

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No.
	)	(Enforcement – Land)
	)	
MARK PICKETT, d/b/a	)	
MARK'S AUTOS SALES,	)	
	)	
Respondent.	)	
	)	

**COMPLAINT FOR CIVIL PENALTIES**

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 ("Illinois EPA"), complains of Respondent, MARK PICKETT, individually and doing business as ("d/b/a") MARK'S AUTO SALES, as follows:

**COUNT I**

**FAILURE TO PROVIDE NOTIFICATION TO ILLINOIS EPA OF TIRE STORAGE SITE**

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, against Respondent, MARK PICKETT, individually and d/b/a MARK'S AUTO SALES, on her own motion and at the request of the Illinois EPA, pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2008).

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 (2008), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this complaint, Respondent, MARK PICKETT d/b/a Mark's Auto Sales ("Mark's Auto"), has operated a used car lot located at 1401 Broadway, Rockford, Winnebago County, Illinois ("site").

4. On April 23, 2009, inspectors from the Illinois EPA Bureau of Land conducted an inspection of Mark's Auto. Illinois EPA inspectors inventoried a total of sixty-one (61) used and/or waste tires present at the site.

5. At the time of the April 23, 2009 inspection, Mark's Auto had not submitted registration and notification of its tire storage status or paid an annual fee to the Illinois EPA for 2009.

6. On May 6, 2009, the Illinois EPA sent Mark's Auto a Violation Notice that identified the violations observed at the site.

7. On July 23, 2009, Mark's Auto was re-inspected by the Illinois EPA and inspectors found that more than fifty (50) used and/or waste tires were stored at the site.

8. At the time of the July 23, 2009 inspection, Mark's Auto had not submitted registration and notification of its tire storage status or paid an annual fee to the Illinois EPA for 2009.

9. On November 16, 2009, the Illinois EPA sent Mark's Auto a Notice of Intent to Pursue Legal Action.

10. On November 25, 2009, Respondent submitted to the Illinois EPA a "Used and/or Waste Tire Activity Notification & Registration Form", providing

notification and registration of tire storage activity and accompanied by a one hundred dollar (\$100.00) fee payment.

11. Section 55(c) of the Act, 415 ILCS 5/55(c) (2008), provides 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.

12. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), provides the following definition:

“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.

13. Respondent Mark Pickett, individually and d/b/a Mark's Auto Sales, is a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2008).

14. Section 54.12 of the Act, 415 ILCS 5/54.12 (2008), provides the following definition:

“Tire storage site” means a site where used tires are stored or processed, other than (1) the site at which the tires were separated from the vehicle wheel rim, (2) the site where the used tires were accepted in trade as part of a sale of new tires, or (3) a site at which

tires are sold at retail in the regular course of business, and at which not more than 250 used tires are kept at any time or (4) a facility at which tires are sold at retail provided that the facility maintains less than 1300 recyclable tires, 1300 tire carcasses, and 1300 used tires on site and those tires are stored inside a building or so that they are prevented from accumulating water.

15. Mark's Auto is a site where used tires are stored or processed and not fitting into one of the exceptions identified in Section 54.12 of the Act, 415 ILCS 5/54.12 (2008). As such, Respondent is a tire storage site as that termed is defined in Section 54.12 of the Act, 415 ILCS 5/54.12 (2008).

16. Because Mark's Auto was a tire storage site which contained more than fifty (50) used or waste tires, Respondent was required to provide notice of such activity to the Illinois EPA pursuant to Section 55(c) of the Act, 415 ILCS 5/55(c) (2008).

17. The Respondent failed to provide notice to the Illinois EPA that it was operating a tire storage site within thirty (30) days of commencing operation of its tire storage site.

18. By Respondent's actions and omissions as alleged herein, the Respondent violated Section 55(c) of the Act, 415 ILCS 5/55(c) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board ("Board") enter an order in favor of Complainant and against Respondent, MARK PICKETT, for the following relief:

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

2. Finding that Respondent violated Section 55(c) of the Act, 415 ILCS 5/55(c) (2008);

3. Ordering Respondent to cease and desist from any further violation of Section 55(c) of the Act, 415 ILCS 5/55(c) (2008);
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Respondent to pay all costs of this action, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as this Board deems appropriate and just.

## COUNT II

### FAILURE TO REGISTER AND PAY FEE

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 and 12 through 15 of Count I as paragraphs 1 through 14 of this Count II.

15. Section 55(d)(1) of the Act, 415 ILCS 5/55(d)(1) (2008), provides as follows:

(d) Beginning January 1, 1992, no person shall cause or allow the operation of:

(1) a tire storage site which contains more than 50 used tires, unless the owner or operator, by January 1, 1992 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, (i) registers the site with the Agency, (ii) certifies to the Agency that the site complies with any applicable standards adopted by the Board pursuant to Section 55.2, (iii) reports to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle and process the tires, and (iv) pays the fee required under subsection (b) of Section 55.

16. Section 21(k) of the Act, 415 ILCS 5/21(k) (2008), provides as follows:

No person shall:

(k) Fail or refuse to pay any fee imposed under this Act.

17. Section 55.6(b) of the Act, 415 ILCS 5/55.6(b) (2008), provides as follows:

Beginning January 1, 1992, in addition to any other fees required by law, the owner or operator of each site required to be registered under subsection (d) of Section 55 shall pay to the Agency an annual fee of \$100. Fees collected under this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

18. From at least April 23, 2009, or a date better known to Respondent, until November 25, 2009, Mark's Auto operated a tire storage site without registering with the Illinois EPA; certifying that the site complies with applicable standards adopted by the Board pursuant to Section 55.2; reporting the number of tires accumulated, the status of vectors controls, and actions taken to handle the process of tires; or paying the annual fee as required by subsection (b) of Section 55.6.

19. By Respondent's actions and omissions as alleged herein, Respondent violated Sections 55(d)(1), 21(k) and 55.6(b) of the Act, 415 ILCS 5/55(d)(1), 5/21(k), and 5/55.6(b) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, MARK PICKETT, for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Sections 55(d)(1), 21(k) and 55.6(b) of the Act, 415 ILCS 5/55(d)(1), 5/21(k), and 5/55.6(b) (2008);

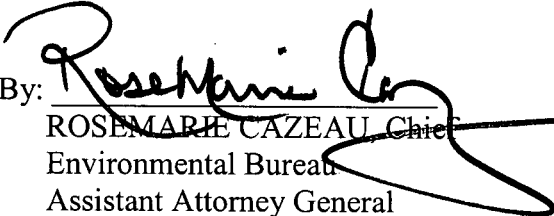
3. Ordering Respondent to cease and desist from any further violation of Sections 55(d)(1), 21(k) and 55.6(b) of the Act, 415 ILCS 5/55(d)(1), 5/21(k), and 5/55.6(b) (2008);
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Respondent to pay all costs of this action, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as this Board deems appropriate and just.

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:

  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

L. Nichole Cunningham  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, Illinois 60602  
312.814.3532

CERTIFICATE OF SERVICE

I, LORREN NICHOLE CUNNINGHAM, an Assistant Attorney General for the State of Illinois, certify that on the 26<sup>th</sup> day of April, 2010, I caused to be served by U.S. Mail the foregoing Complaint to Atty. John Gilbert, 202 West State Street, Rockford, Illinois 61101, by depositing the same in a postage prepared envelope with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
L. NICHOLE CUNNINGHAM