

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 13-
)	(Enforcement)
KERRY ANDERSON, d/b/a)	
BILL'S AUTO REPAIR,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

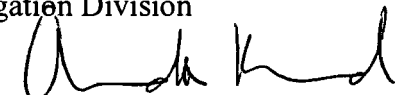
PLEASE TAKE NOTICE that on January 18, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a COMPLAINT, MOTION FOR RELIEF FROM HEARING 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

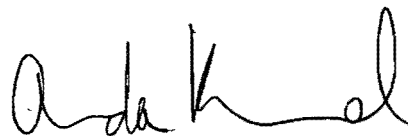
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
AMANDA KIMMEL
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on January 18, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



AMANDA KIMMEL
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Bruce L. Carmen
Carmen Law Office, PC
116 N. East Street
Cambridge, IL 61238

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 13-
)	(Enforcement)
)	
KERRY ANDERSON, d/b/a)	
BILL'S AUTO REPAIR,)	
)	
Respondent.)	

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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

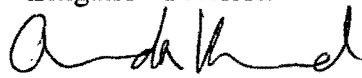
1. A Complaint and Stipulation and Proposal for Settlement are being filed simultaneously with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

AMANDA KIMMEL
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 18, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
KERRY ANDERSON d/b/a,)	
BILL'S AUTO REPAIR,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, KERRY ANDERSON d/b/a BILL'S AUTO REPAIR, as follows:

COUNT I
HAZARDOUS WASTE GENERATION AND STORAGE VIOLATIONS

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent, Kerry Anderson d/b/a Bill's Auto Repair ("Respondent") is an apparent sole proprietorship. At all times relevant to this Complaint, Respondent was the operator of a facility located at 115 E. College Street, Kewanee, Henry County, Illinois (the "Facility").

5. At all times relevant to this complaint, Respondent's primary business at the Facility was an automotive body repair and paint shop. The Facility handles spent solvents, spent solvent mixtures, and/or still bottoms. Still bottoms are the remaining residues from the distillation process of reclaiming solvents from paints and other substances.

6. On June 13, 1986, Respondent submitted the first Notification of Hazardous Waste Activity which identified the Facility as a generator of hazardous waste resulting from spent solvents, spent solvent mixtures, and/or still bottoms.

7. On February 23, 1987, Respondent submitted a Generator Annual Hazardous Waste Report which identified the Facility as a Small Quantity Generator of 140 gallons of paint related materials.

8. On February 23, 1989, Respondent submitted a Generator Annual Hazardous Waste Report which identified the Facility as a Small Quantity Generator of 185 gallons of waste thinner and paint.

9. On February 20, 1990, Respondent submitted a Generator Annual Hazardous Waste Report which identified the Facility as a Small Quantity Generator of 222 gallons of waste thinner and paint and stated in the report, "I have now bought the business and plan to by[sic] a recycleing [sic] machine."

10. On or before July 15, 2011, the exact date or dates better known to Respondent, Respondent began using a Sidewinder Solvent Recovery System ("sidewinder") which recycles

the spent solvent waste from used paint guns. One of the by-products of the sidewinder is still bottoms.

11. On July 15, 2011, an inspector from the Illinois EPA performed a Resource Conservation and Recovery Act ("RCRA") compliance inspection. The Illinois EPA inspector found that the Facility generated hazardous waste in the form of paint related materials, spent solvent waste, and still bottoms from the sidewinder.

12. A Violation Notice ("VN") was issued to Respondent on September 14, 2011. The VN recommended that Respondent conduct hazardous waste and special waste determinations, stop sending hazardous waste to facilities not permitted to accept such waste, and comply with hazardous waste regulations. Respondent proposed a Compliance Commitment Agreement ("CCA") to the Illinois EPA by letter on October 19, 2011.

13. On October 20, 2011, Respondent submitted a Generator's Waste Profile Sheet which identified still bottoms generated from the sidewinder as hazardous waste.

14. On November 15, 2011, Respondent met with representatives of the Illinois EPA at the Peoria Region Office.

15. On November 21, 2011, Respondent, through his attorney, submitted a proposed CCA in which Respondent agreed to stop disposing of hazardous waste improperly and to begin using water-based paint by the end of 2011. An identical proposed CCA was submitted again on December 6, 2011. The proposed CCA was rejected by the Illinois EPA on December 9, 2011.

16. A Notice of Intent to Pursue Legal Action was issued to Respondent on April 10, 2012.

17. The Illinois EPA re-inspected the Facility on May 1, 2012. The inspection showed that Respondent had begun using a water-based paint system. The inspection found that the Facility was no longer in violation of various RCRA requirements.

18. Section 21 of the Act, 415 ILCS 5/21 (2010), provides in the pertinent part, as follows:

No Person Shall:

- f. Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
 - 1. without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or
 - 2. in violation of any regulations or standards adopted by the Board under this Act;
 - 3. in violation of any RCRA permit filing requirement established under standards adopted by the Board under this Act; or
 - 4. in violation of any order adopted by the Board under this Act.

* * *

- i. Conduct any process or engage in any act which produces hazardous waste in violation of any regulations or standards adopted by the Board under subsections (a) and (c) of Section 22.4 of this Act.

19. Section 3.220 of the Act, 415 ILCS 5/3.220 (2010), defines "hazardous waste" as follows:

"Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or

significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations.

20. Section 703.121(a-b) of the Board's regulations, 35 Ill. Adm. Code 703.121(a-b)

(2010), states in pertinent part:

- a. No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:
 1. Without a RCRA permit for the HWM (hazardous waste management) facility; or
 2. In violation of any condition imposed by a RCRA permit.
- b. An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit. An owner or operator of a surface impoundment, landfill, land treatment unit or a waste pile unit that received wastes after July 26, 1982, or that certified closure (according to 35 Ill. Adm. Code 725.215) after January 26, 1983, must have a post-closure care permit, unless it demonstrates closure by removal or decontamination, as provided under Sections 703.159 and 703.160, or obtains enforceable documents containing alternative requirements, as provided under Section 703.161. If a post-closure care permit is required, the permit must address applicable 35 Ill. Adm. Code 724 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements.

21. On or before July 15, 2011, the exact date or dates better known to Respondent, Respondent allowed hazardous waste in the form of still bottoms from the sidewinder to be stored at the Facility without the necessary RCRA permits.

22. By causing or allowing the hazardous waste to be stored at the Facility without the necessary RCRA permits, Respondent has violated Section 21(f) of the Act, 415 ILCS

5/21(f)(2010) and Section 703.121(a-b) of the Board's Regulations, 35 Ill. Adm. Code 703.121(a-b) (2010).

23. On or before July 15, 2011, the exact date or dates better known to Respondent, Respondent produced hazardous waste in the form of still bottoms generated from the sidewinder.

24. By engaging in an act which produced the still bottoms generated from the sidewinder, Respondent has violated Section 21(i) of the Act, 415 ILCS 5/21(i)(2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, KERRY ANDERSON d/b/a BILL'S AUTO REPAIR:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II
HAZARDOUS AND SPECIAL WASTE DETERMINATION VIOLATIONS

1-17. Complainant re-alleges and incorporates by reference herein Paragraphs 1 through 17 of Count I as Paragraphs 1-17 of this Count II.

18. On July 15, 2011, the Illinois EPA inspector conducted an inspection of the Facility and issued a violation notice to Respondent which included a failure to make the required hazardous and special waste determinations.

19. Section 722.111 of the Board's Regulations, 35 Ill. Adm. Code 722.111 (2010), requires generators to determine if the waste generated is hazardous, as set forth below:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste using the following method:

- a. The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- b. The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.

BOARD NOTE: Even if a waste is listed as a hazardous waste, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

- c. For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
 1. Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
 2. Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.

- d. If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 724 through 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

20. Section 808.121(a) of the Board's Regulations, 35 Ill. Adm. Code 808.121(a) (2010), requires generators to determine if the waste generated is special waste, as set forth below:

- a. Each person who generates waste shall determine whether the waste is a special waste. BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste.

21. Respondent failed to make a hazardous waste determination of the still bottoms generated by the sidewinder prior to transporting, storing, and disposing of the waste.

22. By failing to make a hazardous waste determination of the still bottoms generated by the sidewinder prior to transporting, storing, and disposing of the waste, Respondent violated Section 722.111 of the Board's Regulations, 35 Ill. Adm. Code 722.111 (2010).

23. Respondent failed to make a special waste determination of the still bottoms generated by the sidewinder prior to transporting, storing, and disposing of the waste.

24. By failing to make a special waste determination of the still bottoms generated by the sidewinder prior to transporting, storing, and disposing of the waste, Respondent violated Section 808.121(a) of the Board's Regulations, 35 Ill. Adm. Code 808.121(a) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, KERRY ANDERSON d/b/a BILL'S AUTO REPAIR:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III
HAZARDOUS WASTE DISPOSAL VIOLATIONS

1-17. The Complainant realleges and incorporates by reference paragraphs 1 through 17 of Count I as if fully set forth herein as paragraphs 1 through 17 of this Count III.

18. On a date or dates better known to Respondent, the still bottoms generated from the sidewinder were either taken to the Kewanee Waste Transfer Station for storage and transferred to the Knox County Landfill or taken directly to the Knox County Landfill for disposal. Neither the Kewanee Waste Transfer Station nor the Knox County Landfill is permitted to accept hazardous waste.

19. On July 15, 2011, the Illinois EPA inspector conducted an inspection of the Facility and issued a violation notice to Respondent which included disposing of hazardous waste at facilities not permitted to accept hazardous waste.

20. Section 21 of the Act, 415 ILCS 5/21 (2010), provides in the pertinent part, as follows:

No Person Shall:

e. Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

21. Section 722.112(c) of the Board's Regulations, 35 Ill. Adm. Code 722.112(c) (2010), requires generators to only dispose of hazardous waste at permitted facilities, as set forth below:

c. A generator must not offer its hazardous waste to transporters or to treatment, storage or disposal facilities that have not received a USEPA identification number.

22. Respondent sent the still bottoms generated from the sidewinder to a Facility not permitted to accept hazardous waste.

23. By sending the still bottoms generated from the sidewinder to facilities that did not have a permit to accept hazardous waste for storage or disposal, Respondent has violated Section 21 of the Act, 415 ILCS 5/21(e) (2010), and Section 722.112(c) of the Board's Regulations, 35 Ill. Adm. Code 722.112(c) (2010).

24. Respondent disposed of the still bottoms generated from the sidewinder at a Facility not permitted to dispose of hazardous waste.

25. By disposing of hazardous waste at facilities that did not meet the requirements of the Act and regulations, Respondent has violated Section 21 of the Act, 415 ILCS 5/21(e) (2010), and Section 722.112(c) of the Board's Regulations, 35 Ill. Adm. Code 722.112(c) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, KERRY ANDERSON d/b/a BILL'S AUTO REPAIR:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT IV
MANIFEST DOCUMENTATION VIOLATIONS

1-17. Complainant re-alleges and incorporates by reference herein Paragraphs 1 through 17 of Count I as Paragraphs 1-17 of this Count IV.

18. On a date better known to Respondent, the still bottoms generated from the sidewinder were transported for disposal without the necessary manifest documentation for the transportation of hazardous waste.

19. On July 15, 2011, the Illinois EPA inspector conducted an inspection of the Respondent's Facility and issued a violation notice to Respondent which included failing to

prepare a manifest and follow the necessary manifest procedures for the transportation of hazardous waste.

20. Section 722.120(a) of the Board's Regulations, 35 Ill. Adm. Code 722.120(a) (2010), requires generators to prepare a manifests for the transportation of hazardous waste, as set forth below:

- a. A generator that transports hazardous waste or offers a hazardous waste for transportation for off-site treatment, storage, or disposal or a treatment, storage, or disposal facility that offers for transport a rejected load of hazardous waste must prepare a manifest on USEPA Form 8700-22 (and, if necessary, on USEPA Form 8700-22A) according to the instructions included in the appendix to 40 CFR 262 (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

21. Section 808.122 of the Board's Regulations, 35 Ill. Adm. Code 808.122 (2010), requires generators to prepare a manifests for the transportation of special waste, as set forth below:

Except as otherwise provided by Section 808.121(b), the generator of any special waste shall prepare a manifest, as prescribed by 35 Ill. Adm. Code 809.501, prior to shipment.

22. Section 722.123 of the Board's Regulations, 35 Ill. Adm. Code 722.123 (2010), requires generators to follow procedures for manifests for the transportation of hazardous waste, as set forth below:

- a. The generator shall do the following:
 1. Sign the manifest certification by hand;
 2. Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;
 3. Retain one copy, in accordance with Section 722.140(a); and
 4. Send one copy of the manifest to the Agency within two working days.

23. Section 809.301 of the Board's Regulations, 35 Ill. Adm. Code 809.301 (2010), requires generators to concurrently deliver manifests for the transportation of hazardous waste, as set forth below:

No person may deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste transporter who holds a current nonhazardous special waste hauling permit or Uniform Program Registration and Permit issued by the Agency under Subpart B or C of this Part.

24. Respondent failed to prepare a manifest prior to the shipment of the hazardous or special waste in the form of still bottoms generated from the sidewinder.

25. By failing to prepare a manifest prior to the shipment of hazardous or special waste in the form of still bottoms generated from the sidewinder, Respondent has violated Section 722.120(a) of the Board's Regulations, 35 Ill. Adm. Code 722.120(a) (2010) and Section 808.122 of the Board's Regulations, 35 Ill. Adm. Code 808.122 (2010).

26. Respondent failed to follow the procedures for manifests for the transportation of hazardous waste in the form of still bottoms generated from the sidewinder.

27. By failing to follow the procedures for manifests for the transportation of hazardous waste in the form of still bottoms generated from the sidewinder, Respondent has violated Section 722.123(a) of the Board's Regulations, 35 Ill. Adm. Code 722.123(a) (2010).

28. Respondent failed to concurrently deliver a manifest to a special waste hauler for shipment of hazardous waste in the form of still bottoms generated by the sidewinder.

29. By not concurrently delivering a manifest to a special waste hauler for shipments of hazardous waste in the form of still bottoms generated by the sidewinder, Respondent has violated Section 809.301 of the Board's Regulations, 35 Ill. Adm. Code 809.301 (2010).

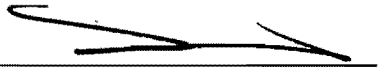
PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, KERRY ANDERSON d/b/a BILL'S AUTO REPAIR:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

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: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel

AMANDA KIMMEL

ARDC# 6303715

500 South Second Street

Springfield, Illinois 62706

217/557-9457

Dated: January 18, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
KERRY ANDERSON d/b/a,)	
BILL'S AUTO REPAIR,)	
)	
Respondent.)	

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 Kerry Anderson d/b/a Bill's Auto Repair ("Respondent") ("Parties to the Stipulation"), 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. (2010), and the Board's Regulations, alleged 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

1. A Complaint was filed simultaneously with this Stipulation 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 (2010), against the Respondent.

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 (2010).

3. At all times relevant to the Complaint, Respondent was and is an apparent sole proprietorship.

4. At all times relevant to the Complaint, Respondent owned and operated an automotive body repair and paint shop facility located at 115 E. College Street, Kewanee, Henry County, Illinois ("Facility").

5. At all times relevant to the Complaint, the Facility handled spent solvents, spent solvent mixtures, and/or still bottoms. Still bottoms are the remaining residues from the distillation process of reclaiming solvents from paints and other substances.

6. On June 13, 1986, Respondent submitted the first Notification of Hazardous Waste Activity which identified the Facility as a generator of hazardous waste resulting from spent solvents, spent solvent mixtures, and/or still bottoms.

7. On February 23, 1987, Respondent submitted a Generator Annual Hazardous Waste Report which identified the Facility as a Small Quantity Generator of 140 gallons of paint related materials.

8. On February 23, 1989, Respondent submitted a Generator Annual Hazardous Waste Report which identified the Facility as a Small Quantity Generator of 185 gallons of waste thinner and paint.

9. On February 20, 1990, Respondent submitted a Generator Annual Hazardous Waste Report which identified the Facility as a Small Quantity Generator of 222 gallons of waste thinner and paint and stated in the report, "I have now bought the business and plan to by[sic] a recycleing [sic] machine."

10. On or before July 15, 2011, the exact date or dates better known to Respondent, Respondent began using a Sidewinder Solvent Recovery System ("sidewinder") which recycles the spent solvent waste from used paint guns. One of the by-products of the sidewinder is still bottoms.

11. On July 15, 2011, an inspector from the Illinois EPA performed a Resource Conservation and Recovery Act ("RCRA") compliance inspection. The Illinois EPA inspector found that the Facility generated hazardous waste in the form of paint related materials, spent solvent waste, and still bottoms from the sidewinder.

12. On a date or dates better known to Respondent, the still bottoms generated from the sidewinder were either taken to the Kewanee Waste Transfer Station for storage and transferred to the Knox County Landfill or taken directly to the Knox County Landfill for disposal. Neither the Kewanee Waste Transfer Station nor the Knox County Landfill is permitted to accept hazardous waste.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Hazardous Waste Generation and Storage Violations

By causing or allowing the hazardous waste to be stored at the Facility without the necessary RCRA permits, Respondent has violated Section 21(f) of the Act, 415 ILCS 5/21(f)(2010) and Section 703.121(a-b) of the Board's Regulations, 35 Ill. Adm. Code 703.121(a-b) (2010).

By engaging in an act which produced the still bottoms, Respondent has violated Section 21(i) of the Act, 415 ILCS 5/21(i)(2010).

Count II: Hazardous and Special Waste Determination Violations

By failing to make a hazardous waste determination of the still bottoms prior to transporting, storing, and disposing of the waste, Respondent violated Section 722.111 of the Board's Regulations, 35 Ill. Adm. Code 722.111 (2010).

By failing to make a special waste determination of the still bottoms prior to transporting, storing, and disposing of the waste, Respondent violated Section 808.121(a) of the Board's Regulations, 35 Ill. Adm. Code 808.121(a) (2010).

Count III: Hazardous Waste Disposal Violations

By sending the still bottoms to facilities that did not have a permit to accept hazardous waste for storage or disposal, Respondent has violated Section 21 of the Act, 415 ILCS 5/21(e) (2010), and Section 722.112(c) of the Board's Regulations, 35 Ill. Adm. Code 722.112(c) (2010).

By disposing of hazardous waste at facilities that did not meet the requirements of the Act and regulations, Respondent has violated Section 21 of the Act, 415 ILCS 5/21(e) (2010), and Section 722.112(c) of the Board's Regulations, 35 Ill. Adm. Code 722.112(c) (2010).

Count IV: Manifest Documentation Violations

By failing to prepare a manifest prior to the shipment of hazardous or special waste in the form of still bottoms, Respondent has violated Section 722.120(a) of the Board's Regulations, 35 Ill. Adm. Code 722.120(a) (2010) and Section 808.122 of the Board's Regulations, 35 Ill. Adm. Code 808.122 (2010).

By failing to follow the procedures for manifests for the transportation of hazardous waste in the form of still bottoms, Respondent has violated Section 722.123(a) of the Board's Regulations, 35 Ill. Adm. Code 722.123(a) (2010).

By not concurrently delivering a manifest to a special waste hauler for shipments of hazardous waste in the form of still bottoms, Respondent has violated Section 809.301 of the Board's Regulations, 35 Ill. Adm. Code 809.301 (2010).

C. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

On May 1, 2012, the Illinois EPA re-inspected the Facility. The inspection showed that Respondent had begun using a water-based paint system and stopped using the sidewinder. The inspection found that the Facility was no longer in violation of various RCRA requirements.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent 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 Respondent 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 (2010).

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

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:

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 to the Stipulation state the following:

1. By engaging in the generation of special or hazardous waste, failing to properly dispose of said waste, and failing to properly document disposal of said waste, the human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.

2. There is social and economic value resulting from the operations performed by Respondent at the Facility.

3. Issues with regard to siting and priority of location are not the subject of the enforcement case, nor were public comments and concerns relative to Respondent's operations received by Complainant documenting Respondent's facility is unsuitable to the area in which it is located.

4. Properly handling and disposing of special or hazardous waste 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)(2012), 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;
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; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Starting on June 13, 1986, Respondent submitted a Notification of Hazardous Waste Activity which identified the Facility as a generator of hazardous waste resulting from spent solvents, spent solvent mixtures, and/or still bottoms. On or before July 15, 2011, the Respondent began using a sidewinder which produced hazardous waste in the form still bottoms. The gravity of the violations is enhanced given that the hazardous waste was disposed of in a landfill not permitted to accept such waste.

2. Respondent was diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified it of its noncompliance. The Respondent stopped using the sidewinder and began using water based paints.

3. Any economic benefit attributable to the noncompliance would be minimal.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Six Thousand Dollars (\$6,000.00) 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. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

8. On November 21, 2011, Respondent, proposed a Compliance Commitment Agreement ("CCA") under subsection (a) of Section 31 of the Act. The proposed CCA was rejected by the Illinois EPA on December 9, 2011.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Six Thousand Dollars (\$6,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent 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, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties 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 Respondent's federal tax identification number 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:

Amanda S. Kimmel
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 Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

F. Release from Liability

In consideration of the Respondent's payment of the \$6,000.00 penalty, its commitment to cease and desist as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent 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 simultaneously with this Stipulation. The Complainant reserves, and this

Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent 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 Respondent's 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

G. Enforcement and Modification 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.

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

PEOPLE OF THE STATE OF ILLINOIS, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN KIM
Interim Director

DATE: 1/18/13

DATE: 1/15/13

KERRY ANDERSON d/b/a BILL'S
AUTO REPAIR

BY: Bill's Auto Repair
Name: Kerry D Anderson
Title: owner

DATE: 01/03/13