

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|---|---|----------------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB NO. 2021-029 |
| |) | (Enforcement – Air) |
| LMS INDUSTRIES, LLC, |) | |
| an Illinois limited liability company, and |) | |
| TOP METAL BUYERS, INC., |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondents. |) | |

NOTICE OF FILING

TO: See attached service list:

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing the following Notice of Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements, true and correct copies of which are attached hereto and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

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

By: /s/ Raymond J. Callery
RAYMOND J. CALLERY # 6193579
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield IL 62706
(217) 557-5790
Raymond.Callery@ilag.gov

Dated: September 15, 2022

Service List:

Lynn M. Schultz, R.A.
LSM Industries, Inc.
808 Walnut Street
E. St. Louis, IL 62201
(by certified mail)

Top Metal Buyers, Inc.
c/o Norman Schultz
808 Walnut Street
E. St. Louis, IL 62201
(by certified mail)

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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Respondents LMS INDUSTRIES, LLC, an Illinois limited liability company, and TOP METAL BUYERS, INC., an Illinois corporation, (“Respondents”) (“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.* (2020), and the Board’s Regulations, alleged in the First Amended 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. LMS is an Illinois limited liability company in good standing that, at all times relevant to the First Amended Complaint, owned the facility located at 808 Walnut Avenue, East St. Louis, St. Clair County, Illinois ("Facility"). As of the date of filing of this Stipulation, the Site is located in an area of Environmental Justice ("EJ") concern as identified using Illinois EPA EJ Start. LMS took ownership of the Facility on February 10, 2017.

2. TOP METAL is an Illinois corporation in good standing that, at all times relevant to the First Amended Complaint, operated the Facility, with signage identifying the Facility as "Top Metal Buyers." At all times relevant to the First Amended Complaint, LMS and TOP METAL shared the same manager, Norman Schultz.

3. At all times relevant to the First Amended Complaint, the Facility was operated as a scrap metal recycling business. Activities at the Respondents' Facility included the buying and processing of ferrous and non-ferrous metals for scrap metal recycling.

4. On September 7, 2018, the Illinois EPA conducted an inspection of the Facility.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and the Board's Regulations:

Count I: Air Pollution
415 ILCS 5/9(a) (2020)

Count II: Open Burning of Refuse
415 ILCS 5/9(c) (2020)

Count III: Failure to Properly Dispose of Hazardous Waste
Section 728.134(a) of the Board's Waste Disposal Regulations,
35 Ill. Adm. Code 728.134(a)
415 ILCS 5/21(e) (2020)

C. Non-Admission of Violations

Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, Respondents do not affirmatively admit the allegations of violation within the First Amended Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities

1. Respondents have ceased all burning of cardboard, refuse and insulated copper wiring.
2. All damaged and or unusable cardboard material is now stored and packaged to be taken to a local cardboard recycler.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their 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 Respondents 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 First Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2020).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), 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. The violations posed a moderate potential for harm to the environment and public health. The potential for harm in this case relates to the potential impact to the environment and human health by the burning of insulated copper wiring which contains 20 times the limit for lead.

2. There is social and economic benefit in the operation of Respondents' Facility, so long as it is operated in accordance with the Act and the Board's Regulations.

3. Respondents' Facility is suitable for the area in which it is operating, so long as it is operated in compliance with the Act and the Board's Regulations.

4. Ceasing all open burning of cardboard, refuse and insulated copper wiring, preventing the creation of an air pollution hazard, conducting waste disposal operations in compliance with the Act and the Board's Regulations, and preventing the improper handling of hazardous waste were all actions which were both technically practicable and economically reasonable.

5. Respondents have subsequently resolved the violations alleged in the First Amended Complaint.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2020), 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 violations posed a moderate potential for harm as the actions had a potential significant adverse effect on the environment and public health.
2. Respondents' initial actions following the Illinois EPA inspection did not demonstrate due diligence. Respondents have subsequently resolved the violations alleged in the First Amended Complaint.
3. The economic benefit from non-compliance would have been less than the civil penalty required by the Stipulation.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirty Thousand Dollars (\$30,000.00) from Respondents will serve to deter further violations and aid in future voluntary compliance with the Act and Board Regulations.
5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.
6. Respondents did not self-disclose the violations.
7. The settlement of this matter does not include a supplemental environmental project.

8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

Respondents shall jointly and severally pay a civil penalty in the sum of Thirty Thousand Dollars (\$30,000.00). Respondents shall pay Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days after this Stipulation is accepted by the Board and the additional Fifteen Thousand Dollars (\$15,000.00) within ninety (90) days after the Stipulation is accepted by the Board.

B. Interest and Default

1. If Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, Respondents 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, 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 Respondents 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 and case 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:

Raymond J. Callery
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Raymond.Callery@ilag.gov

D. Future Compliance

1. Respondents shall cease and desist from all open burning of cardboard, refuse and insulated copper wiring and conduct all waste disposal operations in compliance with the Act and the Board's Regulations.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon Respondents' facilities which were 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, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

3. This Stipulation in no way affects the responsibilities of Respondents to comply

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

4. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the First Amended Complaint.

E. Release from Liability

In consideration of Respondents' payment of the \$30,000.00 penalty, their commitment to cease and desist as contained in Section V.D.4 above, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the First Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's First Amended Complaint filed on September 17, 2021. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondents 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 resource damages arising out of the alleged violations; and
- d. liability or claims based on the Respondents' 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 (2020), or entity other than the Respondents.

F. Enforcement

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.

G. 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.

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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,

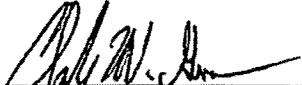
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

KWAME RAOUL
Attorney General
of the State of Illinois

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY: 
CHARLES W. GUNNARSON,
Chief Legal Counsel

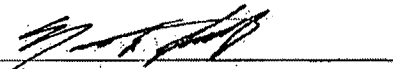
DATE: 09/13/2022

DATE: 9/7/22

LMS INDUSTRIES, LLC,

TOP METAL BUYERS, INC.,

BY: 

BY: 

Name/Title: MANAGER

Name/Title: MANAGER

DATE: 8/29/22

DATE: 8/29/22

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| Respondents. |) | |

MOTION FOR RELIEF FROM HEARING

Complainant, People of the State of Illinois, by Kwame Raoul, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, Complainant states as follows:

1. Filed contemporaneously with this Motion is a Stipulation and Proposal for Settlement executed between Complainant and the Respondents, LMS INDUSTRIES, LLC and TOP METAL BUYERS, INC.

2. The parties have reached agreement on all outstanding issues in this matter.

3. Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2020), provides as follows:

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any

person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

4. No hearing is scheduled in this matter.
5. Complainant hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2020).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

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

BY: /s/ Raymond J. Callery
RAYMOND J. CALLERY
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 557-5690
raymond.callery@ilag.gov

Dated: September 15, 2022

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2022, send as indicated, a true and correct copy of the foregoing Notice of Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the following:

Lynn M. Schultz, R.A.
LSM Industries, Inc.
808 Walnut Street
E. St. Louis, IL 62201
(by certified mail)

Top Metal Buyers, Inc.
c/o Norman Schultz
808 Walnut Street
E. St. Louis, IL 62201
(by certified mail)

/s/Lilia M. Brown
Lilia M. Brown
Administrative Secretary
Environmental Bureau

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/Lilia M. Brown
Lilia M. Brown
Administrative Secretary
Environmental Bureau