

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. 13-)
(Enforcement – Land)

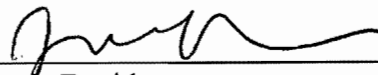
MESSENGER AUTO, INC., d/b/a)
Messenger Auto & Recycling, WILLIAM)
E. MESSENGER, SR., an individual, and)
WILLIAM M. MESSENGER, JR., an)
individual,)
)
Respondents.)

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 Pollution Control Board by electronic filing the following Complaint, copies of which are attached and hereby served upon you.

LISA MADIGAN
Attorney General
State of Illinois



Jamie Davidson

Dated: February 1, 2013
Jamie Davidson
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-6986

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

For the Respondent

For Messenger Auto, Inc:
William M. Messenger, Agent
7319 W. Ridge Lane
Cherry Valley, Illinois 61016

For William M Messenger, Jr.:
Aka Bill Messenger
Messenger Auto & Recycling
4613 E Walden Road
Byron, Illinois
Cell: 815-703-4401

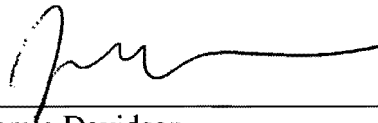
For William E. Messenger, Sr.:
802 Jefferson Street
Oregon, IL 61061

Illinois Environmental Protection Agency

Scott Sievers
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

CERTIFICATE OF SERVICE

I, Jamie Davidson, an Assistant Attorney General, certify that on the 1st day of February 2013, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing 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 Davidson
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
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Respondents.)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, MESSENGER AUTO INC., d/b/a Messenger Auto & Recycling, WILLIAM E. MESSENGER, SR., an individual, and WILLIAM M. MESSENGER, JR., an individual, as follows:

COUNT I

VIOLATION OF TIRE MANAGEMENT STANDARDS

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

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

3. At all times relevant to this Complaint, Respondent William E. Messenger, Sr. ("Messenger, Sr."), an individual, has, on information and belief, been a resident of the State of Illinois.

4. At all times relevant to this Complaint, Respondent William M. Messenger, Jr. ("Messenger, Jr."), an individual, has, on information and belief, been a resident of the State of Illinois.

5. At all times relevant to this Complaint, Messenger, Sr. and Messenger, Jr. owned the property at 4613 Walden Road, Byron, Ogle County, Illinois ("Site").

6. At all times relevant to this Complaint, Respondent Messenger Auto Inc., d/b/a Messenger Auto & Recycling ("Messenger Auto"), was an Illinois corporation in good standing. Messenger Auto operates a discarded tire business at the Site. Messenger Auto processes tires either by removal by a tire transporter to a recycling company or by placing tires inside junk vehicles that are crushed and transferred to a recycler in Sterling, Illinois.

7. Respondent Messenger, Jr. was, at all times relevant to the Complaint, an operator of the Site. Messenger, Jr. directs the day-to-day operations of the Site, including the receipt and placement of used tires at the Site.

8. On February 24, 2011, an Illinois EPA inspector performed a tire inspection at the Site. The inspector found an estimated 1,260 tires on the Site, with approximately thirty (30) intact, off-rim tires containing stagnant water. These tires were located outdoors.

9. On October 21, 2011, Illinois EPA conducted a follow-up inspection of the Site. The inspector again found some tires on the Site that were intact, off-rim, and containing stagnant water. These tires were located outdoors. The same conditions found during the February 24, 2011 inspection were still present.

10. On April 30, 2012, Illinois EPA conducted another follow-up inspection of the Site. Approximately sixty (60) tires were present at the Site. Nearly all of the tires were on-rim and being prepared by Messenger Auto to be crushed or transferred to a recycling facility. The inspection showed that the tires were being properly managed.

11. On November 27, 2012, Illinois EPA conducted another follow-up inspection of the Site. Approximately 245 tires were present at the Site. The inspection showed that the tires were being properly managed.

12. Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2010), provide as follows:

a. No person shall:

* * *

(4) Cause or allow the operation of a tire storage site except in compliance with Board regulations.

* * *

e. No person shall cause or allow the storage, disposal, treatment or processing of any used or waste tire in violation of any regulation or standard adopted by the Board.

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

14. Respondent Messenger Auto, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010). Respondents Messenger, Sr. and Messenger, Jr. are also each a "person" within the meaning of Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

15. Section 54.12 of the Act, 415 ILCS 5/54.12 (2010), provides as follows:

"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.

16. The Site is a site where used tires are stored or processed and therefore is a "tire storage site" within the meaning of Section 54.12 of the Act, 415 ILCS 5/54.12 (2010).

17. Section 54.10 of the Act, 415 ILCS 5/54.10 (2010), 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.

18. The tires present at the Site during the February 24, 2011, October 21, 2011, April 30, 2012, and November 27, 2012 inspections constitute "tires" within the meaning of Section 54.10 of the Act, 415 ILCS 5/54.10 (2010).

19. Section 54.13 of the Act, 415 ILCS 5/54.13 (2010), provides as follows:

"Used tire" means a worn, damaged, or defective tire that is not mounted on a vehicle.

20. Section 54.16 of the Act, 415 ILCS 5/54.16 (2010), provides as follows:

"Waste tire" means a used tire that has been disposed of.

21. The tires present at the Site during the February 24, 2011, October 21, 2011, April 30, 2012, and November 27, 2012 inspections were "used tires" within the meaning of Section 54.13 of the Act, and "waste tires" within the meaning of Section 54.16 of the Act, 415 ILCS 5/54.13 and 54.16 (2010), and are therefore subject to provisions of the Act that pertain to used and waste tires.

22. Section 54.09 of the Act, 415 ILCS 5/54.09 (2010), 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.

23. Respondents' accumulation of used and waste tires at the Site was an integral part of the systematic alteration, reuse, reprocessing, or conversion of the tires that occurred in the regular course of the business conducted thereon and thus constituted "storage" within the meaning of Section 54.09 of the Act, 415 ILCS 5/54.09 (2010).

24. Section 848.202(b)(5) of the Pollution Control Board Regulations governing used and waste tires ("Board Tire Regulations"), 35 Ill. Adm. Code 848.202(b)(5), provides as follows:

b. At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirements:

* * *

(5) Used or waste tires received at the site shall not be stored unless within 14 days after the receipt of any used tire the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. All used and waste tires received at the site before June 1, 1989, shall be altered, reprocessed, converted, covered or otherwise prevented from accumulating water by January 1, 1992.

25. At the time of the February 24, 2011, October 21, 2011, April 30, 2012, and November 27, 2012 inspections, Respondents stored more than fifty (50) used and waste tires at the Site. Furthermore, Respondents Messenger, Sr. and Messenger, Jr. are owners of the Site, and Messenger, Jr. and Messenger Auto are operators of the Site. As a result, Respondents are subject to the tire storage requirements of Section 848.202(b) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b).

26. Section 54.01 of the Act, 415 ILCS 5/54.01 (2010), provides as follows:

"Altered tire" means a used tire which has been altered so that it is no longer capable of holding accumulations of water, including, but not limited to, used tires that have been shredded, chopped, drilled with holes sufficient to assure drainage, slit longitudinally and stacked so as not to collect water, or wholly or partially filled with cement or other material to prevent the accumulation of water. "Alteration" or "altering" means action which produces an altered tire.

27. At the time of the February 24, 2011 and October 21, 2011 inspections, most, if not all, of the used and waste tires present at the site had not been altered and thus did not satisfy the criteria for an "altered tire" within the meaning of Section 54.01 of the Act, 415 ILCS 5/54.01 (2010).

28. Section 54.07 of the Act, 415 ILCS 5/54.07 (2010), provides as follows:

"Reprocessed tire" means a used tire which has been recapped, retreaded or regrooved and which has not been placed on a vehicle wheel rim.

29. At the time of the February 24, 2011 and October 21, 2011 inspections, most, if not all, of the used and waste tires present at the Site had not been reprocessed and thus did not meet the criteria for a "reprocessed tire" within the meaning of Section 54.07 of the Act, 415 ILCS 5/54.07 (2010).

30. Section 54.02 of the Act, 415 ILCS 5/54.02 (2010), provides as follows:

"Converted tire" means a used tire which has been manufactured into a usable commodity other than a tire. "Conversion" or "converting" means action which produces a converted tire.

31. At the time of the February 24, 2011 and October 21, 2011 inspections, most, if not all, of the used and waste tires present at the Site had not been "converted" within the meaning of Section 54.02 of the Act, 415 ILCS 5/54.02 (2010).

32. Section 54.03 of the Act, 415 ILCS 5/54.03 (2010), provides as follows:

"Covered tire" means a used tire located in a building, vehicle or facility with a roof extending over the tire, or securely located under a material so as to preclude exposure to precipitation.

33. At the time of the February 24, 2011 and October 21, 2011 inspections, most, if not all of the used and waste tires present at the Site did not satisfy the criteria for a "covered tire" within the meaning of Section 54.03 of the Act, 415 ILCS 5/54.03 (2010).

34. At times from at least February 24, 2011, beginning on a date better known to Respondents, and continuing up through at least October 21, 2011, on dates better known to Respondents, Respondents caused or allowed the storage of used and waste tires for more than fourteen (14) days without altering, reprocessing, converting, covering, or otherwise preventing the tires from accumulating water as required by Section 848.202(b)(5) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(5).

35. By causing or allowing the storage of used and waste tires for more than fourteen (14) days without altering, reprocessing, converting, covering, or otherwise preventing the used and waste tires from accumulating water, Respondents violated Section 848.202(b)(5) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(5), thereby also violating Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondents, MESSENGER AUTO, INC., d/b/a Messenger Auto & Recycling, WILLIAM E. MESSENGER, SR., an individual, and WILLIAM M. MESSENGER, JR., an individual, on this Count I:

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

2. Finding that Respondents have violated Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2010), and Section 848.202(b)(5) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(5);

3. Ordering the Respondents to cease and desist from any further violations of Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2010), and Section 848.202(b)(5) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(5);

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

5. Assessing all costs against Respondents including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2010); and

6. Granting such other relief as the Board deems equitable and just.

COUNT II

FAILURE TO DRAIN USED OR WASTE TIRES OF WATER

1-25. Complainant realleges and incorporates herein by reference paragraphs 1 through 24 and paragraph 26 of Count I as paragraphs 1 through 25 of this Count II.

26. Section 55(k)(1) of the Act, 415 ILCS 5/55(k)(1) (2010), provides as follows:

(k) No person shall:

(1) Cause of allow water to accumulate in used or waste tires.

27. Section 848.202(b)(4) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(4), provides as follows:

(b) At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirements:

* * *

4) Used or waste tires shall be drained of water on the day of generation or receipt.

28. At the time of the February 24, 2011 and October 21, 2011 inspections, more than fifty (50) used and waste tires containing stagnant water were present at the Site.

29. By failing to drain accumulations of water from used and waste tires, Respondents thereby violated Section 55(k)(1) of the Act, 415 ILCS 5/55(k)(1) (2010), and Section 848.202(b)(4) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(4), thereby also violating Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondents, MESSENGER AUTO, INC., d/b/a Messenger Auto & Recycling, WILLIAM E. MESSENGER, SR., an individual, and WILLIAM M. MESSENGER, JR., an individual, on this Count II:

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

2. Finding that the Respondents have violated Sections 55(a)(4), (e), and (k)(1) of the Act, 415 ILCS 5/55(a)(4), (e), and (k)(1) (2010), and Section 848.202(b)(4) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(4);

3. Ordering the Respondents to cease and desist from any further violations of Sections 55(a)(4), (e), and (k)(1) of the Act, 415 ILCS 5/55(a)(4), (e), and (k)(1) (2010), and Section 848.202(b)(4) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(4);

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


5. Assessing all costs against Respondents including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2010); and

6. Granting such other relief as the Board deems equitable and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
ex rel. 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 DAVIDSON
Assistant Attorney General
69 West Washington Street
Suite 1800
Chicago, Illinois 60602
312/814-6986
ARDC #6296185