

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

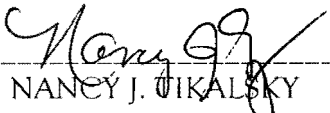
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 13-05
)	(Enforcement - Land)
DANIEL LEE SZAFRANSKI, individually, and)	
as Trustee of the DANIEL LEE SZAFRANSKI)	
TRUST,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 29th day of November 2012, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY:  _____
 NANCY J. TIKALSKY
 Assistant Attorney General
 Environmental Bureau North
 69 West Washington St., Suite 1800
 Chicago, Illinois 60602
 312-814-8567

DATE: November 29, 2012

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

Daniel Szafranski, trustee
Daniel Lee Szafranski Trust
2346 North 23rd Road
Marseilles, IL 61341

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).

7. No hearing is currently scheduled in the instant case.


8. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2010).

Respectfully submitted,

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

BY: _____


NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
312-814-8567

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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 Respondent, DANIEL LEE SZAFRANSKI, individually, and as Trustee of the DANIEL LEE SZAFRANSKI TRUST ("Respondent"), (collectively "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. On July 26, 2012, a Complaint was filed 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 ("Complaint").

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 the Complaint, Respondent, DANIEL LEE SZAFRANSKI, individually, and as Trustee of the DANIEL LEE SZAFRANSKI TRUST, is an individual residing in the State of Illinois (Szafranski").

4. At all times relevant to the Complaint, Szafranski's operations are located at 901 West Marquette, Ottawa, LaSalle County, Illinois ("Site"), where Respondent conducts a scrap metal business. At all times relevant to the Complaint, Szafranski has been and is in control of and is responsible for the day-to-day operations 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 1: OPEN DUMPING
Violations of Section 21(a) of the Act, 415 ILCS 5/21(a) (2010);

- Count II: **CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT**
Violations of Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010), and Section 812.101(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a);
- Count III: **FAILURE TO DETERMINE IF WASTE WAS HAZARDOUS OR SPECIAL WASTE IN VIOLATION OF BOARD REGULATIONS**
Violations of Sections 21(d)(2) and (e) of the Act, 415 ILCS 5/21(d)(2) and (e) (2010), and Sections 722.111 and 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a);
- Count IV: **CAUSING OR ALLOWING LITTER AND THE DEPOSITION OF CONSTRUCTION OR DEMOLITION DEBRIS**
Violations of Sections 21(p)(1) and (7) of the Act, 415 ILCS 5/21(p)(1) and (7) (2010);
- Count V: **CAUSING OPEN DUMPING OF USED/WASTE TIRES**
Violations of Section 55 (a)(1) of the Act, 415 ILCS 5/55(a)(1) (2010);
- Count VI: **FAILURE TO REGISTER A TIRE DISPOSAL SITE**
Violations of Section 55(c) of the Act, 415 ILCS 5/55(c) (2010);
- Count VII: **CAUSING OR ALLOWING STORAGE OF USED/WASTE TIRES IN VIOLATION OF BOARD REGULATIONS**
Violations of Section 55(e) of the Act, 415 ILCS 5/55(e) (2010), and Sections 848.202(b)(4) and (5) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 848.202(b)(4) and (5).

C. Admission of Violations

The Respondent admits to the violation(s) alleged in the Complaint filed in this matter and referenced within Section I.B. herein.

D. Compliance Activities to Date

The Respondent completed remedial steps to prevent any further violations that were the subject matter of the Complaint by removing all tires and miscellaneous waste from the Site,

completing testing of soil samples and removal of contaminated soil pursuant to Illinois EPA requests.

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 dumping of tires and miscellaneous waste at the Site, and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations.

2. There is social and economic benefit to the Site.

3. Operation of the Site was suitable for the area in which it occurred.

4. Disposing tires and miscellaneous waste at a licensed facility 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) (2010), 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 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 failed to dispose tires and miscellaneous waste at a licensed facility, and violated the Act and Board regulations when Respondent allowed the dumping of tires and miscellaneous waste at the Site. The violations began before May 4, 2011, and were resolved by April 30, 2012. In this instance, Respondent's failure to properly manage tires and other miscellaneous waste at the Site resulted in open dumping.

2. Respondent was diligent in his response to the Notice of Violation issued by the Illinois EPA when he took remedial steps to remove large loads of tires and miscellaneous waste, and to prevent further non-compliance with the Act and Board regulations.

3. The Respondent recognized a nominal economic benefit from avoided costs of properly disposing the tires and miscellaneous waste at a licensed facility. Costs include the delayed cost of removal of tires and miscellaneous waste to appropriate licensed facilities. However, the penalty of \$5,000.00 obtained exceeds any economic benefit derived by the Respondent.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Five Thousand dollars (\$5,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

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. A Compliance Commitment Agreement was proposed by Respondent, but rejected by the Illinois EPA.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

The Respondent shall pay a civil penalty in the sum of Five Thousand dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. **Stipulated Penalties, Interest, and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent 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, the 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 the Respondent 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.

3. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

C. Payment Procedures

1. 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, Illinois 62794-9276

2. The case name, case number, and the trust's Federal Tax Identification Number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
Illinois Attorney's General Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. 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 Site 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.

E. Release from Liability

In consideration of the Respondent's payment of the \$5,000.00 penalty, its commitment to cease and desist as contained in Section V.D.3 above, 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 on July 26, 2012. 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.

F. Enforcement of Stipulation

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.

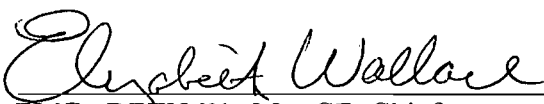
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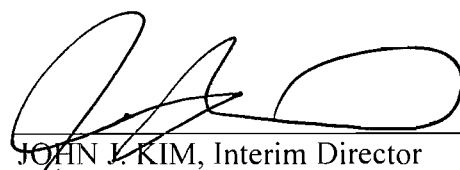
FOR THE COMPLAINANT:

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM, Interim Director

DATE: 11/26/12

DATE: 11/19/12

FOR THE RESPONDENT:

DANIEL LEE SZAFRANSKI

DANIEL LEE SZAFRANSKI TRUST

BY: _____

BY: _____

DATE: _____

DATE: _____

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

FOR THE COMPLAINANT:

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
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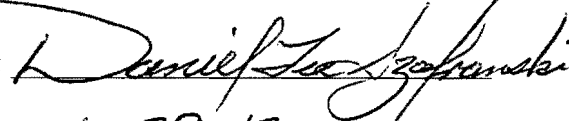
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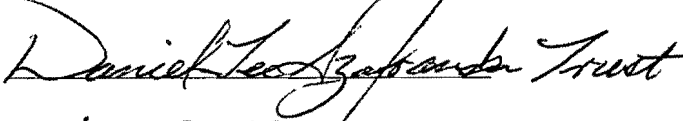
DATE: _____

FOR THE RESPONDENT:

DANIEL LEE SZAFRANSKI

DANIEL LEE SZAFRANSKI TRUST

BY: 

BY: 

DATE: 10-29-12

DATE: 10-29-12