

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.
)	
FRANCISCO RAMIREZ and KIM RAMIREZ,)	(Enforcement – Land)
individually and doing business as ELIZABETH)	
USED TIRES AND FLEET SERVICE,)	
an unincorporated entity,)	
)	
Respondents.)	

COMPLAINT

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, complains of Respondents, FRANCISCO RAMIREZ and KIM RAMIREZ, individually and doing business as ELIZABETH USED TIRES AND FLEET SERVICE, an unincorporated entity, as follows:

COUNT I

VIOLATION OF TIRE MANAGEMENT STANDARDS

1. This Count is brought against Respondent FRANCISCO RAMIREZ 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 (2014).

2. This Count is brought against Respondent KIM RAMIREZ 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, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014).

3. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Act.

4. Respondent, FRANCISCO RAMIREZ, is an Illinois resident.

5. Respondent, KIM RAMIREZ, is an Illinois resident.

6. From at least June 28, 2012 through May 6, 2015, on dates better known to the Respondents, Respondents Kim Ramirez and Francisco Ramirez, individually and d/b/a Elizabeth Used Tires and Fleet Service, an unincorporated entity, operated a tire retail and repair shop at 3588 South Eby's Mill Road, Elizabeth, Jo Daviess County, Illinois ("Site").

7. On September 4, 2013, Illinois EPA conducted an inspection of the Site ("September 2013 Inspection") in order to determine whether the Site was in compliance with Illinois statutes and regulations governing the retail sale and storage of tires at the Site.

8. At the time of the September 2013 Inspection, approximately two thousand five hundred (2,500) tires were located at the Site. One thousand (1,000) tires were found within a stationary semi-trailer parked at the Site. An additional eight hundred (800) tires were found inside a building at the Site in racks for resale. Seven hundred (700) tires were located outside where they were exposed to the environment and accumulating water.

9. On June 25, 2014, the Illinois EPA conducted a follow-up inspection ("June 2014 Inspection") to determine compliance with the Act. Approximately 1,042 tires were stored dry at the Site, either in a building or a semi-trailer.

10. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), 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.
11. Respondents Kim Ramirez and Francisco Ramirez are individuals and, therefore, “persons” within the meaning of Section 3.315 of the Act, 415 ILCS 5/3.315 (2014).
12. Section 54.10 of the Act, 415 ILCS 5/54.10 (2014), 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.
13. The tires present at the Site during the September 2013 Inspection constitute “tires” within the meaning of Section 54.10 of the Act, 415 ILCS 5/54.10 (2014).
14. Section 54.13 of the Act, 415 ILCS 5/54.13 (2014), provides the following definition:
“Used tire” means a worn, damaged, or defective tire that is not mounted on a vehicle.
15. Section 54.16 of the Act, 415 ILCS 5/54.16 (2014), provides the following definition:
“Waste tire” means a used tire that has been disposed of.
16. At the time of the September 2013 Inspection, the one thousand (1,000) tires found within the stationary semi-trailer and the eight hundred (800) tires found on racks for resale at the Site constitute “used tires” within the meaning of Section 54.13 of the Act, 415 ILCS 5/54.13 (2014), and are therefore subject to provisions of the Act that pertain to used tires.
17. The seven hundred (700) tires found outside at the Site were in piles which contained both tires that constitute “used tires” within the meaning of Section 54.13 of the Act, 415 ILCS 5/54.13 (2014), and tires that constitute “waste tires” within the meaning of Section

54.16 of the Act, 415 ILCS 5/54.16 (2014). Therefore, the seven hundred (700) tires found outside at the Site are subject to provisions of the Act that pertain to used tires and waste tires.

18. Section 54.09 of the Act, 415 ILCS 5/54.09 (2014), 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.

19. The Respondents accumulated used tires without disposing them, and thus the accumulation of tires located at the Site constituted “storage” within the meaning of Section 54.09 of the Act, 415 ILCS 5/54.09 (2014).

20. Section 54.12(3) of the Act, 415 ILCS 5/54.12(3) (2014), 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.

21. Because the Respondents sold tires at retail in the regular course of business and had more than 1,300 used tires on Site, the Site is a “tire storage site” within the meaning of Section 54.12 of the Act, 415 ILCS 5/54.12 (2014).

22. Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2014), 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.

23. Section 848.202(b) of the Illinois Pollution Control Board Regulations governing used tires and waste tires ("Board Tire Regulations"), 35 Ill. Adm. Code 848.202(b), provides, in pertinent part, 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:

* * *

- (2) Used or waste tires shall not be accumulated in any area located outside of any building unless the accumulation is separated from all buildings, whether on or off the site, by no less than 25 feet.

* * *

- (4) Used or waste tires shall be drained of water on the day of generation or receipt.
- (5) Used or waste tires received at the site shall not be stored unless 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.

24. At the time of the September 2013 Inspection, Respondents stored more than fifty (50) used tires at 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).

25. At the time of the September 2013 Inspection, used tires and waste tires were accumulated in piles outside along the north, east and south sides of a building at the Site. Some

of the tires were accumulated in piles separated from the building by less than twenty five (25) feet.

26. Because Respondents accumulated used tires and waste tires at the Site outside and within twenty five (25) feet of a building, Respondents violated Section 848.202(b)(2) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(2).

27. At the time of the September 2013 Inspection, seven hundred (700) used tires and waste tires were outside accumulating water.

28. Because Respondents failed to drain used tires and waste tires of water on the day of generation or receipt, they violated Section 848.202(b)(4) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(4).

29. Section 54.01 of the Act, 415 ILCS 5/54.01 (2014), 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.

30. At the time of the September 2013 Inspection, the used tires present at the Site had not been altered and thus did not satisfy the criteria for “altered tires” within the meaning of Section 54.01 of the Act, 415 ILCS 5/54.01 (2014).

31. Section 54.07 of the Act, 415 ILCS 5/54.07 (2014), 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.

32. At the time of the September 2013 Inspection, the used tires present at the Site had not been reprocessed and thus did not meet the criteria for “reprocessed tires” within the meaning of Section 54.07 of the Act, 415 ILCS 5/54.07 (2014).

33. Section 54.02 of the Act, 415 ILCS 5/54.02 (2014), 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.

34. At the time of the September 2013 Inspection, the used tires present at the Site had not been “converted” within the meaning of Section 54.02 of the Act, 415 ILCS 5/54.02 (2014).

35. Section 54.03 of the Act, 415 ILCS 5/54.03 (2014), 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.

36. At the time of the September 2013 Inspection, some of the used tires present at the Site did not satisfy the criteria for “covered tires” within the meaning of Section 54.03 of the Act, 415 ILCS 5/54.03 (2014).

37. At times from at least September 4, 2013 through June 25, 2014, on dates best known to Respondents, Respondents caused or allowed the storage of used tires 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).

38. By causing or allowing the storage of used tires and waste tires for more than fourteen (14) days without altering, reprocessing, converting, covering, or otherwise preventing the used tires 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).

39. Section 848.202(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(3), provides as follows:

c) In addition to the requirements set forth in subsection (b), the owner or operator shall comply with the following requirements at sites at which more than 500 used or waste tires are located

3) Used or waste tires shall not be placed on or accumulated in any pile unless the pile is separated from grass, weeds, brush, over-hanging tree limbs and similar vegetative growth by no less than 50 feet.

40. At the time of the September 2013 Inspection, Respondents stored more than five hundred (500) used tires at the Site. As a result, Respondents are subject to the tire storage requirements of Section 848.202(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(3).

41. At the time of the September 2013 Inspection, Respondents accumulated used tires and waste tires at the Site in piles separated by less than 50 feet from grass, weeds, brush, and over-hanging tree limbs.

42. Because Respondents caused or allowed the accumulation of piles of used tires and waste tires at the Site separated by less than 50 feet from grass, weeds, brush, and over-hanging tree limbs, Respondents violated Section 848.202(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(3).

43. By violating Sections 848.202(b)(2), (4), and (5), and Section 848.202(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(2), (4), and (5), and 848.202(c)(3), Respondents thereby also violated Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FRANCISCO RAMIREZ and KIM RAMIREZ, individually and d/b/a ELIZABETH USED TIRES AND FLEET SERVICE, an unincorporated entity, on this Count I:

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) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2014), and Sections 848.202(b)(2), (4), and (5), and Section 848.202(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(2), (4), and (5), and 848.202(c)(3);

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) (2014), and Sections 848.202(b)(2), (4), and (5), and Section 848.202(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(b)(2), (4), and (5), and 848.202(c)(3);

4. Assessing a civil penalty against Respondents of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and any pertinent regulations, and an additional 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) (2014); and

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

COUNT II

VIOLATION OF TIRE TRANSPORTATION STANDARDS

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

16. At the time of the September 2013 Inspection, more than twenty (20) tires were located inside a converted hay wagon.

17. The twenty (20) tires located inside the converted hay wagon constitute “waste tires” within the meaning of Section 54.16 of the Act, 415 ILCS 5/54.16 (2014).

18. Section 55(g) of the Act, 415 ILCS 5/55(g) (2014), provides as follows:

(g) No person shall engage in any operation as a used or waste tire transporter except in compliance with Board regulations.

19. Section 54.12b of the Act, 415 ILCS 5/54.12b (2014), provides the following definition:

“Tire transporter” means a person who transports used or waste tires in a vehicle.

20. Section 54.15 of the Act, 415 ILCS 5/54.15 (2014), provides the following definition:

“Vehicle” means every device in, upon or by which a person or property is or may be transported or drawn, except devices moved by human power or by animal power, devices used exclusively upon stationary rails or racks, and motorized wheelchairs.

21. The converted hay wagon located on the Site was designed to be hauled by a truck, and therefore constitutes a “vehicle” within the meaning of Section 54.15 of the Act, 415 ILCS 5/54.15 (2014).

22. At times from at least September 4, 2013 through June 25, 2014, on dates best known to Respondents, Respondents transported used or waste tires in a vehicle.

23. Because the Respondents transported used or waste tires in a vehicle, Respondents are a “tire transporter” within the meaning of Section 54.12b of the Act, 415 ILCS 5/54.12b (2014).

24. Section 848.606(a) of the Board Tire Regulations, 35 Ill. Adm. Code 848.606(a), provides as follows:

- a) Upon approval of a registration as a tire transporter, the owner or operator of any vehicle registered to transport used or waste tires shall place a placard on opposite sides of the vehicles which displays a number issued by the Agency following the words "Registered Tire Transporter: (number)."

25. At the time of the September 2013 Inspection, Respondents, d/b/a Elizabeth Used Tires and Fleet Service, were registered as a tire transporter by the Illinois EPA.

26. At the time of the September 2013 Inspection, a vehicle operated by the Respondents to transport used or waste tires did not display the required Illinois EPA placard.

27. Section 848.601(a)(2) of the Board Tire Regulations, 35 Ill. Adm. Code 848.601(a)(2), provides as follows:

- a) Except as provided in Subsection (c), no person shall transport more than 20 used or waste tires in a vehicle unless the following requirements are met.

* * *

- 2) The owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of this Subpart.

28. At times from at least September 4, 2013 through June 25, 2014, on dates best known to Respondents, Respondents transported more than twenty (20) used or waste tires in a vehicle that did not display the required Illinois EPA placard.

29. Because Respondents transported used or waste tires without displaying the required Illinois EPA placard, Respondents violated Sections 848.601(a)(2) and 848.606(a) of the Board Tire Regulations, 35 Ill. Adm. Code 848.601(a)(2) and 848.606(a), and thereby violated Section 55(g) of the Act, 415 ILCS 5/55(g) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FRANCISCO RAMIREZ and KIM

RAMIREZ, individually and d/b/a ELIZABETH USED TIRES AND FLEET SERVICE, an unincorporated entity, 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 Section 55(g) of the Act, 415 ILCS 5/55(g) (2014), and Sections 848.601(a)(2) and 848.606(a) of the Board Tire Regulations, 35 Ill. Adm. Code 848.601(a)(2) and 848.606(a);
3. Ordering the Respondents to cease and desist from any further violations of Section 55(g) of the Act, 415 ILCS 5/55(g) (2014), and Sections 848.601(a)(2) and 848.606(a) of the Board Tire Regulations, 35 Ill. Adm. Code 848.601(a)(2) and 848.606(a);
4. Assessing a civil penalty against Respondents of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and any pertinent regulations, and an additional 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) (2014); and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

ALLOWING ACCUMULATION OF USED TIRES BEYOND STATUTORY TIME FRAME

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count III.

18. Section 55.8(a) of the Act, 415 ILCS 5/55.8(a) (2014), provides as follows:

a. Any person selling new or used tires at retail or offering new or used tires for retail sale in this State shall:

* * *

2) accept for recycling used tires from customers, at the point of transfer, in a quantity equal to the number of new tires purchased.

19. At the time of the September 2013 Inspection, Respondents sold used tires at retail and offered used tires for retail sale in Illinois.

20. At the time of the September 2013 Inspection, Respondents accepted for recycling used tires from customers.

21. Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2014), provides as follows:

b. A person who accepts used tires for recycling under subsection (a) shall not allow the tires to accumulate for periods of more than 90 days.

22. At the time of the September 2013 Inspection, used tires accepted for recycling at the Site had accumulated for a period of greater than 90 days.

23. From at least September 4, 2013 through June 25, 2014, on dates best known to Respondents, Respondents caused or allowed the accumulation of used tires for recycling on the Site for a period of greater than 90 days.

24. By allowing the accumulation of used tires for recycling on the Site for a period greater than 90 days, Respondents violated Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FRANCISCO RAMIREZ and KIM

RAMIREZ, individually and d/b/a ELIZABETH USED TIRES AND FLEET SERVICE, an unincorporated entity, on this Count III:

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 Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2014);
3. Ordering the Respondents to cease and desist from any further violations of Section 55.8(b) of the Act, 415 ILCS 5/55.8(b) (2014);
4. Assessing a civil penalty against Respondents of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional 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) (2014); and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

VIOLATION OF RECORD KEEPING AND REPORTING REGULATIONS

1-24. Complainant realleges and incorporates herein by reference paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count IV.

25. Section 848.202(c)(2) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2), provides as follows:

- c. In addition to the requirements set forth in subsection (b), the owner or operator shall comply with the following requirements at sites at which more than 500 used or waste tires are located.

- (2) The recordkeeping and reporting requirements of Subpart C shall be met.

26. At the time of the September 2013 Inspection, more than five hundred (500) used tires were located at the Site. As a result, Respondents are subject to the recordkeeping and reporting requirements identified in Section 848.202(c)(2) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2).

27. Section 848.204(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.204(c)(3), provides as follows:

- c. In addition to the requirements set forth in subsection (b), if 500 or more used or waste tires are stored within a building, then the owner or operator shall:

- (3) meet the recordkeeping and reporting requirements of Subpart C.

28. At the time of the September 2013 Inspection, Respondents stored more than 500 used tires within a building at the Site. As a result, Respondents are subject to the recordkeeping and reporting requirements identified in Section 848.204(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.204(c)(3).

29. Section 848.302(a) of Subpart C of the Board Tire Regulations, 35 Ill. Adm. Code 848.302(a), provides as follows:

- (a) The owner and operator shall keep a record of used and waste tires at the site. The owner and operator shall keep the following records:

- 1) Daily Tire Record
- 2) Annual Tire Summary

30. Section 848.305 of Subpart C of the Board Tire Regulations, 35 Ill. Adm. Code 848.305, provides as follows:

Copies of all records required to be kept under this Subpart shall be retained by the owner and operator for three years and shall be made available at the site during normal business hours of the operator for inspection and photocopying by the Agency.

31. During the September 2013 Inspection, Respondents failed to produce three years of Daily Tire Records and Annual Tire Summaries at the Site upon the Illinois EPA's request.

32. Because copies of the Daily Tire Reports and Annual Tire Summaries were not retained by the operator on Site and were not available for inspection by the Illinois EPA, Respondents violated Sections 848.302(a) and 848.305 of the Board Tire Regulations, 35 Ill. Adm. Code 848.302(a) and 848.305.

33. Section 848.304(c) of the Board Tire Regulations, 35 Ill. Adm. Code 848.304(c), provides as follows:

- c) The Annual Tire Summary shall be received by the Agency on or before January 31 of each year and shall cover the preceding calendar year.

34. The Illinois EPA received Respondents' Annual Tire Summary report for calendar year 2012 on February 5, 2013.

35. Because Respondents' Annual Tire Summary for calendar year 2012 was not received by the Illinois EPA by January 31, 2013, Respondents violated Section 848.304(c) of the Board Tire Regulations, 35 Ill. Adm. Code Section 848.304(c).

36. Because Respondents violated Sections 848.302(a), 848.305, and 848.304(c) of Subpart C of the Board Tire Regulations, 35 Ill. Adm. Code 848.302(a), 848.305, and 848.304(c), Respondents thereby violated Sections 848.202(c)(2) and 848.204(c)(3) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2) and 848.204(c)(3).

37. Because Respondents violated Sections 848.202(c)(2), 848.204(c)(3), 848.302(a), 848.305, and 848.304(c) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2),

848.204(c)(3), 848.302(a), 848.305, and 848.304(c), Respondents thereby also violated Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FRANCISCO RAMIREZ and KIM RAMIREZ, individually and d/b/a ELIZABETH USED TIRES AND FLEET SERVICE, an unincorporated entity, on this Count IV:

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) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2014), and Sections 848.202(c)(2), 848.204(c)(3), 848.302(a), 848.305, and 848.304(c) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2), 848.204(c)(3), 848.302(a), 848.305, and 848.304(c);

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) (2014), and Sections 848.202(c)(2), 848.204(c)(3), 848.302(a), 848.305, and 848.304(c) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2), 848.204(c)(3), 848.302(a), 848.305, and 848.304(c);

4. Assessing a civil penalty against Respondents of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and any pertinent regulations, and an additional 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) (2014); and

of the Act, 415 ILCS 5/31(c)(2) (2014).

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) (2014), and such other relief as the Board deems proper.

Respectfully submitted,

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

BY:



Sammy David
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-3816

DATE: July 30, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. -16
)	(Enforcement - _____)
FRANCISCO RAMIREZ and KIM RAMIREZ,)	
individually and doing business as ELIZABETH)	
USED TIRES AND FLEET SERVICE,)	
an unincorporated entity,)	
)	
Respondents.)	

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 FRANCISCO RAMIREZ and KIM RAMIREZ, individually and d/b/a ELIZABETH USED TIRES AND FLEET SERVICE (“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. (2014), 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 30, 2015, a Complaint was filed on behalf of the People of the State of

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 (2014), 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 (2014).

3. At all times relevant to the Complaint, Respondents were and are residents of the State of Illinois.

4. From at least June 28, 2012 through May 6, 2015, on dates better known to the Respondents, Respondents Kim Ramirez and Francisco Ramirez, individually and d/b/a Elizabeth Used Tires and Fleet Service, an unincorporated entity, operated a tire retail and repair shop at 3588 South Eby's Mill Road, Elizabeth, Jo Daviess County, Illinois ("Site").

5. On September 4, 2013, Illinois EPA conducted an inspection of the Site ("September 2013 Inspection") in order to determine whether the Site was in compliance with Illinois statutes and regulations governing the retail sale and storage of tires at the Site.

6. At the time of the September 2013 Inspection, approximately two thousand five hundred (2,500) tires were located at the Site. One thousand (1,000) tires were found within a stationary semi-trailer parked at the Site. An additional eight hundred (800) tires were found inside a building at the Site in racks for resale. Seven hundred (700) tires were located outside where they were exposed to the environment and accumulating water.

7. On June 25, 2014, the Illinois EPA conducted a follow-up inspection ("June 2014 Inspection") to determine compliance with the Act. Approximately 1,042 tires were stored dry at the Site, either in a building or a semi-trailer.

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 - 415 ILCS 5/55(a)(4) and (e) (2014); Section 848.202(b)(2), (4), and (5), and Section 848.202(c)(3) of the Illinois Pollution Control Board Regulations, 35 Ill Adm. Code 848.202(b)(2), (4), and (5), and 848.202(c)(3).

Count II: Violation of Tire Transportation Standards – 415 ILCS 5/55(g) (2014); Sections 848.601(a)(2) and 848.606(a) of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 848.601(a)(2) and 848.606(a).

Count III: Allowing Accumulation of Used Tires Beyond Statutory Timeframe – 415 ILCS 5/55.8(b) (2014).

Count IV: Violation of Record Keeping and Reporting Obligations – 415 ILCS 5/55(a)(4) and (e) (2014); Sections 848.202(c)(2), 848.204(c)(3), 848.302(a), 848.305, and 848.304(c) of the Board Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2), 848.204(c)(3), 848.302(a), 848.305, and 848.304(c).

C. Admission of Violations

The Respondents neither admit nor deny the violations alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

On May 6, 2015, Illinois EPA conducted an inspection at the Site. The Respondents had removed all tires from the Site. Respondents' lease at the Site expired, and they incorporated a new used tires business called Extra Mile Plus, Inc. in Hanover, Illinois. Illinois EPA inspected the Hanover, Illinois location on May 6, 2015. All tires at the Hanover, Illinois location were stored under cover and were not exposed to the environment.

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 (2014).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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 and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.
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 and waste tires is technically practicable and economically reasonable.
5. Respondents have 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) (2014), 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. The violations began on or around September 4, 2013 and were resolved at the latest by June 25, 2014.
2. Respondents were diligent in attempting to come back into compliance with the Act and Board regulations once the Illinois EPA notified them of their noncompliance.
3. The civil penalty takes into account any economic benefit realized by the Respondents as a result of avoided or delayed compliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of One Thousand Five Hundred Dollars (\$1,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board 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. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents shall pay a civil penalty in the sum of One Thousand Five Hundred Dollars (\$1,500.00) 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:

Christopher B. Grubb
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. The Respondents shall store all of their used and waste tires in such a way that they are covered and prevented from accumulating water.

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 Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondents' payment of the \$1,500.00 penalty and any accrued interest, 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 July 30, 2015. 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. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Christopher B. Grubb
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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

Shaun Newell
Bureau of Land
Illinois Environmental Protection Agency
Rockford Regional Office
4302 North Main Street
Rockford, Illinois 61103

As to the Respondents

Francisco Ramirez and Kim Ramirez
5 Enterprise Drive
Hanover, Illinois 61041

G. Enforcement and Modification 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.

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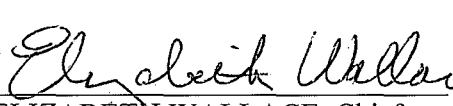
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


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

LISA BONNETT, Director
Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 7/27/15

DATE: 7/21/15

RESPONDENTS:

FRANCISCO RAMIREZ

DATE: _____

KIM RAMIREZ

DATE: _____

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
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Illinois Environmental Protection Agency

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

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

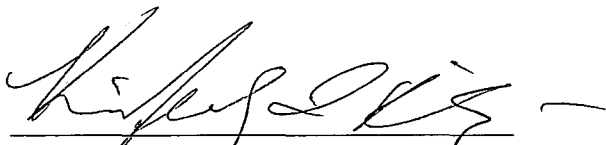
RESPONDENTS:

FRANCISCO RAMIREZ



DATE: July 21, 2015

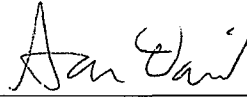
KIM RAMIREZ



DATE: July 21, 2015

CERTIFICATE OF SERVICE

I, SAMMY DAVID, an Assistant Attorney General, do certify that I caused to be served on this 30th day of July, 2015, the attached Notice of Electronic Filing, Complaint, Motion for Relief from Hearing Requirement, and Stipulation and Proposal for Settlement upon Fransisco and Kim Ramirez *via mail*.



SAMMY DAVID