

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
)	
WILLIAM BLANKENSHIP,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on December 5, 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 MOTION FOR RELIEF FROM HEARING REQUIREMENT, COMPLAINT 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: s/Amanda Kimmel
AMANDA KIMMEL
Assistant Attorney General
Environmental Bureau

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

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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) (2012), 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) (2012). In support of this motion, Complainant states as follows:

1. On today's date, December 5, 2013, a Complaint was filed 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) (2012).

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) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: s/Amanda Kimmel
AMANDA KIMMEL
Environmental Bureau
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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of Respondent, WILLIAM BLANKENSHIP, as follows:

COUNT I
WASTE TIRE 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. At all times relevant to this complaint prior to July 27, 2012, Respondent owned the land at 4010 Moake School Road, Marion, Williams County, Illinois, 629595 ("site") and operated a used tire storage and processing facility at the site.

5. On September 29, 2010, the Illinois EPA conducted an inspection of the site because of a citizen complaint. The Illinois EPA inspector observed approximately 3250 altered tires.

6. On September 29, 2010, the Illinois EPA inspector observed a large structure constructed from stacks of altered tires which was composed of tire treads and sidewalls and measured approximately 200 feet long by 20 feet wide by 4 feet tall. The Illinois EPA inspector observed approximately 130 stacks of 50 sidewalls. The structure was surrounded by vegetation and trees growing between the sidewalls and treads.

7. On September 29, 2010, the Illinois EPA inspector observed documents pertaining to the construction of a tire house. Approximately 155 cubic yards of waste or altered tires were observed at the site.

8. On May 16, 2011, the Illinois EPA inspector re-inspected the site. The Illinois EPA inspector observed piles of used or waste tire sidewalls. The Illinois EPA inspector observed a large structure constructed from stacks of altered tires which was composed of tire treads and sidewalls and measured approximately 20 feet long by 20 feet wide by 4 feet tall. The Illinois EPA inspector observed a "gazebo" structure constructed from used or waste tires.

9. On January 9, 2012, the Illinois EPA inspector re-inspected the site and observed

piles of tire treads and "tire blocks." The Illinois EPA inspector observed that approximately half of the large structure constructed from stacks of altered tires was dismantled. The Illinois EPA inspector observed the "gazebo" structure constructed from used or waste tires in the substantially same condition as the prior inspection. The Illinois EPA inspector observed approximate 90 cubic yards of waste or altered tires still remained at the site.

10. On July 27, 2012, Respondent sold the site.

11. On May 14, 2013, the Illinois EPA inspector re-inspected the site and observed that the tires were not present at the site.

12. The accumulation of used and/or waste tires at the site constitutes a fire hazard, threat to clean air and water, and poses a potential danger to the public health, safety and welfare by providing a habitat for a number of disease-spreading mosquitoes and other nuisance organisms. These diseases relate to and include the West Nile virus, meningitis, and encephalitis.

13. Section 55 of the Act, 415 ILCS 5/55(2010), provides in relevant part, as follows:

(a) No person shall:

(1) Cause or allow the open dumping of any used or waste tire.

(5) Abandon, dump or dispose of any used or waste tire on private or public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.

(e) No person shall cause or allow the storage, disposal, treatment or processing of any used or waste tire in violation of any regulation or standard adopted by the Board.

14. Section 54.13 of the Act, 415 ILCS 5/54.13 (2010), provides as follows: "[u]sed tire' means a worn, damaged, or defective tire that is not mounted on a vehicle."

15. Section 54.16 of the Act, 415 ILCS 5/54.16 (2010), provides as follows: "[w]aste

tire' means a used tire that has been disposed of.”

16. Section 848.202 of the Board's Regulations, 35 Ill. Adm. Code 848.202, provides as follows:

(b) At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirements:

(6) Used or waste tires shall not be abandoned, dumped or disposed on private or public property in Illinois, except in a landfill permitted by the Agency pursuant to 35 Ill. Adm. Code 807 or 811. (Section 55(a)(5) of the Act)

(c) In addition to the requirements set forth in subsection (b), the owner or operator shall comply with the following requirements at sites at which more than 500 used or waste tires are located.

(3) Used or waste tires shall not be placed on or accumulated in any pile unless the pile is separated from grass, weeds, brush, overhanging tree limbs and similar vegetative growth by no less than 50 feet.

17. On October 10, 2010, the Illinois EPA issued Violation Notice L-2010-01339 to the Respondent. On December 23, 2010, the Illinois EPA accepted with modification the Respondent's proposed Compliance Commitment Agreement (CCA). On August 15, 2011, the Illinois EPA granted Respondent's request for an extension of the CCA deadline.

18. On March 13, 2012, the Illinois EPA sent Respondent a Notice of Intent to Pursue Legal Action by certified mail. At Respondent's request, a meeting pursuant to Section 31 of the Act was scheduled for April 5, 2012. Respondent failed to attend the meeting and did not request for the meeting to be rescheduled.

19. Since at least September 20, 2010, and on dates better known to the Respondent, used and waste tires were stored at the Site in violation of the Board's regulatory management

standards and requirements.

20. By causing or allowing used or waste tires to be open dumped, Respondent violated Section 55(a)(1) of the Act, 415 ILCS 5/55(a)(1)(2010).

21. By causing or allowing used or waste tires to be abandoned, dumped or disposed of on private property, Respondent violated Section 848.202(b)(6) of the Board's Regulations, 35 Ill. Adm. Code 848.202(b)(6) and Section 55(a)(5) and (e) of the Act, 415 ILCS 5/55(a)(5) and (e)(2010).

22. By causing or allowing used or waste tires to be stored at a distance of less than 50 feet from vegetative growth, Respondent violated Section 848.202(c)(3) of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(3) and Section 55(a) and (e) of the Act, 415 ILCS 5/55(a),(e)(2010).

23. By causing or allowing the storage, disposal, treatment, or processing of any used or waste tire in violation of any regulations or standard adopted by the Board, Respondent has violated Section 55(e) of the Act, 415 ILCS 5/55(e)(2010).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, People of the State of Illinois, respectfully requests that this Court grant the following relief against the Respondent, WILLIAM BLANKENSHIP:

- 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 as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;

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
NOTICE AND FINANCIAL ASSURANCE VIOLATIONS

1-17. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count II.

18. Section 55(c) of the Act, 415 ILCS 5/55(c)(2010), provides in relevant part, as follows:

(c) Any person who sells new or used tires at retail or operates a tire storage site or a tire disposal site which contains more than 50 used or waste tires shall give notice of such activity to the Agency. Any person engaging in such activity for the first time after January 1, 1990, shall give notice to the Agency within 30 days after the date of commencement of the activity. The form of such notice shall be specified by the Agency and shall be limited to information regarding the following:

- (1) the name and address of the owner and operator;
- (2) the name, address and location of the operation;
- (3) the type of operations involving used and waste tires (storage, disposal, conversion or processing); and
- (4) the number of used and waste tires present at the location.

19. Section 848.404 of the Board's Regulations, 35 Ill. Adm. Code 848.404, provides as follows:

(a) The owner or operator shall submit to the Agency a written estimate of the cost of removing all used and waste tires from the site.

(2) The cost estimate is due on January 1 of each year, commencing January 1, 1992.

(b) The owner or operator shall revise the cost estimate whenever a change in the removal plan increases the cost estimate.

20. At the time of the September 20, 2010 Illinois EPA inspection, no notification form had been submitted to the Illinois EPA for the site.

21. After a thorough review of records, the Illinois EPA determined that Respondent failed to adequately provide financial assurance, including submitting or revising a removal cost estimate, for the site.

22. By causing or allowing the operation of a tire storage site without submitting the required notification information to the Illinois EPA, Respondent has violated Section 55(c) of the Act, 415 ILCS 5/55(c)(2010).

23. By causing or allowing the operation of a tire storage site without submitting the required financial assurance to the Illinois EPA, Respondent has violated Section 848.404 of the Board's Regulations, 35 Ill. Adm. Code 848.404(a)(2),(b) and Section 55(e) of the Act, 415 ILCS 5/55(e)(2010).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, People of the State of Illinois, respectfully requests that this Court grant the following relief against the Respondent, WILLIAM BLANKENSHIP:

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 as alleged herein;

- C. Ordering Respondent to cease and desist from any further violations of the Act;
- 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
RECORDKEEPING AND REPORTING VIOLATIONS

1-17. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count III.

18. Section 55 of the Act, 415 ILCS 5/55(2010), provides in relevant part, as follows:

(a) No person shall:

(6) Fail to submit required reports...

19. Section 848.202 of the Board's Regulations, 35 Ill. Adm. Code 848.202, provides as follows:

(c) In addition to the requirements set forth in subsection (b), the owner or operator shall comply with the following requirements at sites at which more than 500 used or waste tires are located.

(1) A contingency plan which meets the requirements of Section 848.203 shall be maintained.

(2) The recordkeeping and reporting requirements of Subpart C shall be met.

20. Section 848.302(a) of the Board's Used and Waste Tire Regulations, 35 Ill. Adm. Code 848.302(a), provides, in pertinent part, as follows:

(a) The owner and operator shall keep a record of used and waste tires at the site. The owner and operator shall keep the following records:

- (1) Daily Tire Record
- (2) Annual Tire Summary

21. Section 848.303 of the Board's Used and Waste Tire Regulations, 35 Ill. Adm. Code 848.303, provides, in pertinent part, as follows:

(a) The owner or operator shall maintain the Daily Tire Record at the site; such record shall include the day of the week, the date, the Agency designated site number and the site name and address.

(b) The following information relative to used and waste tires shall be recorded in the Daily Tire Record:

- (1) The weight or volume of used or waste tires received at the site during the operating business day.
- (2) The weight or volume of used or waste tires transported from the site during the operating business day and the destination of the tires so transported.
- (3) The total number of used or waste tires remaining in storage at the conclusion of the operating business day determined in terms of the passenger tire equivalent (PTE) in accordance with subsection (c).
- (4) The weight or volume of used or waste tires burned or combusted during the operating business day.

22. Section 848.304 of the Board's Used and Waste Tire Regulations, 35 Ill. Adm. Code 848.304, provides, in pertinent part, as follows:

(a) The owner or operator shall maintain an Annual Tire Summary at the site; such record shall include the Agency designated site number, the site name and address and the calendar year for which the summary applies.

(b) The following information relative to used and waste tires shall be recorded in the Annual Tire Summary.

- (1) The weight or volume of used or waste tires received at the site during the calendar year.
 - (2) The weight or volume of used or waste tires transported from the site during the calendar year.
 - (3) The total number of used or waste tires determined in terms of passenger tire equivalent (PTE) remaining in storage at the conclusion of the calendar year.
 - (4) The weight or volume of used or waste tires combusted during the calendar year.
- (c) The Annual Tire Summary shall be received by the Agency on or before January 31 of each year and shall cover the preceding calendar year.

23. Section 848.305 of the Board's Used and Waste Tire Regulations, 35 Ill. Adm. Code 848.305, provides, in pertinent part, as follows:

Copies of all records required to be kept under this Subpart shall be retained by the owner and operator for three years and shall be made available at the site during the normal business hours of the operator for inspection and photocopying by the Agency.

24. At the time of the September 20, 2010 Illinois EPA inspection, no contingency plan had been submitted to the Illinois EPA for the Site. After a thorough review of records, the Illinois EPA determined that Respondent failed to adequately maintain proper recordkeeping and reporting as required by the Act and Board Regulations.

25. Respondent has not properly maintained or submitted the daily tire records or the annual tire summaries as required by the Board Regulations

26. By failing to maintain a contingency plan for the Site, which contains at least 500 used tires, Respondent has violated Section 848.202(c)(1) of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(1), and Section 55(a)(6) of the Act, 415 ILCS 5/55(a)(6)(2010).

27. By failing to maintain proper recordkeeping and reporting requirements, Respondent has violated Section 848.202(c)(2) of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(2), and Section 55(a)(6) of the Act, 415 ILCS 5/55(a)(6)(2010).

28. By failing to properly maintain the daily tire record, Respondent has violated Section 848.302(a)(1) and 848.303(a-b) of the Board's Regulations, 35 Ill. Adm. Code 848.302(a)(1), 848.303(a-b); and Section 55(a)(6) of the Act, 415 ILCS 5/55(a)(6)(2010).

29. By failing to properly maintain the annual tire summary, Respondent has violated Section 848.302(a)(2) and Section 848.304(a-c) of the Board's Regulations, 35 Ill. Adm. Code Section 848.302(a)(2), 848.304(a-c); and Section 55(a)(6) of the Act, 415 ILCS 5/55(a)(6)(2010).

30. By failing to properly retain copies of records, Respondent has violated Section 848.305 of the Board's Regulations, 35 Ill. Adm. Code 848.305, and Section 55(a)(6) of the Act, 415 ILCS 5/55(a)(6)(2010).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, People of the State of Illinois, respectfully requests that this Court grant the following relief against the Respondent, WILLIAM BLANKENSHIP:

- 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 as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- 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
OPEN DUMPING VIOLATIONS

1-17. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count IV.

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

No person shall:

- (a) Cause or allow the open dumping of any waste.

- (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.

- (p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:
 - (1) litter;

19. Section 3.300 of the Act, 415 ILCS 5/3.300 (2010), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

20. Section 3.385 of the Act, 415 ILCS 5/3.385 (2010), provides that, "Refuse" means waste.

21. Section 3.535 of the Act, 415 ILCS 5/3.535 (2010), provides as follows:

"Waste" means any garbage, sludge from a waste treatment plant, water supply

treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. . . .

22. Since at least September 20, 2010, and on dates better known to the Respondent, Respondent caused or allowed the open dumping of used and altered waste tires at the site.

23. By causing or allowing the open dumping of waste, Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a)(2010).

24. By disposing or abandoning waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, the Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

25. By causing or allowing the open dumping of waste in a manner which has resulted in litter at the site, Respondent has violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1)(2010).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, People of the State of Illinois, respectfully requests that this Court grant the following relief against the Respondent, WILLIAM BLANKENSHIP:

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 as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act;

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: December 4, 2013

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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 WILLIAM BLANKENSHIP ("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, simultaneous with the 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 this complaint prior to July 27, 2012, Respondent owned the land at 4010 Moake School Road, Marion, Williamson County, Illinois, 629595 ("site") and operated a used tire storage and processing facility at the site.

4. On September 29, 2010, the Illinois EPA conducted an inspection of the site and observed approximately 3250 altered tires. The Illinois EPA inspector observed a large structure constructed from stacks of altered tires which was composed of tire treads and sidewalls and measured approximately 200 feet long by 20 feet wide by 4 feet tall. The Illinois EPA inspector observed approximately 130 stacks of 50 sidewalls. The structure was surrounded by vegetation and trees growing between the sidewalls and treads. Approximately 155 cubic yards of waste or altered tires were observed at the site.

5. On May 16, 2011, the Illinois EPA inspector re-inspected the site. The Illinois EPA inspector observed piles of used or waste tire sidewalls. The Illinois EPA inspector observed a large structure constructed from stacks of altered tires which was composed of tire treads and sidewalls and measured approximately 20 feet long by 20 feet wide by 4 feet tall. The Illinois EPA inspector observed a "gazebo" structure constructed from used or waste tires.

6. On January 9, 2012, the Illinois EPA inspector re-inspected the site and observed piles of tire treads and "tire blocks." The Illinois EPA inspector observed that approximately half of the large structure constructed from stacks of altered tires was dismantled. The Illinois EPA inspector observed the "gazebo" structure constructed from used or waste tires in the

substantially same condition as the prior inspection. The Illinois EPA inspector observed approximate 90 cubic yards of waste or altered tires still remained at the site.

7. On May 14, 2013, the Illinois EPA inspector re-inspected the site and observed that the tires were not present at the site.

B. Allegations of Non-Compliance

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

Count I: Waste Tire Storage Violations
Respondent violated Section 848.202(b)(6) and (c)(3) of the Board's Regulations, 35 Ill. Adm. Code 848.202(b)(6), (c)(3)(2010) and Section 55(a) and (e) of the Act, 415 ILCS 5/55(a)(1),(5),(e)(2010)

Count II: Notice and Financial Assurance Violations
Respondent violated Section 848.404 of the Board's Regulations, 35 Ill. Adm. Code 848.404(a)(2),(b) and Section 55(c) and (e) of the Act, 415 ILCS 5/55(c),(e)(2010)

Count III: Recordkeeping and Reporting Violations
Respondent has violated Section 848.202(c)(1-2), 848.302(a)(1-2), 848.303(a-b), 848.304(a-c), 848.305, of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(1-2), 848.302(a)(1-2), 848.303(a-b), 848.304(a-c), 848.305; and Section 55(a)(6) of the Act, 415 ILCS 5/55(a)(6)(2010).

Count IV: Open Dumping Violations
Respondent has violated Section 21(a), (e), and (p)(1) of the Act, 415 ILCS 5/21(a), (e),(p)(1)(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

The Respondent removed the used and altered tires from the site by certified tire haulers and sold the site on July 27, 2012. In April 2013, the Respondent submitted receipts for the tire

disposal to the Illinois EPA and the Illinois Attorney General's Office.

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. Human health and the environment were threatened by the improper tire storage

practices and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.

2. Issues with regard to social and economic benefit to the facility are not the subject of the enforcement case.

3. Issues with regard to siting and priority of location are not the subject of the enforcement case.

4. Properly storing tires at the site and compliance with the tire storage regulation terms 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. The Respondent operated a tire storage facility without complying with the storage requirements, notice and financial assurance requirements, and recordkeeping and reporting requirements. Respondent also caused open dumping. The violations began on or around September 29, 2010 and were resolved at various times in the following two years.
2. Respondent was 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. 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 would serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations but due to Respondent's economic hardship no penalty will be imposed in this matter. Respondent filed personal bankruptcy under Chapter 7, Section 727 of Title 11, United States Code, and the bankruptcy agreement between the debtor and creditor was approved on March 20, 2013.
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 December 23, 2010, the Illinois EPA accepted with modification the Respondent's proposed Compliance Commitment Agreement (CCA). On August 15, 2011, the Illinois EPA granted Respondent's request for an extension of the CCA deadline to December 30, 2011. Respondent did not comply the terms of the proposed CCA by the deadline. As of May 14, 2013, the tires were not present at the site.

V. TERMS OF SETTLEMENT

A. 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.

B. Release from Liability

In consideration of the Respondent's commitment to cease and desist as contained in Section V.A. 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.

E. 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

LISA BONNETT, Director
Illinois Environmental Protection Agency

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 12/04/13

DATE: 11/18/13

WILLIAM BLANKENSHIP

BY: 

DATE: 11-26-13

CERTIFICATE OF SERVICE

I hereby certify that I did on December 5, 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, MOTION FOR RELIEF FROM HEARING REQUIREMENT, COMPLAINT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the following:

William Blankenship
8494 Old Route 13
Marion, IL 62959

Carol Webb
Hearing Office
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

s/ Amanda Kimmel
AMANDA KIMMEL
Assistant Attorney General

This filing is submitted on recycled paper.