ILLINOIS POLLUTION CONTROL BOARD February 15, 2001

| PEOPLE OF THE STATE OF ILLINOIS, |) | |
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| Complainant, |) | |
| v. |) | PCB 01-8 |
| LARRY BARRY, INC. d/b/a LARRY'S |) | (Enforcement – Land, Tires) |
| MARATHON WAREHOUSE, |) | |
| Respondent. |) | |

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On July 17, 2000, the People of the State of Illinois (People) filed a two-count complaint against respondent Larry Barry, Inc. d/b/a Larry's Marathon Warehouse (Barry). The complaint alleges Barry stored used or waste tires capable of accumulating water at its facilities located at 1109 North Webster Street and 401 North Webster Street, Taylorville, Christian County, Illinois. These activities were in alleged violation of Sections 21(d) and (e), and 55(a)(4) and (e) of the Environmental Protection Act (Act) (415 ILCS 5/21(d), (e); 55(a)(4), (e) (1998)), and the Board's waste disposal regulations at 35 Ill. Adm. Code 848.202(b)(5). The complaint also alleges that Barry accumulated tires within 25 feet of a building at its facility located at 401 North Webster Street. This activity was an alleged violation of 35 Ill. Adm. Code 848.202(b)(2).

On January 11, 2001, the parties filed a joint stipulation and proposal for settlement, accompanied by a motion requesting relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (1998)). Pursuant to Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (1998)), the Board caused publication of the required newspaper notice of the stipulation and proposal for settlement and request for relief from the hearing requirement. The notice appeared in *The Breeze-Courier* on January 12, 2001. The Board did not receive any requests for hearing. Accordingly, the Board grants a waiver from the hearing requirement.

The stipulation and proposal for settlement sets forth the facts relating to the nature, operations, and circumstances surrounding the allegations in the complaint. Barry admits the violations alleged in count I of the complaint, but does not admit accumulating tires within 25 feet of a building at its facility located at 401 North Webster Street, in violation of 35 Ill. Adm. Code 848.202(b)(2). Barry agrees to pay a civil penalty of \$2,500.

The Board accepts the stipulation and proposal for settlement filed by the parties in this matter. Barry must continue to comply with any federal, State, or local regulations including, but not limited to, the Act and the Board's regulations.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1. The Board hereby accepts the stipulation and settlement agreement executed by the People of the State of Illinois and Larry Barry, Inc. d/b/a Larry's Marathon Warehouse (Barry). The stipulation and settlement agreement is incorporated by reference as though fully set forth herein.
- 2. Barry must pay a civil penalty of \$2,500. Payment must be made within 30 days of the date of this order, that is, on or before March 17, 2001. Such payment must be made by certified check or money order payable to the Treasurer of the State of Illinois, for deposit in the Environmental Protection Trust Fund. The case number, case name, and Barry's federal employer identification number 37-1367320 must also be included on the certified check or money order and clearly indicate that payment is directed to the Environmental Protection Trust Fund.
- 3. The check or money order must be sent by first class mail to:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

A copy of the payment transmittal and check shall be simultaneously submitted to:

Donna Lutes, Environmental Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62706

- 4. Any such penalty not paid within the time prescribed incurs interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003 (1998)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest does not accrue during the pendency of an appeal during which payment of the penalty has been stayed.
- 5. Barry must cease and desist future alleged violations of any federal, State, or local statutes and regulations.

- 6. This order covers all claims asserted in the complaint filed herein concerning violations of the Act (415 ILCS 5/1 *et seq.* (1998)), and the regulations promulgated thereunder. Covered matters do not include:
 - a. Criminal liability;
 - b. Claims based on Barry's failure to meet the requirements of this order;
 - c. Liability for future violation of State, local, federal, and common laws and/or regulations; and
 - d. Any future liability for natural resource damage or for removal, cleanup, or remedial action as a result of a release of hazardous substances or the liability of Barry under Section 22.2(f) of the Act (415 ILCS 5/22.2(f) (1998)), or under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C §§ 9601-9675).

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 15th day of February 2001 by a vote of 7-0.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board