

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ADMINISTRATIVE CITATION

NOV 22 2006

STATE OF ILLINOIS  
Pollution Control Board

COUNTY OF SANGAMON, )  
)  
Complainant, )  
)  
v. )  
)  
Jack Caldwell, )  
)  
Respondent. )

01-22  
AC 06-  
SCDPH 06-AC-1  
ADMINISTRATIVE CITATION

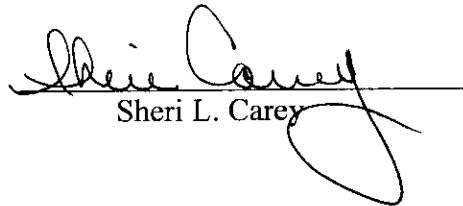
NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and the foregoing STIPULATION AND PROPOSAL FOR SETTLEMENT was served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon the following party of record by enclosing same in envelopes addressed to, and by delivering as specified below:

Dorothy Gunn, Clerk – U.S. Mail  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Randall Segatto  
Attorney for Respondent, Jack Caldwell  
831 E. Monroe  
Springfield, Illinois 62703

With postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on November 20, 2006

  
Sheri L. Carey

Sheri L. Carey  
Assistant State's Attorney  
Sangamon County State's Attorney  
200 S. 9<sup>th</sup> Street, Room 402  
Springfield, Illinois 62701  
(217) 535-3100

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Pursuant to 35 Ill. Adm. Code 103.180 (1994), the following Stipulation and Proposal for Settlement entered into between Complainant, COUNTY OF SANGAMON ("County"), and Respondent, Jack Caldwell ("Respondent"), is tendered for approval by the Illinois Pollution Control Board ("Board"). It is expressly understood and agreed to by and between the County and Respondent that the agreements, stipulations and statements herein contained are not binding on the parties, and shall be deemed null and void, in the event such approval by the Board is not obtained, or in the event additional terms or conditions which are unacceptable to the parties, are imposed by the Board. This Stipulation and Proposal for Settlement is made for the purposes of settlement only and putting an end to litigation, and neither the fact that a party has entered into this Stipulation and Proposal for Settlement, nor any of the facts stipulated herein, shall be introduced into evidence or construed as an admission of fact or law in any other proceedings conducted before the Board or outside of the jurisdiction of the Board except to enforce the terms hereof by the parties to this agreements and as evidence of previously

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adjudicated violations for purposes of Section 39(i) and 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39(i) and 42(h) (2004). Subject to the foregoing understanding and agreement, it is further agreed as follows:

**I.**

**STIPULATION OF FACTS**

1. Jack Caldwell is the owner of commercial storage units located in Williamsville, Sangamon County, Illinois. On September 20, 2006, the Respondent was building some storage units located at 501 Oak Street, Williamsville, Sangamon County, Illinois.
2. Jack Caldwell is the owner of property located at 501 Oak Street, Williamsville, Sangamon County, Illinois, which is the subject of the above-captioned Administrative Citation.
3. On October 16, 2006, the County filed the above-captioned Administrative Citation against Respondent alleging violations of Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act, 415 ILCS 5/21(p)(1), 21(p)(3) and 21(p)(7) (2004).
4. On October 26, 2006 the Respondent signed for receipt of the Administrative Citation by certified mail.

**II.**

**IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2004), provides:

- c. 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:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. 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;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance.

In response to these factors, the parties state as follows:

1. The County contends that the Respondent open dumped waste materials, but that such dumping had minimal impact on human health and the environment.
2. The Respondent's business has economic value to the surrounding community.
3. The County contends that it would be technically practicable and economically reasonable for Respondent to cease open dumping.
5. The County and Respondent have met to discuss compliance issues, and Respondent has been in compliance since the filing of the above-captioned Administrative Citation.
6. Respondent denies the alleged violations in the above-captioned Administrative Citation.

## DETERMINATION OF APPROPRIATENESS OF CIVIL PENALTY

Section 42(h) of the Act, 415 ILCS 5/42(h) (2004), provides:

- h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3) or (b)(5) of 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 violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
  3. any economic benefits accrued by the violator because of delay in compliance with requirements;
  - (4) the amount of monetary penalty which will serve to deter further violations by this violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and any other persons similarly subject to the Act; and
  - (5) the number, proximity in time and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. The alleged violations occurred one time, and the potential impact on surrounding properties would not be considered major.
2. Respondent has attempted to comply with the Act since receiving the above-captioned Administrative Citation.
3. Some economic benefit may have been accrued by Respondent by not having to pay to deposit waste materials accumulated on the property, but such benefit would be deemed minimal.

4. Respondent denies violating the Act or regulations promulgated thereunder, but for the purpose of settlement, has agreed to make a payment in the sum of Three Thousands Dollars (\$3,000.00) to the Sangamon County Department of Public Health. The County believes that such a payment will deter Respondent from future violations of the Act. Further, this payment will aid the County's enforcement of the Act and regulations, under its delegation agreement with the Illinois Environmental Protection Agency, against persons similarly subject to the Act.

5. Respondent has no previously adjudicated violations.

#### IV.

#### **COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondent to comply with any other federal, state or local laws or regulations, including, but not limited to the Act, 415 ILCS 5/1 et seq. (2004), and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H (1994).

#### V.

#### **JURISDICTION**

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act.

#### VI.

#### **APPLICABILITY AND AUTHORIZATION**

This Stipulation and Proposal for Settlement shall apply to and be binding upon Complainant, COUNTY OF SANGAMON, and Respondent, Jack Caldwell.

Respondent shall not raise as a defense to any action to enforce this Stipulation and Proposal for Settlement the failure of any of its officers, agents, employees, servants, successors and assigns to take such action as shall be required to comply with the provisions of this Stipulation and Proposal for Settlement. The undersigned representative 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 Proposal for Settlement and to legally bind them to it.

## VII.

### COVERED MATTERS

This Stipulation and Proposal for Settlement covers all claims asserted in the Administrative Citation filed herein concerning violations of the Act, 415 ILCS 5/1 et seq. (2004), and the regulations promulgated thereunder. Covered matters do **not** include:

- i. Criminal liability;
- ii. Claims based upon Respondent's failure to meet the requirements of this Stipulations and Proposal for Settlement;
- iii. Liability for future violation of federal, state, local or common laws and/or regulations; and
- iv. Any future liability for natural resource damage or for removal, cleanup, or remedial action as a result of a release of hazardous substances or the liability of Respondent under Section 22.2(f) of the Act, 415 ILCS 5/22.2(f) (2004), or under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 9601-9675.

VIII.

**NONADMISSION OF LIABILITY**

This Stipulation and Proposal for Settlement is entered into for the purpose of settling and compromising disputed claims without the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, Respondent does not affirmatively admit the allegations of violation within the Administrative Citation, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

IX.

**PROPOSAL FOR SETTLEMENT**

1. Respondents shall pay Three Thousand Dollars (\$3,000.00) for the open dumping violations within 30 days following the Pollution Control Boards acceptance of this Stipulation and Proposal for Settlement.

The payment shall be made by certified check, payable to the Sangamon County Department of Public Health and submitted to:

Sangamon County Department of Public Health  
Attention: Sheri L. Carey  
2501 North Dirksen Parkway  
Springfield, Illinois 62702

The name, case number and Respondent Jack Caldwell's Social Security Number shall appear on the certified check.

2. As part of this Stipulation and Proposal for Settlement, the County agrees to dismiss the alleged violation of Section 21(p)(3), 415 ILCS 5/21(p)(3) (2004), alleging open dumping of waste in a manner resulting open burning.

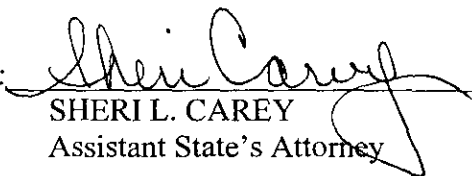


3. In consideration of the payment by Respondents of \$3,000.00, the County releases, waives and discharges Respondent from any violations of the Act or the Board's regulations which were the subject matter of the Administrative Citation herein.

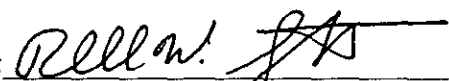
Respectfully Submitted,

COUNTY OF SANGAMON

JOHN SCHMIDT  
State's Attorney for Sangamon County

BY:   
SHERI L. CAREY  
Assistant State's Attorney

JACK CALDWELL

BY:   
RANDALL SEGATTO  
Attorney for Respondent