

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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


PCB No. 13-40
 (Enforcement - Land)

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 Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement, copies of which are attached and hereby served upon you.

LISA MADIGAN
 Attorney General
 State of Illinois



 Jamie Davidson, AAG

Dated: April 9, 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

CERTIFICATE OF SERVICE

I, Jamie Davidson, an Assistant Attorney General, certify that on the 9th day of April 2013, caused to be served the foregoing Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement to the parties named on the attached Service List, by electronic transmission and 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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Service List

John Therriault
Clerk, Illinois Pollution Control Board
(by electronic filing)

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
brad.halloran@illinois.gov
(by e-mail)

William M. Messenger, Agent
Messenger Auto, Inc.
7319 W. Ridge Lane
Cherry Valley, IL 61016
(by e-mail)

William M. Messenger, Jr.
Messenger Auto & Recycling
7319 W. Ridge Lane
Cherry Valley, IL 61016

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

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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2012), moves that the Illinois Pollution Control Board (“Board”) grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 55(a)(4), 55(e), and 55(k)(1) of the Act, 415 ILCS 5/55(a)(4), 55(e), and 55(k)(1) (2012), and Sections 848.202(b)(4) and 848.202(b)(5) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(4) and 848.202(b)(5).
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2012).

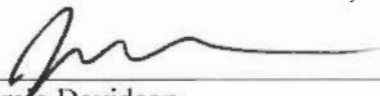
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



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

DATE: April 9, 2013

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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 MESSENGER AUTO, INC., d/b/a Messenger Auto & Recycling, WILLIAM E. MESSENGER, SR., an individual, and WILLIAM M. MESSENGER, JR., an individual (“Respondents”), (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 Illinois Pollution Control Board Regulations (“Board 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 February 1, 2013 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 Respondents.

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 William E. Messenger, Sr. ("Messenger, Sr."), an individual, has been a resident of the State of Illinois.

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

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

6. At all times relevant to the 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.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: Violation of Tire Management Standards – Respondents failed to properly manage used or waste tires at the Site in violation of Section 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).

Count II: Failure to Drain Used or Waste Tires of Water – Respondents failed to drain used or waste tires of water at the Site in violation 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)

C. Admission of Violations

The Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The 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 the 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 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 Respondents' failure to properly manage and prevent the accumulation of water in used or waste tires.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility was and is suitable for the area in which it is located.
4. Proper management of used or waste tires is 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, *effective as of August 23, 2011*),

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. From at least February 24, 2011 to April 30, 2012, or on dates better known to Respondents, the Respondents operated a tire storage facility. Respondents failed to properly manage the tires and failed to prevent water from accumulating in used or waste tires. The

violations posed a risk to the environment.

2. Respondents were only somewhat diligent in attempting to come back into compliance with the Act and Board Tire Regulations once the Illinois EPA notified them of their noncompliance. Respondents failed to timely fulfill the terms of their Compliance Commitment Agreement ("CCA"), dated May 18, 2011 as they were not in compliance during an Illinois EPA inspection of the Facility on October 21, 2011. The Respondents came into compliance by April 30, 2012, or on a date better known to Respondents.

3. The used or waste tires in question ultimately must be properly managed, disposed or recycled. The costs of doing so have only been delayed and any value realized from this delay is nominal.

4. Complainant has determined, based upon the specific facts of this matter, a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Tire Regulations.

5. To Complainant's knowledge, Respondents have 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. On May 18, 2011, a CCA was approved by the Illinois EPA. The CCA stipulated that the Respondents would ensure tires would be prevented from accumulating water and would be properly stored and disposed of. A follow-up inspection on October 21, 2011 revealed the Respondents were not storing tires as required by the CCA. The Respondents brought the Facility into the compliance by April 30, 2012, or on a date better known to Respondents.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

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

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 and case 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:

Jamie Davidson
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's 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 Respondents' Facility 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 Respondents 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 Respondents shall cease and desist from future violations of the Act and Board Tire Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondents' payment of the \$10,000.00 penalty, their

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 Respondents 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 February 1, 2013. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the 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 resources damage 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, or entity other than the Respondents.

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.


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

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM, Director
Chief Legal Counsel

DATE: 4/2/13

DATE: 3/26/13

RESPONDENTS:

MESSENGER AUTO, INC.

WILLIAM M. MESSENGER, JR.

BY: _____

Its _____
[Title of signatory]

DATE: _____

DATE: _____

WILLIAM E. MESSENGER, SR.

DATE: _____

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State of Illinois

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Environmental Enforcement/
Asbestos Litigation Division

BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
JOHN J. KIM, Director

DATE: _____

DATE: _____

RESPONDENTS:

MESSENGER AUTO, INC.

WILLIAM M. MESSENGER, JR.

BY: William M. Messenger
Its Vice President
[Title of signatory]

William M. Messenger
DATE: 4/1/13

DATE: 4/1/13

WILLIAM E. MESSENGER, SR.

William E. Messenger
DATE: 4/1/13