant's operation.

**B. Allegations of Non-Compliance**

Complainant contends that Respondents have violated the following provisions of the Act and Board regulations:

**COUNT I**

By not removing the PERC, TCE and chloroform from the soil and groundwater of the Site and adjacent to the Site, Respondents continue to threaten and allow the discharge of such contaminants into the environment, so as to cause or tend to cause water pollution in the State of Illinois, and thereby continue to violate Section 12(a) of the Act, 415 ILCS 5/12(a).

**COUNT II**

By not removing the PERC, TCE and chloroform deposited upon the land in an uncontrolled or uncontained manner, Respondents allowed such contaminants to remain deposited upon the land, so as to create a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d).

**COUNT III**

By allowing the disposal of waste PERC, TCE and chloroform at a disposal site that does not fulfill the requirements of a sanitary landfill, Respondents violated Section 21(e) of the Act, 415 ILCS 5/21(e).

**C. Admission of Violations**

Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, Respondents neither admit nor deny the allegations of violation within the Complaint and referenced within Section I.B. herein.

**D. Compliance Activities to Date**

1. Respondents performed and completed remedial action at the Site under the supervision of the Illinois EPA's Site Remediation Program. As a result, Respondents received a focused No Further Remediation Letter ("NFR Letter") for the Site from Illinois EPA on July 11, 2012.

2. The NFR letter, among other conditions, restricts the Site to Industrial/Commercial land use and requires that a barrier remain in place over impacted soils. That barrier has been constructed. The NFR Letter also requires institutional controls including an ordinance

prohibiting the installation and use of potable water supply wells in this area within the City of Decatur ("City"). The City has passed such an ordinance.

3. Respondents filed the NFR letter with the Office of the Recorder of Macon County on July 16, 2012.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of Respondents. .

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

In pertinent part, Section 33(c) of the Act, 415 ILCS 5/33(c), 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 pollutions source; and
5. any subsequent compliance.

415 ILCS 5/33(c).

**In response to these factors, the Parties of the Stipulation state the following:**

1. Human health and the environment were threatened by the dry cleaning solvent-related contamination at the Site. .
2. There was social or economic benefit to Respondents' businesses.

3. The locations of Respondents' businesses were suitable for their normal operations.
4. Compliance with the Act at the Site was both technically practical and economically reasonable.
5. Respondents performed and completed remedial action at the Site and, as a result, received a focused NFR Letter.

**IV. TERMS OF SETTLEMENT**

**A. Penalty**

In exchange for Respondents' compliance with the terms of this Stipulation, Complainant does not request penalties be levied against Respondents.

**B. Future Compliance**

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.

**C. Release from Liability**

1. Upon the Board's approval of this Stipulation, Complainant releases, waives and discharges Respondents, including Sylvia Carlton, the spouse of Respondent, Hartley Carlton, from any further liability or penalties for the violations of the Act 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.

2. 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 Illinois EPA may have against the



person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Respondents.

**V. ENFORCEMENT AND MODIFICATIONS OF STIPULATION**

Upon the entry of the Board's Order approving and accepting this Stipulation, this Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

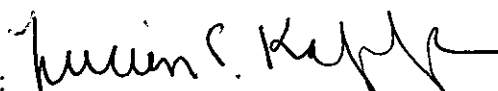
**VI. EXECUTION OF STIPULATION**

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 respectfully request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

KAPP, INC.,  
Complainant

HARTLEY CARLTON, individually and d/b/a  
ONE HOUR CLEANERS,  
Respondent

BY:   
\_\_\_\_\_  
Lucien C. Kapp  
President  
5 Millikin Place  
Decatur, Illinois 62522  
Telephone: (217) 428-9527

BY: \_\_\_\_\_  
Jeffrey R. Diver, P. C.  
28741 Crimson King Lane  
Glen Ellyn, Illinois 60137  
Telephone: (730) 790-0001

DATE: 8-13-2013

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

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person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Respondents.

**V. ENFORCEMENT AND MODIFICATIONS OF STIPULATION**

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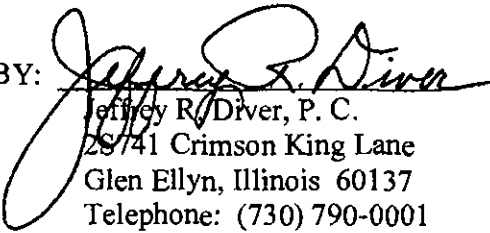
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WHEREFORE, the Parties to the Stipulation respectfully request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

KAPP, INC.,  
Complainant

HARTLEY CARLTON, individually and d/b/a  
ONE HOUR CLEANERS,  
Respondent

BY: \_\_\_\_\_  
Lucian C. Kapp  
President  
5 Millikin Place  
Decatur, Illinois 62522  
Telephone: (217) 428-9527

BY:   
Jeffrey R. Driver, P. C.  
28741 Crimson King Lane  
Glen Ellyn, Illinois 60137  
Telephone: (730) 790-0001

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

DATE: 3/29/13

KAPP:001/Fil/Stipulation and Proposal for Settlement

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**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

KAPP, Inc, Complainant herein, pursuant to 35 Ill. Adm. Code Section 103.301 requests that the Board grant Kapp, Inc. and Hartley Carlton, individually and d/b/a ONE HOUR CLEANERS (collectively the "Parties,"), relief from the hearing requirement of Section 31(c)(1) of the Illinois Environmental Protection Act (415 ILCS 5/31(c)(1)) (the "Act"). In support of this Motion the Parties state as follows:

1. On May 13, 2005, Kapp, Inc., filed a Complaint with the Board, pursuant to Section 31(d) of the Act, against Respondents Hartley Carlton, individually and d/b/a ONE HOUR CLEANERS.
2. The Parties have come to an agreement in resolution of the aforementioned Complaint.
3. Simultaneous with this Motion, the Parties have filed a Stipulation and Proposal for Settlement that memorializes that agreement and conforms to the requirements set forth at 35 Ill. Adm. Section 103.302 of the Board's rules.
4. The Parties agree that a hearing in this matter is not necessary. Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) and 103.301 of Board's rules provide that whenever a complaint

has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act.

WHEREFORE, Kapp, Inc., respectfully request that the Board adopt and accept the Stipulation and Proposal for Settlement filed contemporaneously with this Motion and grant the Parties relief from the hearing requirement in Section 31(c)(1) of the Act.

Respectfully submitted,

KAPP, INC.,  
Complainant,

Dated: August 15, 2013

By: /s/Edward W. Dwyer  
Edward W. Dwyer

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KAPP:001/Fil/Motion for Relief from Hearing Reqmt.