

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No. 2017-045
)	
MAGNA TAX SERVICE CO., INC., an)	
Illinois Corporation, and DENNIS)	
BALLINGER, an individual,)	
)	
Respondents.)	

NOTICE OF FILING

TO: See attached service list.

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Notice of Filing, Stipulation and Proposal For Settlement, Motion for Relief from Hearing Requirements and Certificate of Service, copies of which are attached and hereby served upon you.

Respectfully submitted,

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

By: s/Rachel R. Medina
Rachel R. Medina
Christina Nannini
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62701
rmedina@atg.state.il.us
cnannini@atg.state.il.us

Date: June 26, 2020

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

For the Respondents

Magna Tax Service Co., Inc.

c/o Claire Manning

cmanning@bhslaw.com

Dennis Ballinger

c/o Claire Manning

cmanning@bhslaw.com

carol.webb@illinois.gov

Hearing Officer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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vs.)	PCB No. 2017-045
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MAGNA TAX SERVICE CO., INC.,)	
an Illinois corporation, and DENNIS)	
BALLINGER, an individual,)	
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Respondents.)	

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"), MAGNA TAX SERVICE CO., INC., an Illinois corporation ("Magna Tax"), and DENNIS BALLINGER, an individual, ("Respondents"), ("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 First Amended Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On February 2, 2017, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018), against the Respondent, Magna Tax.

2. On July 24, 2019, a First Amended 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, Magna Tax and Dennis Ballinger.

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. Magna Tax is an Illinois corporation and owner of property located at 120 North 14th Street, Mattoon, Coles County, Illinois ("site").

4. Dennis Ballinger is the president, secretary, and registered agent of Magna Tax, and operates the site.

5. On October 5, 2011, Illinois EPA inspected the site and observed a dark stain along the west half of the northern edge of the site.

6. On August 23, 2012, Respondents conducted an investigative dig at the site along a pipe in the contaminated area.

7. On September 13, 2013, Respondents conducted another exploratory dig of the site and located an underground storage tank ("UST") with field observations indicating that the

UST had a release. The UST was registered with the Office of the State Fire Marshal on September 17, 2013.

8. On September 13, 2013, Respondents' contractor notified Illinois Emergency Management Agency of a leaking UST incident.

9. On October 16-17, 2013, Respondents, through their contractors, excavated and removed one 1,500 gallon heating oil UST from the site.

10. On October 17, 2013, approximately 27 tons of visibly impacted soil surrounding the UST was excavated as part of the UST removal. The Respondents completed a site investigation under the Leaking Underground Storage Tank ("LUST") program with Illinois EPA.

B. Allegations of Non-Compliance

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

- Count I: Open Dumping of Waste
415 ILCS 5/21(a) and (e)
- Count II: Failure to Perform Waste Determination
415 ILCS 5/21(d)(2)
35 Ill. Adm. Code 722.111
- Count III: Unpermitted Waste Storage or Disposal
415 ILCS 5/21(d)(1)-(2)
35 Ill. Adm. Code 812.101(a)
- Count IV: Water Pollution
415 ILCS 5/12(a)
- Count V: Water Pollution Hazard
415 ILCS 5/12(d)

- Count VI: Open Dumping by Dennis Ballinger
415 ILCS 5/21(a) and (e)
- Count VII: Failure to Perform Waste Determination by Dennis Ballinger
415 ILCS 5/21(d)(2)
35 Ill. Adm. Code 722.111
- Count VIII: Unpermitted Waste Storage or Disposal by Dennis Ballinger
415 ILCS 5/21(d)(1)-(2)
35 Ill. Adm. Code 812.101(a)
- Count IX: Water Pollution by Dennis Ballinger
415 ILCS 5/12(a)
- Count X: Water Pollution Hazard by Dennis Ballinger
415 ILCS 5/12(d)

C. Non-Admission of Violations

Respondents represent that they have 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 complying with its terms, the Respondents do not affirmatively admit the allegations of violation alleged in the First Amended Complaint, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

On May 22, 2017, Illinois EPA issued a No Further Remediation letter for the remedial action taken in response to the leaking UST.

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 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 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 First Amended 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. Plaintiff alleges that human health and the environment were threatened.
2. There is potential social and economic benefit to the property.
3. Respondents' ownership of the property is suitable for the area, so long as it is

operated in compliance with the Act and Board Regulations.

4. Compliance with the Act and Board regulations is both technically practicable and economically reasonable and has been achieved.

5. Respondents remediated the release associated with the leaking UST and received a No Further Remediation letter under LUST Incident No. 20131007.

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 Illinois EPA observed stained soils on October 5, 2011. The UST was removed on October 16-17, 2013.
2. Respondents were relatively diligent once they entered the LUST program and in responding to the identified release, once the Illinois EPA notified them of their alleged 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 Three Thousand Dollars (\$3,000.00) will serve to deter further non-compliance and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, the 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 Three Thousand Dollars (\$3,000.00) within thirty (30) calendar days from the date the Board adopts and accepts this

Stipulation. Respondents are each jointly and severally liable for the \$3,000 civil penalty.

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

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 #2
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and case 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:

Rachel Medina
Assistant Attorney General
Environmental Bureau

Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. 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.

2. 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.

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

E. Release from Liability

In consideration of the Respondents' payment of the \$3,000.00 penalty, their commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the First Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's First Amended Complaint filed on July 24, 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

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,

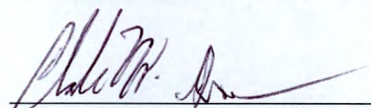
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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: 
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

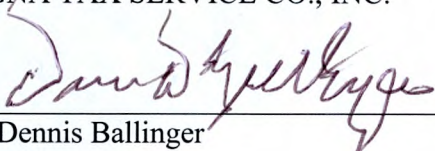
BY: 
CHARLES W. GUNNARSON
Acting Chief Legal Counsel

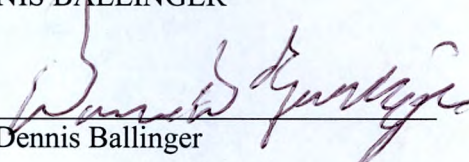
DATE: 06/22/2020

DATE: 6/16/2020

MAGNA TAX SERVICE CO., INC.

DENNIS BALLINGER

BY: 
Dennis Ballinger

BY: 
Dennis Ballinger

DATE: 27 April 2020

DATE: 27 April 2020

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
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Complainant,)	
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v.)	PCB No. 2017-045
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MAGNA TAX SERVICE CO., INC., an)	
Illinois Corporation, and DENNIS)	
BALLINGER, an individual,)	
)	
Respondents.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT
AND NOTICE OF ELECTRONIC SERVICE

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 Complainant in this matter alleges violations of Section 12(a), Section 12(d), Section 21(a), Sections 21(d)(1)-(2), and Section 21(e) of the Act, 415 ILCS 5/12(a), 5/12(d), 5/21(a), 5/21(d)(1)-(2), and 5/21(e) (2018), and Section 722.111 and Section 812.101(a) of the Board Regulations, 35 Ill. Adm. Code 722.111 and 812.101(a).
2. The Respondents agree to accept service of the notice of filing, stipulation, motion for relief and certificate of service via electronic mail.
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, the 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,
by KWAME RAOUL,
Attorney General of the
State of Illinois

By: s/Rachel R. Medina
RACHEL R. MEDINA
CHRISTINA NANNINI
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706
(217) 782-9031
rmedina@atg.state.il.us
ebs@atg.state.il.us

Dated: June 26, 2020

CERTIFICATE OF SERVICE

I, Rachel R. Medina, an Assistant Attorney General, certify that on the 26nd day of June, 2020, I caused to be served by Electronic Mail the foregoing Notice of Filing, Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirements and Certificate of Service to the parties named on the attached Service List and listed below:

Magna Tax Service Co., Inc.
c/o Claire Manning
cmanning@bhslaw.com

Dennis Ballinger
c/o Claire Manning
cmanning@bhslaw.com

carol.webb@illinois.gov
Hearing Officer

s/Rachel R. Medina
Rachel R. Medina
Christina Nannini
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
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Springfield, IL 62701
(217)782-9061
rmedina@atg.state.il.us