

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No.</b>
	)	<b>(Enforcement)</b>
<b>ISAAC CAPPS,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

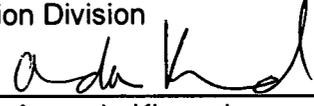
PLEASE TAKE NOTICE that on July 17, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT, COMPLAINT, and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:   
Amanda Kimmel  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: July 17, 2013

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
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<b>Complainant,</b>	)	
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<b>vs.</b>	)	<b>PCB No.</b>
	)	<b>(Enforcement)</b>
<b>ISAAC CAPPS,</b>	)	
	)	
<b>Respondent.</b>	)	

**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) (2010), moves that the Illinois Pollution Control 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) (2010). In support of this motion, Complainant states as follows:

1. A Complaint is being filed simultaneously herewith with the Illinois Pollution Control Board ("Board") in this matter.
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 contemporaneously with this motion.
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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY: 

Amanda Kimmel  
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	)	<b>(Enforcement)</b>
<b>ISAAC CAPPS,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, ISAAC CAPPS, as follows:

**COUNT I**  
**WASTE TIRE STORAGE VIOLATIONS BY ISAAC CAPPS**

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2010).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4(2010), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31(2010), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.
4. At all times relevant to this complaint, Respondent Isaac Capps ("Respondent") is and was the operator of a used tire storage facility at 4804 East Dundas Lane, Dundas, Illinois

62425, ("site").

5. On February 23, 2011, the Illinois EPA inspected the site. The Illinois EPA inspector observed approximately 1,700 used or waste tires were observed. Most of the tires were barrel stacked around the perimeter of the property. All tires were stored off the rim. Some tires were being stored within 25 feet of the building and all of the tires were being stored less than 50 feet from weeds. Water and organic matter accumulation was observed in some of the tires.

6. Violation Notice ("VN") was issued to the Respondent on March 9, 2011. On May 10, 2011, Respondent submitted a proposed Compliance Commitment Agreement ("CCA"). On May 23, 2011, the Illinois EPA denied Respondent's notification form for "Tire Storage Exemption" because of numerous deficiencies. On June 2, 2011, the Illinois EPA rejected the Respondent's proposed CCA.

7. On May 31, 2011, the Illinois EPA re-inspected the site. Inspectors observed that additional tires were brought to the site and there were approximately 3,100 used or waste tires on the site. Most tires had accumulated water and organic matter; additionally some tires contained mosquito larvae. There was no evidence that tires were altered to prevent water accumulation or processed in any way.

8. On June 16, 2011, the Illinois EPA again inspected the site. Inspectors observed the same conditions on the site. Approximately 3,100 used or waste tires were observed on the site. Most tires had accumulated water and organic matter; additionally some tires contained mosquito larvae. Mosquito larvae were collected from two tires at the site. Additionally, there was a flat bed utility trailer, license plate number 8741 DU, which contained approximately 50 tires. The trailer did not have any placard to indicate it was registered as a used tire transporter.

9. On August 23, 2011, the Illinois EPA again inspected the site and observed the same conditions on the site; however additional tires were present. Approximately 3,600 used or waste tires were observed on the site. Most tires had accumulated water and organic matter; additionally some tires contained mosquito larvae. Mosquito larvae was again collected from the site. A flat bed utility trailer, no license plate, contained approximately 50 tires which appeared to be newly acquired and were covered by a tarp. The trailer did not have any placard to indicate it was registered as a used tire transporter.

10. On December 7, 2011, the Illinois EPA performed a drive-by inspection. Some tires had been removed from the site; however, at least three semi-truck trailer loads of tires remained on site.

11. On December 18, 2012, the Illinois EPA performed a drive-by inspection and observed evidence of continued open burning.

12. Section 55 of the Act, 415 ILCS 5/55(2010), provides in relevant part, as follows:

(a) No person shall:

(1) Cause or allow the open dumping of any used or waste tire.

\*\*\*\*

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

\*\*\*\*

(c) Any person who sells new or used tires at retail or operates a tire storage site or a tire disposal site which contains more than 50 used or waste tires shall give notice of such activity to the Agency. Any person engaging in such activity for the first time after January 1, 1990, shall give notice to the Agency within 30 days after the date of commencement of the activity. The form of such notice shall be specified by the Agency and shall be limited to information regarding the following:

(1) the name and address of the owner and operator;

(2) the name, address and location of the operation;

- (3) the type of operations involving used and waste tires (storage, disposal, conversion or processing); and
  - (4) the number of used and waste tires present at the location.
- (d) Beginning January 1, 1992, no person shall cause or allow the operation of:
- (1) a tire storage site which contains more than 50 used tires, unless the owner or operator, by January 1, 1992 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, (i) registers the site with the Agency, (ii) certifies to the Agency that the site complies with any applicable standards adopted by the Board pursuant to Section 55.2, (iii) reports to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle and process the tires, and (iv) pays the fee required under subsection (b) of Section 55.6; or

\*\*\*\*

- (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 54.13 of the Act, 415 ILCS 5/54.13 (2010), provides as follows: “[u]sed tire’ means a worn, damaged, or defective tire that is not mounted on a vehicle.”

14. Section 54.16 of the Act, 415 ILCS 5/54.16 (2010) provides as follows: “[w]aste tire’ means a used tire that has been disposed of.”

15. Section 848.202(b)(5) of the Board’s Regulations, 35 Ill. Adm. Code 848.202(b)(5)(2010) 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:

\*\*\*\*

- (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.

\*\*\*\*

(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.

(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, overhanging tree limbs and similar vegetative growth by no less than 50 feet.

16. Since at least February 23, 2011, and on dates better known to the Respondent, a tire storage operation has been conducted at the site in violation of the Board's regulatory management standards and requirements within 35 Ill. Adm. Code 848.202.

17. By causing or allowing used or waste tires to be stored at a distance of less than 25 feet from any building, Respondent violated Section 848.202(b)(2) of the Board's Regulations, 35 Ill. Adm. Code 848.202(b)(2)(2010) and Section 55(a) and (e) of the Act, 415 ILCS 5/55(a)(4),(e)(2010).

18. By causing or allowing tires to be stored in a manner that did not prevent water from accumulating in the tires, Respondent violated Section 848.202(b)(5) of the Board's Regulations, 35 Ill. Adm. Code 848.202(b)(5)(2010) and Section 55(a) and (e) of the Act, 415 ILCS 5/55(a)(4),(e)(2010).

19. By causing or allowing used or waste tires to be stored at a distance of less than 50 feet from vegetative growth, Respondent violated Section 848.202(c)(3) of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(3)(2010) and Section 55(a) and (e) of the Act, 415

ILCS 5/55(a)(4),(e)(2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ISAAC CAPPS:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

**COUNT II**  
**RECORDKEEPING AND REPORTING VIOLATIONS BY ISAAC CAPPS**

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

17. Section 848.202(c) of the Board's Used and Waste Tire Regulations, 35 Ill. Adm. Code 848.202(c)(2010), provides, in pertinent part, 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.
  - (1) A contingency plan which meets the requirements of Section 848.203 shall be maintained.
  - (2) The recordkeeping and reporting requirements of Subpart C shall be met.

18. At the time of the February 23, 2011 Illinois EPA inspection, no notification form or contingency plan had been submitted for the site.

19. After a thorough review of records, the Illinois EPA determined that Defendants failed to adequately register the site as a tire storage site. On May 12, 2011, the Illinois EPA received Respondent's notification form for "Tire Storage Exemption." On May 23, 2011, the Illinois EPA denied the Respondent's notification form for "Tire Storage Exemption" because of numerous deficiencies.

20. Defendants have not properly maintained record keeping or reporting required by the Board Regulations.

21. By failing to maintain a contingency plan for the site, which contains at least 500 used tires, Respondent has violated Section 848.202(c)(1) of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(1)(2010).

22. By failing to maintain proper record keeping and reporting requirements, Respondent has violated Section 848.202(c)(2) of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(2)(2010).

23. By causing or allowing the operation of a tire storage site in a manner not in compliance with Board regulations, Respondent has violated Section 55(a)(4) of the Act, 415 ILCS 5/55(a)(4)(2010).

24. By causing or allowing the operation of a tire storage site without recording and submitting the required registration and notification information to the Illinois EPA, Respondent has violated Section 55(c) and (d) of the Act, 415 ILCS 5/55(c), (d)(1)(2010).

25. By causing or allowing the storage, disposal, treatment, or processing of any used or waste tire in violation of any regulations or standard adopted by the Board, Respondent has

violated Section 55(e) of the Act, 415 ILCS 5/55(e)(2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ISAAC CAPPS:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

**COUNT III**  
**FAILURE TO TIMELY PAY TIRE STORAGE SITE FEE BY ISAAC CAPPS**

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 55.6 of the Act, 415 ILCS 5/55.6(2010), provides in relevant part as follows:

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

18. Section 21 of the Act, 415 ILCS 5/21(k)(2010), provides in pertinent part as follows:

No person shall:

\*\*\*\*

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

19. After a thorough review of records, the Illinois EPA determined that prior to the Illinois EPA inspection of February 23, 2011, Defendants did not pay the annual fee for tire storage activity. Subsequently on May 24, 2011, Respondent paid the annual tire storage fee although the payment was untimely.

20. By failing to timely pay to the Illinois EPA the annual tire storage fee, Respondent has violated Sections 55.6 of the Act, 415 ILCS 55.6(2010).

21. By failing or refusing to timely pay a fee imposed under this Act, Respondent has violated Section 21 of the Act, 415 ILCS 21(k)(2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ISAAC CAPPS:

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

B. Finding that Respondent has violated the Act as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

**COUNT IV**  
**OPEN DUMPING VIOLATIONS BY ISAAC CAPPS**

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count IV.

17. Section 21 of the Act, 415 ILCS 5/21(a) and (p)(2010), provides in pertinent part as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

\*\*\*\*

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter;

\*\*\*\*

(3) open burning;

18. Section 3.300 of the Act, 415 ILCS 5/3.300 (2010), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

19. Section 3.385 of the Act, 415 ILCS 5/3.385 (2010), provides that, "Refuse" means waste.

20. Section 3.535 of the Act, 415 ILCS 5/3.535 (2010), provides as follows:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. . . .

21. On February 23, 2011, the during the Illinois EPA inspection, evidence of open dumping household and domicile waste was observed. The inspectors observed a burn pile which contained the burned remnants of the dumped household and domicile waste.

22. During the various the Illinois EPA inspection of the site, approximately 1,700-3,600 tires were noted at the site. The tires appeared to be worn and were not mounted on vehicles and constituted waste.

23. By causing or allowing the open dumping of waste, Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a)(2010).

24. By causing or allowing the open dumping of waste in a manner which has resulted in litter at the site, Respondent has violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1)(2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ISAAC CAPPS:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

**COUNT V**  
**OPEN BURNING BY ISAAC CAPPS**

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count V.

17. Section 9 of the Act, 415 ILCS 5/9(2010), provides in pertinent part as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

\* \* \*

(c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning.

18. Section 3.115 of the Act, 415 ILCS 5/3.115 (2010), provides that:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

19. Section 3.300 of the Act, 415 ILCS 5/3.300 (2010), provides that "[o]pen burning" is the combustion of any matter in the open or in an open dump.

20. On February 23, 2011, the during the Illinois EPA inspection, evidence of open burning of household and domicile waste was observed.

21. On May 31, 2011, the Illinois EPA re-inspected the site. During that inspection the inspector noted that the previously observed burn pile remained on the site.

22. On June 16, 2011, the Illinois EPA inspected the site. During that inspection the inspector noted that the previously observed burn pile remained on the site.

23. On August 23, 2011, the Illinois EPA again re-inspected the site. During that

inspection the inspector noted that the previously observed burn pile was covered with landscape waste.

24. By causing or allowing the open dumping of waste so as to result in open burning at the site, Respondent has violated Section 9 (a) and (c), and 21(p)(3) of the Act, 415 ILCS 5/9(a),(c), 21(p)(3)(2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ISAAC CAPPS:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

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

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

BY:   
\_\_\_\_\_

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel

AMANDA KIMMEL

ARDC# 6303715

500 South Second Street

Springfield, Illinois 62706

217/557-9457

Dated:

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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<b>ISAAC CAPPS,</b>	)	
	)	
<b>Respondent.</b>	)	

**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 ISAAC CAPPS ("Respondent") ("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. A Complaint was filed, simultaneous with the Stipulation, 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.

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 operated a tire storage facility located at 4804 East Dundas Lane, Dundas, Illinois ("site").

4. On February 23, 2011, the Illinois EPA inspected the site. The Illinois EPA inspector observed approximately 1,700 used or waste tires were observed. Most of the tires were barrel stacked around the perimeter of the property. All tires were stored off the rim. Some tires were being stored within 25 feet of the building and all of the tires were being stored less than 50 feet from weeds. Water and organic matter accumulation was observed in some of the tires.

5. On May 31, 2011, the Illinois EPA re-inspected the site. Inspectors observed that additional tires were brought to the site and there were approximately 3,100 used or waste tires on the site. Most tires had accumulated water and organic matter; additionally some tires contained mosquito larvae. There was no evidence that tires were altered to prevent water accumulation or processed in any way.

6. On June 16, 2011, the Illinois EPA again inspected the site. Inspectors observed the same conditions on the site. Approximately 3,100 used or waste tires were observed on the site. Most tires had accumulated water and organic matter; additionally some tires contained mosquito larvae. Mosquito larvae were collected from two tires at the site. Additionally, there was a flatbed utility trailer, license plate number 8741 DU, which contained approximately 50 tires. The trailer did not have any placard to indicate it was registered as a used tire transporter.

7. On August 23, 2011, the Illinois EPA again inspected the site and observed the same conditions on the site; however additional tires were present. Approximately 3,600 used or waste tires were observed on the site. Most tires had accumulated water and organic matter; additionally some tires contained mosquito larvae. Mosquito larvae was again collected from the site. A flat bed utility trailer, no license plate, contained approximately 50 tires which appeared to be newly acquired and were covered by a tarp. The trailer did not have any placard to indicate it was registered as a used tire transporter.

8. On December 7, 2011, the Illinois EPA performed a drive-by inspection. Some tires had been removed from the site; however, at least three semi-truck trailer loads of tires remained on site.

9. On December 18, 2012, the Illinois EPA performed a drive-by inspection and observed evidence of continued open burning.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- Count I: Waste Tire Storage Violations  
Respondent violated Section 848.202(b)(2), (5) and (c)(3) of the Board's Regulations, 35 Ill. Adm. Code 848.202(b)(2), (5) and (c)(3)(2010) and Section 55(a) and (e) of the Act, 415 ILCS 5/55(a)(4),(e)(2010)
- Count II: Recordkeeping and Reporting Violations  
Respondent has violated Section 848.202(c)(1-2) of the Board's Regulations, 35 Ill. Adm. Code 848.202(c)(1-2)(2010) and Section 5 (a)(4), (c) and (d) of the Act, 415 ILCS 5/55(a)(4) (c) and (d) (2010)
- Count III: Failure to Timely Pay Tire Storage Site Fee  
Respondent has violated Sections 55.6 of the Act, 415 ILCS 55.6(2010) and Section 21 of the Act, 415 ILCS 21(k)(2010)

Count IV: Open Dumping Violations  
Respondent has violated Section 21(a) and (p) of the Act, 415 ILCS 5/21(a) and (p)(2010)

Count V: Open Burning  
Respondent has violated Section 9 (a) and (c), and 21(p)(3) of the Act, 415 ILCS 5/9(a),(c), 21(p)(3)(2010)

**C. Admission of Violations**

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

**D. Compliance Activities to Date**

The Respondent had the tires removed from the site by certified tire haulers by August 30, 2012. In December 2012, the Respondent submitted receipts for the tire disposal to the Illinois EPA and the Illinois Attorney General's Office.

**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 improper tire storage practices and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. Issues with regard to social and economic benefit to the facility are not the subject of the enforcement case.
3. Issues with regard to siting and priority of location are not the subject of the enforcement case, nor were public comments and concerns relative to Respondent's operations received by Complainant documenting Respondent's facility is unsuitable to the area in which it is located.
4. Properly storing tires at the site and compliance with the tire storage regulation terms 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)(2012), 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 Respondent operated a tire storage facility without complying with the storage requirements, recordkeeping and reporting requirements, and failed to timely pay the tire storage site fee. Respondent also cause open dumping and open burning. The violations began on or around February 23, 2011 and were resolved at various times in the following two years.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.

3. Any economic benefit attributable to the noncompliance would be minimal.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Two Thousand Dollars (\$2,000.00) 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. On May 10, 2011, Respondent submitted a proposed Compliance Commitment Agreement ("CCA"). On June 2, 2011, the Illinois EPA rejected the Respondent's proposed CCA.

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Two Thousand Dollars (\$2,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### B. Payment Procedures

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, IL 62794-9276

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Amanda Kimmel  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**C. 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 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 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.

**D. Release from Liability**

In consideration of the Respondent's payment of the \$2,000.00 penalty, its commitment to cease and desist as contained in Section V.C. above, completion of all activities required hereunder, 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 simultaneously with this Stipulation. 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.

**E. 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

LISA BONNETT, Director  
Illinois Environmental Protection Agency

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

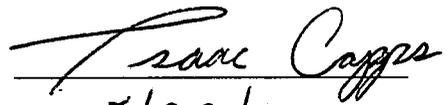
BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 7/16/13

DATE: 7/12/13

ISAAC CAPPS

BY:   
DATE: 5/22/13

**CERTIFICATE OF SERVICE**

I hereby certify that I did on July 17, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT, COMPLAINT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



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Amanda Kimmel  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Isaac Capps  
4804 East Dundas Lane  
Dundas, IL 62425