

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
v.)
)
BI STATE TIRE, INC., an)
Illinois corporation,)
)
Respondent.)

PCB 03-117

RECEIVED
CLERK'S OFFICE

JUL 3 2003

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Mr. Bob Paulsen
Bi-State Tire, Inc.
730 31st Avenue
Rock Island, IL 61201

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT 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: 
DELBERT D. HASCHEMEYER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 1, 2003

CERTIFICATE OF SERVICE

I hereby certify that I did on July 1, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Mr. Bob Paulsen
Bi-State Tire, Inc.
730 31st Avenue
Rock Island, IL 61201

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 South Second Street
Springfield, IL 62704


Delbert D. Haschemeyer
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

JUL 3 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 BI STATE TIRE, INC., an)
 Illinois corporation,)
)
 Respondent.)

PCB No. 03-117

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) (2002), 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) (2002). In support of this motion, Complainant states as follows:

1. On February 5, 2003, Complainant filed a Complaint with the Board, alleging violations regarding Respondent's tire business located in Rock Island, Illinois.
2. Since that filing, 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) (2002).

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) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY:


DELBERT D. HASCHEMEYER
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 7/1/03

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 BI STATE TIRE, INC., an)
 Illinois corporation,)
)
 Respondent.)

RECEIVED
CLERK'S OFFICE

JUL 3 2003

STATE OF ILLINOIS
Pollution Control Board

PCB NO. 03-117
(Enforcement - Tires)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), and Respondent, BI STATE TIRE, INC., an Illinois corporation, have agreed to the making of this Stipulation and Proposal for Settlement and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2002).

II.

AUTHORIZATION

The undersigned representatives for each party 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.

III.

STATEMENT OF FACTS

A. Parties

1. On February 5, 2003, 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 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2002), 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 (2002).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

B. Site Description

At all times relevant to the Complaint, Respondent owned and operated a tire business facility located at 730 31st Avenue, Rock Island, Rock Island County, Illinois ("Site").

C. Allegations of Non-Compliance

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

1. On April 16, 2001, and dates prior to and thereafter known to the Respondent, Respondent operated its used tire facility in such a manner so as to cause or allow the placement

of used or waste tires in piles outside of its building so as to fail to maintain aisle space to allow the unobstructed movement of personnel and equipment in violation of 35 Ill. Adm. Code 848.202(b)(1).

2. On April 16, 2001, and dates prior to and thereafter known to the Respondent, Respondent failed to drain water from used or wasted tires on the day of generation or receipt at its tire facility in violation of 35 Ill. Adm. Code 848.202(b)(4).

3. On April 16, 2001, and dates prior to and thereafter known to the Respondent, Respondent stored used and waste tires at its facility and failed to alter, reprocess, convert, cover or otherwise prevent used and waste tires from accumulating water within fourteen (14) days of receipt in violation of 35 Ill. Adm. Code 848.202(b)(5).

4. On April 16, 2001, and dates prior to and thereafter known to the Respondent, Respondent, at its facility at which more than 500 used or waste tires are located, placed or accumulated tires in such a manner so as to violate 35 Ill. Adm. Code 848.202(c)(5).

5. Respondent caused or allowed the operation of a tire storage facility in violation of Sections 55(a)(4) and (e) of the Act, 415 ILCS 5/55(a)(4) and (e) (2002).

D. Admission of Violations

The Respondent represents that it has entered into this Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

IV.

APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer or agent of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers or agents to take such action as shall be required to comply with the provisions of this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation and Proposal for Settlement. In appropriate circumstances, however, the Respondent and a contemplated future owner or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of any Order approving and adopting the terms of this Stipulation and Proposal for Settlement to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation and Proposal for Settlement in place of, or in addition to, the Respondent.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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, 35 Ill. Adm. Code, Subtitles A through H.

VI.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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 state the following:

1. Human health and the environment were threatened in that failure to manage used tires correctly may contribute a fire hazard and a habitat for disease spreading mosquitos.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Operating the site in compliance with the applicable requirements is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

VII.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), 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 violator in attempting to comply with requirement of this Act and regulations thereunder or to secure relief thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. The alleged violations commenced on some date prior to April 16, 2001, and continued to some date prior to August 8, 2002, at which time, an inspection by the Agency found the facility in compliance. Although the violation posed the potential for harm to the environment, no actual harm was identified. Respondent asserts the violations occurred during a time Respondent's operation was under pressure due to economic circumstances.

2. Respondent achieved compliance with the Act, Board Regulations and applicable Federal regulations, after the Illinois EPA notified it of its noncompliance.

3. There was a likely economic benefit Respondent realized from its noncompliance although the benefit is unquantifiable at this time.

4. Complainant has determined that a penalty of six thousand dollars (\$6,000.00) 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.

VIII.

TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a penalty in the sum of six thousand dollars (\$6,000.00) as follows:

One thousand dollars (\$1,000.00) within 30 days after the Board accepts this Agreement;

One thousand dollars (\$1,000.00) 6 months after the Board accepts this Agreement;

One thousand dollars (\$1,000.00) one year after the Board accepts this Agreement;

One thousand five hundred dollars (\$1,500.00) 18 months after the Board accepts this Agreement; and

One thousand five hundred dollars (\$1,500.00) 24 months after the Board accepts this Agreement.

The penalty described in this Agreement shall be paid by certified check payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), _____, shall appear on the check. A copy of the certified check or money order and the transmittal letter shall be sent to:

Illinois Attorney General's Office
Environmental Bureau
500 South Second Street

Springfield, IL 62706

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payments are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. Upon Respondent's failure to pay any installment of the penalty when due, the entire balance of the penalty remaining unpaid shall without notice be and become immediately due and payable.

4. For purposes of payment and collection, Respondent may be reached at the following address:

Bi State Tire, Inc.
730 31st Avenue
Rock Island, IL 61201

5. In the event of default, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, this Stipulation may be used against the Respondent in any subsequent enforcement action as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Section 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42(h) (2002).

C. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Section IX. of this Stipulation, shall be submitted as follows:

Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

D. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Consent Order, at all reasonable times for the purposes of carrying out inspections. 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.

E. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations, including but not limited to those sections of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. of this Stipulation.

F. Release from Liability

In consideration of the Respondent's payment of the \$6,000.00 penalty, upon the completion of all activities required hereunder, and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 5, 2003. The Complainant reserves, and this Consent Order 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 or the Illinois EPA may have against any person, as defined by Section 3.26 of the Act, 415 ILCS 5/3.26, or entity other than the Respondent.

G. Enforcement of Consent Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce and Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall

be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

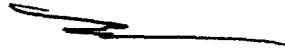
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

Respectfully submitted,

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

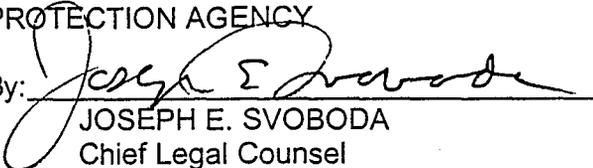
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Dated: 6/30/03

By: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

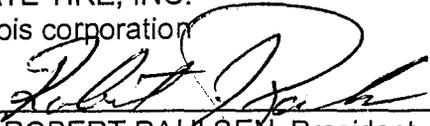
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Dated: 6-10-03

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

BI STATE TIRE, INC.
An Illinois corporation

Dated: 6-25-03

By: 
ROBERT PAULSEN, President