## ILLINOIS POLLUTION CONTROL BOARD May 1, 2003

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
V.	)	PCB 00-165
	)	(Enforcement - Land)
DAVID COHEN d/b/a DAVE'S AUTO	)	
REPAIR AND SERVICE,	)	
	)	
Respondent.	,	

## OPINION AND ORDER OF THE BOARD (by W.A. Marovitz):

On March 27, 2000, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against David Cohen d/b/a Dave's Auto Repair and Service (Cohen). *See* 415 ILCS 5/31(c)(1) (2002); 35 Ill. Adm. Code 103.204. The People allege that Cohen violated Section 57.6(a) of the Environmental Protection Act (Act) (415 ILCS 5/57.6(a) (2002)), and 35 Ill. Adm. Code 732.100(c), 732.200, 732.202(c), and 732.202(e) of the Board's regulations. The People further allege that Cohen failed to submit the proper reports following a release of petroleum from an underground storage tank. The complaint concerns Cohen's auto repair facility at 7 East Main Street, Lake Zurich, Lake County.

On March 10, 2003, the People and Cohen filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2002)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002)). See 35 III. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Pioneer Press* on April 3, 2003. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2002); 35 III. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 III. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2002)). The People and Cohen have satisfied Section 103.302. Cohen neither admits nor denies the alleged violations and agrees to pay a civil penalty of \$5,000. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

## **ORDER**

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. David Cohen d/b/a Dave's Auto Repair and Service must pay a civil penalty of \$5,000. David Cohen must pay \$1,000 no later than May 31, 2003, which is the 30th day after the date of this order. David Cohen must make two additional payments of \$2,000 each. The first additional payment is due by August 29, 2003, which is the 120th day after the date of the order. The second payment is due by October 28, 2003, which is the 180th day after the date of this order. Cohen must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Cohen's social security number or federal employer identification number must be included on the certified check or money order.
- 3. David Cohen must send the certified check or money order to:

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

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
- 5. David Cohen must cease and desist from the alleged violations.

## IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 1, 2003, by a vote of 7-0.

Dorothy The Burn

Dorothy M. Gunn, Clerk Illinois Pollution Control Board