

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
by KWAME RAOUL, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
v.)
)
CHICAGO TIRE, INC., an Illinois)
corporation, and CHICAGO)
INDUSTRIAL RETREADERS, INC.,)
an Illinois corporation,)
)
Respondents.)

No. 2020-009
(Enforcement – Air)

NOTICE OF FILING

PLEASE TAKE NOTICE that on Friday, December 27, 2019, Complainant, PEOPLE OF THE STATE OF ILLINOIS, through the undersigned, filed with the Clerk of the Illinois Pollution Control Board, a true and correct copy of the attached Motion for Relief from Hearing and Stipulation and Proposal for Settlement and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
BY KWAME RAOUL, Attorney General of
the State of Illinois,

/s/ Elizabeth Dubats
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-2069
edubats@atg.state.il.us

CERTIFICATE OF SERVICE

I, Elizabeth Dubats, Assistant Attorney General, do certify that I caused to be served this 27th Day of December 2019, the Notice of Filing, Motion for Relief for Hearing and Stipulation and Proposal for Settlement in this matter upon the persons listed below via U.S. first class mail mailed from 100 W. Randolph Street, Chicago, Illinois 60602.

Chicago Tire Inc.
c/o Gintaras P. Cepenas, Registered Agent
6436 S. Pulaski Road
Chicago, Illinois 60629-5134

Chicago Industrial Retraders, Inc.
c/o Martynas A. Trakis, Registered Agent
16001 S. Van Drunen Road
South Holland, Illinois 60473-1283

/s/ Elizabeth Dubats
Elizabeth Dubats

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Complainant,)

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v.)

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No. PCB 20-9

(Enforcement – Air)

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corporation, and CHICAGO)

INDUSTRIAL RETREADERS, INC.,)

an Illinois corporation,)

)

Respondents.)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, 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) (2018), moves that the Illinois Pollution Control Board (“Board”) grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2018). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 9(a) and 9(b) of the Act, 415 ILCS 5/9(a), 5/9(b) (2018), Sections 201.142, 201.143, and 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, 201.143, and 201.302(a), and Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a).
2. Complainant filed the Complaint on August 14, 2019.
3. The parties have reached agreement on all outstanding issues in this matter.

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

5. 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) (2018).

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) (2018).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General
State of Illinois

BY: /s/ Elizabeth Dubats
ELIZABETH DUBATS
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2069
edubats@atg.state.il.us

DATE: December 27, 2019

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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and Respondents, CHICAGO TIRE, INC., an Illinois corporation, and CHICAGO INDUSTRIAL RETREADERS, INC., an Illinois corporation (“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.* (2018), 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 August 14, 2019, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018), 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 (2018).

3. At all times relevant to the Complaint, Respondent Chicago Tire, Inc. was and is an Illinois corporation in good standing with the Illinois Secretary of State.

4. At all times relevant to the Complaint, Respondent Chicago Industrial Retreaders, Inc. was and is an Illinois corporation in good standing with the Illinois Secretary of State.

5. At all times relevant to the Complaint, Respondents owned and operated a retread production facility engaged in retreading used truck tires and selling new and used truck tires, located at 16001 S. Van Drunen Road, South Holland, Cook County Illinois ("Facility").

B. Allegations of Non-Compliance

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

Count I: Construction of Emissions Sources without a Permit

Violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2018), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142

Count II: Operation of Emissions Sources without a Permit

Violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2018), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

201.143.

Count III: Failure to Submit Annual Emissions Reports

Violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2018), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a).

C. Admission of Violations

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

D. Compliance Activities to Date

On June 28, 2019, Respondent, Chicago Industrial Retreaders, Inc., registered the Facility in the Illinois EPA's Registration Of Small Sources ("ROSS") program.

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, the Board Regulations and the Illinois EPA 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 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), 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. The Illinois EPA's information gathering responsibilities were hindered by the Respondents' violations thereby threatening human health and the environment.
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. Obtaining a permit prior to construction and operation at the site and compliance with its terms, and timely submission of complete and accurate annual emissions reports, are both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act, Board regulations and Illinois EPA Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), 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 Respondents failed to obtain a permit for construction and operation of emissions units at the Facility. The violations began on or around the time Respondent, Chicago Industrial Retreaders, Inc., began operations in 1994, and were individually resolved by registering as a ROSS source on June 28, 2019.

2. Respondents were not diligent in compliance with the Act and Board regulations prior to notification of their noncompliance; however, Respondents were diligent in attempting to come back into compliance, once the Illinois EPA and the Illinois Attorney General 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 Thirteen Thousand Three Hundred Seventy-Five dollars (\$13,375.00) 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 Thirteen Thousand Three Hundred Seventy-Five Dollars (\$13,375.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If 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. A certified check or money order for \$3,375.00 shall be designated for deposit in the Illinois EPA Permit and Inspection Fund. A certified check or money order for \$10,000.00 shall be designated 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 each certified check or money order.

3. A copy of each certified check or money order and any transmittal letter shall be sent to:

Elizabeth Dubats
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondents' facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act, Board Regulations and Illinois EPA Regulations.

3. The Respondents shall cease and desist from future violations of the Act, Board Regulations and Illinois EPA Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondents' payment of the \$13,375.00 penalty, their commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act, Board regulations and Illinois EPA 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 August 14, 2019. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters,

including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

F. Enforcement of Stipulation

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

G. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

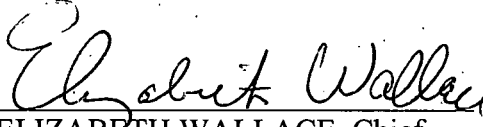
PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

KWAME RAOUL
Attorney General
State of Illinois

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: 12-16-19

DATE: 12-4-19

RESPONDENTS

CHICAGO INDUSTRIAL
RETREADERS, INC.

CHICAGO TIRE, INC.

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

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DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: _____

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