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AUG 20 2008
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 19, 2008

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

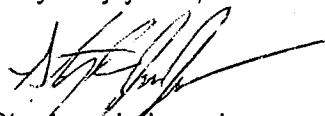
Re: ***People v. Gary Cates, et al.***
PCB No. 08-26

Dear Clerk:

Enclosed for filing please find the original and one copy 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,


Stephen J. Janasie
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SJJ/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
GARY CATES, d/b/a CHERRY STREET)
AUTOMOTIVE, CALVIN BOOTH,)
d/b/a AUTO SALVAGE ILLINOIS, and)
S. I. PROMOTION FLORA, INC.,)
)
Respondents.)

PCB No. 08-26
(Enforcement)

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AUG 20 2008
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: John D. Stanley
Stanley Law Office
114 South Walnut St.
P.O. Box 399
Carmi, IL 62821

Jennifer M. Martin
Crain, Miller & Wernsman, Ltd.
623 E. Broadway
P.O. Box 867
Centralia, IL 62801


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: 
STEPHEN J. JANASIE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 19, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on August 19, 2008, 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:

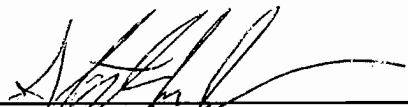
| | |
|--|--|
| To: John D. Stanley Stanley Law Office 114 South Walnut St. P.O. Box 399 Carmi, IL 62821 | Jennifer M. Martin Crain, Miller & Wernsman, Ltd. 623 E. Broadway P.O. Box 867 Centralia, IL 62801 |
|--|--|

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


STEPHEN J. JANASIE
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
GARY CATES, d/b/a CHERRY STREET)
AUTOMOTIVE, CALVIN BOOTH,)
d/b/a AUTO SALVAGE ILLINOIS, and)
S. I. PROMOTION FLORA, INC.,)
)
Respondents.)

PCB No. 08-26
(Enforcement)

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STATE OF ILLINOIS
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).

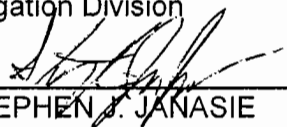
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: _____


STEPHEN J. JANASIE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 19, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 GARY CATES, d/b/a CHERRY STREET)
 AUTOMOTIVE, CALVIN BOOTH,)
 d/b/a AUTO SALVAGE ILLINOIS,)
 and S. I. PROMOTION FLORA, INC.,)
)
 Respondents.)

PCB No. 08-26
(Enforcement)

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STATE OF ILLINOIS
Pollution Control Board

STIPULATION AND PROPOSAL FOR SETTLEMENT

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|---|---|----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| GARY CATES, d/b/a CHERRY STREET |) | PCB No. 08-26 |
| AUTOMOTIVE, CALVIN BOOTH, |) | |
| d/b/a AUTO SALVAGE ILLINOIS, |) | (Enforcement) |
| and S. I. PROMOTION FLORA, INC., |) | |
| |) | |
| 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 GARY CATES, d/b/a CHERRY STREET AUTOMOTIVE, and CALVIN BOOTH, d/b/a AUTO SALVAGE ILLINOIS and S.I. PROMOTION FLORA, INC. ("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. 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 October 1, 2007, 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 Gary Cates owned and operated a business known as Cherry Street Automotive located at 810 Elm Street, Carmi, White County, Illinois ("facility" or "site"). Respondent Calvin Booth owned and conducted an auto salvage operation at 810 Elm Street, Carmi, Illinois under the name of Auto Salvage Illinois, an assumed name for S. I. Promotion Flora, Inc., an Illinois for-profit corporation. At all times relevant to the Complaint M.G.J., Inc held title to the property at 810 Elm Street, Carmi, Illinois. Respondent Gary Cates was the Registered Agent for M.G.J., Inc. M.G.J., Inc., was an Illinois corporation which was dissolved in 1990.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contends that the Respondents have violated the following provisions of the Act in that Respondents caused or allowed the spillage or discharge of gasoline and other automotive fluids:

Count I: Section 21(a) of the Act, 415 ILCS 5/21(a) (2006),
Section 55(a)(1) of the Act, 415 ILCS 5/55(a)(1)
(2006).

C. Non-Admission of Violations

The Respondents neither admit nor deny the violation(s) alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

The Respondents have completed all required remediation of the site.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, 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 state the following:

1. Human health and the environment were threatened by the spillage or discharge of gasoline and other automotive fluids.
2. There was a small social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Eliminating the spillage or discharge of gasoline and other automotive fluids is both technically practicable and economically reasonable.
5. Respondent has 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 state as follows:

1. The Respondent caused or allowed the spillage or discharge of gasoline and other automotive fluids at the site. The improper release and disposal of automotive fuel, even in small amounts, can threaten the environment as well as the health of humans. The violations took place over a period of two months.

2. Respondents were diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.

3. The Respondents avoided the cost of a proper containment system for the auto salvage operation, and thus realized a small economic benefit.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eight Thousand Dollars (\$8,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.
6. There was no self-disclosure in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondents shall pay a civil penalty in the sum of Eight Thousand Dollars (\$8,000.00), Four Thousand Dollars (\$4,000.00) from each Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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, 415 ILCS 5/42(g) (2006), interest shall accrue on any payment not paid within the time period prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue until the date full payment is received. When partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid payment 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. 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 Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

E. Release from Liability

In consideration of the Respondents' payment of the \$8,000.00 penalty, 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 October 1, 2007. 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.

F. Enforcement 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 each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

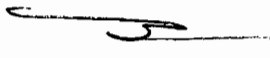
LISA MADIGAN
Attorney General
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

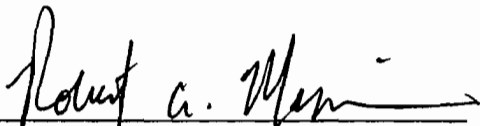
DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY:



ROBERT A. MESSINA
Chief Legal Counsel

DATE:

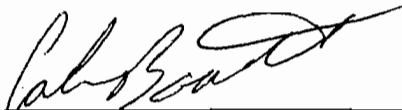
8/19/08

DATE:

5/28/08

CALVIN BOOTH

BY:



CALVIN BOOTH
Respondent

DATE:

6-27-08

GARY CATES

BY:



GARY CATES
Respondent

DATE:

8/4/08