

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, by LISA)	
MADIGAN, Attorney General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement-Land)
SURDYKE CYCLE OF ILLINOIS, INC.,)	
An Illinois Corporation, d/b/a DALE'S)	
HARLEY- DAVIDSON and WATERKOTTE)	
HARLEY-DAVIDSON.)	
Respondent.)	

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you.

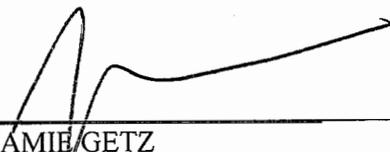
Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN, Attorney General of the State
of Illinois

By:



 JAMIE GETZ
 Assistant Attorney General
 Environmental Bureau
 Illinois Attorney General's Office
 69 W. Washington St., 18th Floor
 Chicago, Illinois 60602
 (312) 814-6986

Date: 5 September 2014

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

For the Respondent

Hank Villani
2215 Broadway
P.O. Box 1593
Mt. Vernon, Illinois 62864

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Jamie Getz, an Assistant Attorney General, certify that on the 5th day of September 2014, I caused to be served by Regular U.S. Mail the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



Jamie Getz
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-6986

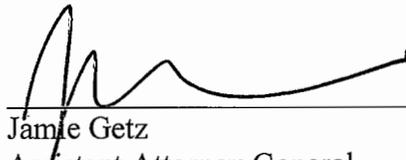
Service List

For the Respondent

Hank Villani
Villani, Johnson, Buesking, LLC.
320 S. 11th Street
Mount Vernon, IL 62864
618-242-2220

CERTIFICATE OF SERVICE

I, Jamie Getz, an Assistant Attorney General, certify that on the 5th day of September 2014, I caused to be served by Regular U.S. Mail the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



Jamie Getz
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-6986

3. Respondent, Surdyke Cycle of Illinois, Inc. ("Surdyke"), is an Illinois corporation. At all times relevant to this Complaint, Surdyke conducts or conducted business under the name Dale's Harley Davidson and Waterkotte Harley Davidson.

4. Surdyke is a commercial motorcycle dealership and repair facility located at 305 North 44th Street, Mount Vernon, Jefferson County, Illinois ("Site").

5. On December 9, 2011, Illinois EPA conducted an inspection of the Site in order to determine whether the Site was in compliance with Illinois statutes and regulations governing the retail sale and storage of tires at the Site.

6. During the December 9, 2011 inspection, approximately 20 worn tires were located in a truck at the Site. Some of the worn tires had been located at the Site for longer than 90 days.

7. On March 21, 2013, Illinois EPA conducted a follow-up inspection of the Site in order to determine whether the Site was in compliance with Illinois statutes and regulations governing the retail sale and storage of tires at the Site.

8. During the March 21, 2013 inspection, approximately 90 worn tires were located inside of a truck at the Site. More than 50 of those worn tires had been accumulated at the Site for longer than 90 days.

9. On June 5, 2014, Illinois EPA conducted a follow-up inspection of the Site in order to determine whether the Site was in compliance with Illinois statutes and regulations governing the retail sale and storage of tires at the Site.

10. During the June 5, 2014 inspection, there were no worn tires at the Site, as they had recently been removed by a tire disposal service. An empty tire storage rack was located inside the shop.

11. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.
12. Surdyke, an Illinois corporation, is a "person" within the meaning of Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).
13. Section 54.15 of the Act, 415 ILCS 5/54.15 (2012), provides as follows:

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn, except devices moved by human power or by animal power, devices used exclusively upon stationary rails or tracks, and motorized wheelchairs.
14. Motorcycles, which are sold at the Site, are "vehicles" within the meaning of Section 54.10 of the Act, 415 ILCS 5/54.15 (2012).
15. Section 54.10 of the Act, 415 ILCS 5/54.10 (2012), provides as follows:

"Tire" means a hollow ring, made of rubber or similar materials, which was manufactured for the purpose of being placed on the wheel rim of a vehicle.
16. The tires present at the Site during the inspections constitute "tires" within the meaning of Section 54.10 of the Act, 415 ILCS 5/54.10 (2012).
17. Section 54.13 of the Act, 415 ILCS 5/54.13 (2012), provides the following definition:

"Used tire" means a worn, damaged, or defective tire that is not mounted on a vehicle.
18. The worn tires present at the Site during the inspections of the Site were "used tires" within the meaning of Section 54.13 of the Act, 415 ILCS 5/54.13 (2012), and are therefore subject to provisions of the Act that pertain to used tires.
19. Section 54.09 of the Act, 415 ILCS 5/54.09 (2012), provides as follows:

"Storage" means any accumulation of used tires that does not constitute disposal. At a minimum, such an accumulation must be an integral part of the systematic alteration, reuse, reprocessing or conversion of the tires in the regular course of business.

20. Surdyke accumulated used tires without disposing them, and thus the tires located at the Site constituted "storage" within the meaning of Section 54.09 of the Act, 415 ILCS 5/54.09 (2012).

21. Section 55.8(a)(1) and (1.5) of the Act, 415 ILCS 5/55.8(a)(1) and (1.5) (2012), provides as follows:

(a) Any persons selling new or used tires at retail or offering new or used tires for retail sale in this State shall:

(1) beginning on June 20, 2003 (the effective date of Public Act 93-32), collect from retail customers a fee of \$2 per new or used tire sold and delivered in this State, to be paid to the Department of Revenue and deposited into the Used Tire Management Fund, less a collection allowance of 10 cents per tire to be retained by the retail seller and a collection allowance of 10 cents per tire to be retained by the Department of Revenue and paid into the General Revenue Fund; the collection allowance for retail sellers, however, shall be allowed only if the return is filed timely and only for the amount that is paid timely in accordance with this Title XIV.

(1.5) beginning on July 1, 2003, collect from retail customers an additional 50 cents per new or used tire sold and delivered in this State; the money collected from this fee shall be deposited into the Emergency Public Health Fund;

22. Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2012), provides as follows:

(b) A person who accepts used tires for recycling under subsection (a) shall not allow the tires to accumulate for periods of more than 90 days.

23. Surdyke sold and continues to sell new or used tires at retail in Illinois as identified by Section 55.8(a) of the Act, 415 ILCS 5/55.8(a) (2012), and accepts used tires for recycling. Surdyke is thus subject to Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2012).

24. On December 9, 2011, March 21, 2013, and on dates better known to Surdyke, Surdyke allowed tires to accumulate for periods of more than 90 days.

25. By allowing used tires to accumulate for periods of more than 90 days, Surdyke violated Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, SURDYKE CYCLE OF ILLINOIS, INC., d/b/a Dale's Harley-Davidson and Waterkotte Harley-Davidson, on this Count I:

1. Authorizing a hearing in this matter, at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2012);

3. Ordering the Respondent to cease and desist from any further violations of Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2012);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Assessing all costs against the Respondent including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2012); and

6. Granting such other relief as this Court deems equitable and just.

COUNT II
FAILURE TO COLLECT RETAIL FEE FROM CUSTOMERS

1-21. Complainant realleges and incorporates herein by reference paragraphs 1 through 21 of Count I as paragraphs 1 through 21 of this Count II.

22. Section 55.9 of the Act, 415 ILCS 5/55.9 (2012), provides as follows:

Retailers shall collect the fee from the purchaser by adding the fee to the selling price of the tire. The fee imposed by Section 55.8 shall be stated as a distinct item separate and apart from the selling price of the tire. The fee imposed by Section 55.8 shall not be includable in the gross receipts of the retailer subject to the Retailers' Occupation Tax Act, the Use Tax Act or any locally imposed retailers' occupation tax. The fee imposed by Section 55.8, and any such fees collected by a retailer, shall constitute a debt owed by the retailer to this State.

23. At the time of the December 9, 2011 inspection, Surdyke was not collecting a tire user fee per tire sold at retail or properly documenting the user fee on customer invoices.

24. At the time of the March 21, 2013 inspection, Surdyke was still not collecting a tire user fee per tire sold at retail or properly documenting the user fee on customer invoices.

25. Because Surdyke sold new or used tires at retail, it was required to collect from retail customers a fee of \$2.50 per tire sold and delivered at the Site by adding the fee to the selling price of tires.

26. From at least December 9, 2011 through March 21, 2013, or dates better known to Surdyke, Surdyke failed to collect a \$2.50 fee per tire sold and delivered to the Site.

27. Surdyke, by failing to collect a \$2.50 fee per tire sold and delivered at the Site by adding the fee to the selling price of tires, thereby violated Sections 55.8(a)(1) and (1.5) and 55.9 of the Act, 415 ILCS 5/55.8(a)(1) and (1.5) and 55.9 (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent,

SURDYKE CYCLE OF ILLINOIS, INC., d/b/a Dale's Harley-Davidson and Waterkotte Harley-Davidson, on this Count II:

1. Authorizing a hearing in this matter, at which time Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Sections 55.8(a)(1) and(1.5) and 55.9 of the Act, 415 ILCS 5/55.8(a)(1) and (1.5) and 55.9 (2012);
3. Ordering the Respondent to cease and desist from any further violations of Sections 55.8(a)(1) and (1.5) and 55.9 of the Act, 415 ILCS 5/55.8(a)(1) and (1.5) and 55.9 (2012);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against the Respondent including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2012); and
6. Granting such other relief as this Court deems equitable and just.

COUNT III
FAILURE TO NOTIFY ILLINOIS EPA OF TIRE RETAIL ACTIVITY

1-20. Complainant realleges and incorporates herein by reference paragraphs 1 through 20 of Count I as paragraphs 1 through 20 of this Count III.

21. Section 55(c) of the Act, 415 ILCS 5/55(c) (2012), provides as follows:

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 or 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.

22. At the time of the December 9, 2011 inspection, Surdyke had not provided notice to Illinois EPA of its tire retail activities at the Site.

23. At the time of the March 21, 2013 inspection, an employee of Surdyke completed a Used and/or Waste Tire Activity Notification and Registration Form.

24. From December 9, 2011 through at least March 21, 2013, or on dates best known to Surdyke, Surdyke sold tires at retail. Surdyke was therefore required to give notice of retail activity to Illinois EPA pursuant to Section 55(c) of the Act, 415 ILCS 5/55(c) (2012).

25. Surdyke failed to timely notify Illinois EPA of the tire retail activity of the Site for the years 2011, 2012 and 2013.

26. By failing to timely notify the Illinois EPA of the tire retail activity at the Site, Surdyke thereby violated Section 55(c) of the Act, 415 ILCS 5/55(c) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, SURDYKE CYCLE OF ILLINOIS, INC., d/b/a Dale's Harley-Davidson and Waterkotte Harley-Davidson, on this Count III:

1. Authorizing a hearing in this matter, at which time Respondent will be required to answer the allegations herein;

2. Finding that the Respondent has violated Section 55(c) of the Act, 415 ILCS 5/55(c) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 55(c) of the Act, 415 ILCS 5/55(c) (2012);
4. Assessing a civil penalty against Respondent of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against Respondent including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2012); and
6. Granting such other relief as this Court deems equitable and just.

COUNT IV
VIOLATION OF COMPLIANCE COMMITMENT AGREEMENT

1-78. Complainant realleges and incorporates herein by reference paragraphs 1 through 25 of Count I, paragraphs 1 through 27 of Count II, and paragraphs 1 through 26 of Count III as paragraphs 1 through 78 of this Count IV.

79. Section 31(a)(7.6) of the Act, 415 ILCS 5/31(a)(7.6) (2012) provides, in part, as follows:

* * *

No person shall violate the terms and conditions of a Compliance Commitment Agreement entered into under subdivision (a)(7.5) of this Section.

80. On February 15, 2012, the Illinois EPA issued to Respondent a Violation Notice pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1) (2012), for violations observed at the December 9, 2011 inspection.

81. On April 10, 2012, Illinois EPA received from Surdyke terms for a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31(a)(2)(B) of the Act, 415 ILCS 5/31(a)(2)(B) (2012).

82. On May 8 2012, Surdyke and Illinois EPA entered into a CCA pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5) (2012). A true and correct copy of the CCA is attached hereto as Exhibit 1.

83. Section III.5.c of the CCA provides, in part, as follows:

Dale's Harley Davidson will no longer operate a used tire storage site and shall abide by all tire regulations in the Illinois Environmental Protection Act and IPCB Title G, Chapter 1, Subchapter m: Used and Waste Tires, Part 848. If at any time more than 50 used and waste tires are at the dealership, Dale's Harley Davidson will complete the proper Agency notification forms and submit the \$100 user fee.

84. On March 21, 2013, and on dates better known to Respondent, Surdyke allowed more than 50 used tires to accumulate at the dealership.

85. As of March 21, 2013, or on a date better known to Respondent, Surdyke had not completed the notification form required by Section 55(c) of the Act, 415 ILCS 5/55(c) (2012).

86. By allowing more than 50 used tires to accumulate at the dealership and by failing to complete the proper Agency notification form, Surdyke violated Section III.5.c of the CCA.

87. Additionally, by violating Sections 55(c), 55.8(a)(1) and (1.5), 55.8(b), and 55.9 of the Act, 415 ILCS 5/55(c), 55.8(a)(1) and (1.5), 55.8(b), and 55.9 (2012), which are provisions under the Act that govern the retail sale and storage of used tires, Respondent thereby also violated Condition III.5.c of the CCA.

88. By violating Condition III.5.c of the CCA, Respondent thereby violated Section 31(a)(7.6) of the Act, 415 ILCS 5/31(a)(7.6) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, SURDYKE CYCLE OF ILLINOIS, INC., d/b/a Dale's Harley-Davidson and Waterkotte Harley-Davidson, on this Count IV:

1. Authorizing a hearing in this matter, at which time Respondent will be required to answer the allegations herein;

2. Finding that the Respondent has violated Section 31(a)(7.6) of the Act, 415 ILCS 5/31(a)(7.6) (2012);

3. Ordering the Respondent to cease and desist from any future violations of Section 31(a)(7.6) of the Act, 415 ILCS 5/31(a)(7.6) (2012);

4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation, and an additional civil penalty of Two Thousand Dollars (\$2,000.00) pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k) (2012);

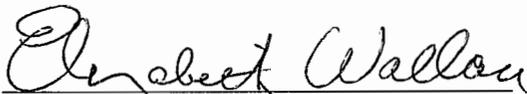
5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2012); and

6. Granting such other relief as this Court deems appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN, Attorney General
of the State of Illinois

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

BY: 
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

JAMIE GETZ
Assistant Attorney General
69 West Washington Street
Suite 1800
Chicago, Illinois 60602
312/814-6986
ARDC #6296185