

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOSEPH AND VICTORIA MORRISSEY,)	
)	
Complainants,)	
)	
v.)	PCB 2009 -010
)	
GEOFF PAHIOS AND ALPINE)	
AUTOMOTIVE, INC.,)	
)	
Respondents.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainants, JOSEPH and VICTORIA MORRISSEY, and pursuant to Section 31(c) (2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5131(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, Complainants, JOSEPH and VICTORIA MORRISSEY, 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,

JOSEPH & VICTORIA MORRISSEY




BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOSEPH AND VICTORIA MORRISSEY,)	
)	
Complainants,)	
)	
v.)	PCB 2009 -010
)	
GEOFF PAHIOS AND ALPINE)	
AUTOMOTIVE, INC.,)	
)	
Respondents.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

The Complainants, JOSEPH AND VICTORIA MORRISSEY, (hereinafter referred to as "Complainants") and the Respondents, GEOFF PAHIOS and ALPINE AUTOMOTIVE, INC. (hereinafter referred to as "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 5/24 etseq. (2006), 35 Ill. Adm. Code, Subtitle H, Chapter 1, Sections 900.102, 900.102a, 900.102b and 900.104 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

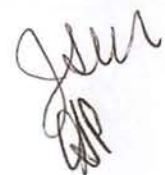
1. On August 1, 2008, Complainants, Joseph and Victoria Morrissey, filed a Complaint No. PCB 2009 -010, with the Illinois Pollution Control Board, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondents.
2. Since 1999, Complainants, Joseph and Victoria Morrissey, have resided at 32 S. Chestnut Court in a residential neighborhood in the Village of Hawthorn Woods, State of Illinois.
3. At all times relevant to the Complaint, Respondent, Alpine Automotive, Inc., was and is an Illinois corporation in good standing and authorized to do business in the State of Illinois.
4. Since July of 2007 and at all times relevant to the Complaint, Respondent, Geoff Pahios, has been the President and Sole Shareholder of Alpine Automotive, Inc. which operates an automotive repair and 24-hour towing and impound facility located at 1320 Ensell Road, Lake Zurich, Lake County, Illinois.



5. The Alpine Automotive facility at 1320 Ensell Road in Lake Zurich is located next to the residential neighborhood where the Complainants have their residence at 32 Chestnut Court in Hawthorn Woods.

B. Allegations of Non-Compliance

6. Complainant contends that as part of its automotive repair operations, Respondents' employees generate noise through the use of pneumatic and/or power tools and other high impact activities.
7. Complainant contends that as part of its towing operations, Respondents' employees generate noise through the use of revving towing vehicle engines to operate hydraulics and dragging chains in the loading and unloading of towed vehicles.
8. In Complaint No. PCB 2009 -010, Complainants, Joseph and Victoria Morrissey, allege Respondents violated various provisions of the Illinois Pollution Control Act (the "Act") and Board regulations.
9. Specifically, Complainants allege that the Respondents, owners and operators of a Class C land, emitted and allowed its employees to emit, beyond the boundaries of Respondents' property, noise that unreasonably interfered with and continues to interfere with the Complainants' enjoyment of life on their residential Class A land. (415 ILCS 5/24; Section 900.102 Prohibition of Noise Pollution); Complainants allege that the Respondents caused or allowed the emission of sound during nighttime hours from its property-line-noise-source to Complainants' residential Class A land which exceeded the allowable octave band sound pressure level. (Section 901.102(b)); and Complainants allege that the Respondents caused or allowed the emission of highly-impulsive sound from its property-line-noise-source to Complainants' residential Class A land which exceeded the allowable A-weighted sound levels. (Section 901.104).
10. The Respondents have denied the allegations as to any violations in their answer to the Complaint and have continued to deny said allegations, including but not limited to the fact that the land upon which it is situated on is zoned in a manner so as to be classified as Class C land. However, Respondent believes that it is in its best interest to enter into this stipulation and proposal for settlement.
11. Complainants acknowledge that the Respondents business provides a value to the community at large; however, there is no social or economic value to the noise sought to be abated through closing of the bay doors when tools such as impact wrenches, air hammers or other noise making tools are used. The parties agree however that any incidental noise of 3 seconds or less from the impact wrenches or other noise generating tools during any 5 minute interval shall not be considered a violation of this agreement. The Respondent shall conduct towing operations to the side or front of the building when the vehicle is in operating condition.
12. Complainants resided in their residential property prior to the Respondents having obtained an exception to the Village of Lake Zurich zoning code for some of their operations. Complainants' property is zoned residential and is part of the Village of Hawthorn Woods and Respondents property is zoned light industrial with a variance for the 24-hour towing operations.

A handwritten signature in black ink, appearing to read "John" followed by a stylized surname, is located in the bottom right corner of the page.

C. Compliance Activities to Date

13. The Respondents have installed a wooden fence surrounding a ventilation/exhaust fan. Complainants and Respondents agree that the noise is reduced enough to comply with regulations. Complainants and Respondents agree that the barrier and wall must be maintained. [415 ILCS 5/33(c)]. The Illinois Pollution Control Board finds that the actions taken by Respondent are reasonable and sufficient to mitigate the noise allegations by the Complainants.

D. Proposed Compliance by Stipulation

14. Complainants and Respondents agree that the above described violations would be resolved by a Stipulation entered by the Board requiring Respondents to (1) restrict their noise generating operations to the inside of the building with the rear (north) bay doors completely closed when tools such as high audible impact wrenches, air hammers or other large, noise making tools are used and restrict the loading and unloading of all towed vehicles that are in a drivable condition to an area on the property (south and/or west of the building) where the Alpine Automotive building shields the residential homes from noise. Both parties agree that this would be a practicable and economic solution to abate most of the noise which interferes with Complainants' enjoyment of their property. The parties agree that any incidental noise from the impact wrenches, air hammers or other large noise making equipment that amount to 3 seconds or less in any 5 minute interval shall not be deemed a violation of the spirit of the agreement.

The use of low noise generating pneumatic tools not audible on the Morrissey residence, lawn maintenance equipment, and outdoor washing of equipment are not examples of noise generating activities referenced above. Both parties agree to utilize good faith with respect to this paragraph and both parties agree that this would be a practicable and economic solution to abate most of the noise which interferes with Complainants' enjoyment of the property.

II. APPLICABILITY

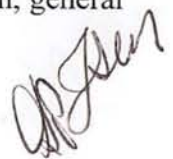
15. This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

III. IMPACT ON PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

16. In pertinent part, Section 33(c) of the Act, 415 ILCS 5/33(c) (2010) 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:

- (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.”

a. The Complainant’s allegations raise concerns about noise that may unreasonably interfere with the enjoyment of their property.

b. The Respondent’s activities have significant social and economic value and are suitable to the area in which it is located. It is disputed by Complainants as to whether respondent’s generating noise with the bay doors open has any value and whether these activities are suitable to the area in which the business is located.

c. It is both technically practicable and economically reasonable for the Respondent to take the following actions to reduce the noise emissions emanating from its property. These are: (1) restrict their noise generating operations to the inside of the building with the rear (north) bay doors completely closed when high audible impact wrenches, air hammers or other large noise making tools are used and, (2) restrict the loading and unloading of all towed vehicles that are in a drivable condition to an area on the property (south and/or west of the building) where the Alpine Automotive building shields the residential homes from noise; and (3) maintain the wooden fence and barrier surrounding the ventilation/exhaust fan. The parties agree that any incidental noise from the impact wrenches or other noise generating tools lasting 3 seconds or less in any 5 minute interval shall not be deemed a violation of this agreement.

The use of low noise generating pneumatic tools not audible on the Morrissey residence, lawn maintenance equipment, and outdoor washing of equipment are not examples of noise generating activities referenced above. Both parties agree to utilize good faith with respect to this paragraph and both parties agree that this would be a practicable and economic solution to abate most of the noise which interferes with the Complainants’ enjoyment of the property.

IV. TERMS OF SETTLEMENT

A. Penalty

17. In exchange for Respondents compliance with the terms of this Stipulation, Complainants do not request penalties to be levied against Respondents.

APG

B. Future Compliance

18. 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.
19. For purposes of the allegations of the Complainant's complaint, the parties are requesting that the Board adopt the remediation methods set forth Paragraph 16(c) as the best and most practical means of dealing with the noise emanating from the Respondent's property and the allegations set forth by the Complainant's complaint.

C. Release from Liability

20. Upon the Board's approval of this Stipulation, the Complainants release, waive and discharge 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
21. 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.

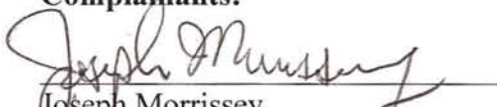
D. Enforcement and Modification of Stipulation

22. 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.

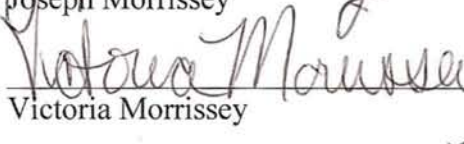
E. Execution of Stipulation

23. 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.

Complainants:



Joseph Morrissey



Victoria Morrissey

Respondents:



Geoff Pahios for GEOFF PAHIOS
and ALPINE AUTOMOTIVE, Inc.

