

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
	)	
Complainant,	)	
	)	PCB No. 20-08
v.	)	
	)	
WILLIAM MUCCI and	)	
DEBRA MUCCI	)	
d/b/a B&M Properties, and	)	
	)	
JOHN KIRBY, an individual, and	)	
POLLY KIRBY, an individual,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

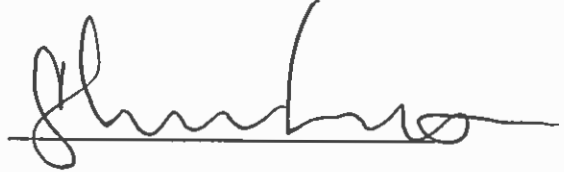
PLEASE TAKE NOTICE that today, December 17, 2020, Complainant filed the Stipulation and Proposal for Settlement with Respondents John Kirby and Polly Kirby, and Motion to Waive the Requirement of a Hearing, with the Office of the Illinois Pollution Control Board. A copy of the documents so filed are attached hereto and served upon you.

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

BY:   
 Christopher Grant  
 Senior Assistant Attorney General  
 Environmental Bureau  
 69 W. Washington Street, #1800  
 Chicago, IL 60602  
 (312) 814-3532  
 cgrant@atg.state.il.us

**CERTIFICATE OF SERVICE**

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 17th day of December, 2020, the Stipulation and Proposal for Settlement with Respondents John Kirby and Polly Kirby, the associated Motion to Waive the Requirement of a Hearing, and Notice of Filing, upon the persons listed below by first class mail and/or electronic mail.

A handwritten signature in black ink, appearing to read 'Christopher Grant', written over a horizontal line.

CHRISTOPHER GRANT

**SERVICE LIST:**

Mr. Eric L. Miskell  
Miskell Law Center LLC  
218 W. Madison Street  
Ottawa IL 601350-2819  
Eric@miskelllaw.com  
By electronic mail and first class mail

Mr Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
By electronic mail only  
Brad.Halloran@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
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v.	)	
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JOHN KIRBY, an individual, and	)	
POLLY KIRBY, an individual,	)	
	)	
Respondents.	)	

**MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT AND ACCEPT SETTLEMENT WITH KIRBY RESPONDENTS**

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter and approval of the Stipulation and Proposal for Settlement resolving Complainant’s claims against Respondents John Kirby and Polly Kirby (“Kirby Respondents”). In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a proposed Stipulation and Proposal for Settlement executed between Complainant and the Kirby Respondents.
2. The Board accepted the Stipulation between Complainant and Respondents William Mucci and Debra Mucci on December 19, 2019. Accordingly, if the Board accepts the Stipulation and Proposal for Settlement with the Kirby Respondents, this matter will be resolved in its entirety.
3. Section 31 of the Act, 415 ILCS 5/31 (2018), provides, in pertinent part, as

follows:

- (c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).
4. No hearing is currently scheduled in this matter.
5. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2018).

Respectfully submitted,

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

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

BY:

  
CHRISTOPHER GRANT  
Senior Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, Illinois 60602  
(312) 814-5388  
cgrant@atg.state.il.us

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Respondents.	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH  
RESPONDENTS JOHN KIRBY AND POLLY KIRBY**

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 JOHN KIRBY AND POLLY KIRBY, ("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 Respondents William Mucci, Debra Mucci, John Kirby, and Polly Kirby.

2. On December 19, 2019, the Board accepted the Stipulation and Proposal for Settlement between Complainant and Respondents William Mucci and Debra Mucci, which resolved all allegations of violation against these Respondents.

3. 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).

4. All Respondents are Illinois residents.

5. At all times relevant to the Complaint, John Kirby and Polly Kirby (“Kirby Respondents”) were the contract purchasers of property located adjacent to Illinois Route 71 north and south of N 2725 Road, Ottawa, La Salle County, Illinois (“Site”). The Site consists of three tax parcels with property index numbers (“PINs”) of 22-15-301-012, 22-15-301-016, and 22-15-408-000.

6. On or about April 23, 2018, the Kirby Respondents set fire to piles of Landscape Debris at the Site.

### B. Allegations of Non-Compliance

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

- Count I: OPEN DUMPING OF WASTE, violation of 415 ILCS 5/21(a) (2018);
- Count II: CAUSING AND ALLOWING LITTER, violation of 415 ILCS 5/21(p)(1) (2018);
- Count III: OPEN DUMPING OF CONSTRUCTION OR DEMOLITION DEBRIS, violation of 415 ILCS 5/21(p)(7) (2018);
- Count IV: OPEN DUMPING RESULTING IN OPEN BURNING, violation of 415 ILCS 5/21(p)(3) (2018);
- Count V: OPEN DUMPING OF WASTE TIRES, violation of 415 ILCS 5/55(a)(1) (2018);
- Count VI: CAUSING AND ALLOWING STANDING WATER IN WASTE TIRES, violation of 415 ILCS 5/55(k)(1) (2018);
- Count VII: WASTE STORAGE AND DISPOSAL AT AN IMPROPER SITE, violation of 415 ILCS 5/21(e) (2018);
- Count VIII: CONDUCTING A WASTE STORAGE AND WASTE TREATMENT OPERATION WITHOUT A PERMIT, violation of 415 ILCS 5/21(d)(1), 415 ILCS 5/21(d)(2), and 35 Ill. Adm. Code 812.101 (2018).
- Count IX: AIR POLLUTION, violation of 415 ILCS 5/9(a) (2018);
- Count X: OPEN BURNING OF REFUSE, violation of 415 ILCS 5/9(c) (2018).
- Count XI: OPEN BURNING OF WASTE TIRES, violation of 415 ILCS 5/55(a)(2) (2018).

**C. Non-Admission of Violations**

The Kirby Respondents represent that they have entered into this Stipulation 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 Kirby Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

As of the date of filing this Stipulation, all waste, including used or waste tires, that was the subject of the Complaint has been removed from the Site.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Kirby 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 Kirby Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 5/42 (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 accumulation of landscape debris, and the open burning of refuse at the Site, was harmful to the general welfare of residents living near the subject property.

2. The accumulated landscape debris and used or waste tires at the Site did not have social or economic value.

3. The Site is not suitable for unpermitted waste storage and/or disposal, nor the open burning of refuse.

4. Maintenance and use of the Site in accordance with the provisions of the Act is technically feasible and economically reasonable.

5. All waste, including landscape debris and used or waste tires, has been removed from the Site. The Kirby Respondents have ceased the open burning of refuse at the Site.

#### **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 there from 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; and
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;
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. Landscape debris and used or waste tires were accumulated at the Site for an unknown period, but during at least 2017.
2. Complainant asserts that the Kirby Respondents were not diligent in handling the accumulation of landscape debris and used or waste tires at the Site.
3. The Kirby Respondents initially experienced an economic benefit by openly burning landscape debris instead of arranging for disposal at a permitted waste disposal facility. Complainant believes that most, or all, of the economic benefit from this avoided disposal cost was eliminated by payment of costs related to the open burning, including reimbursement of costs by local fire response authorities, and by the subsequent removal and disposal of waste and used or waste tires. Complainant asserts that assessment of a civil penalty of \$6,000.00 will

recover any remaining economic benefit realized by the Kirby Respondents.

4. Complainant has determined, based upon the specific facts of this matter, and after review of financial information provided by the Kirby Respondents, that a penalty of \$6,000.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. The Kirby Respondents have no previously adjudicated violations.

6. The Kirby Respondents did not self-disclose the alleged violations.

7. The settlement of this matter does not include a supplemental environmental project.

8. The parties did not enter into a Compliance Commitment Agreement.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Kirby Respondents shall pay a civil penalty in the sum of Six Thousand Dollars (\$6,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### **B. Interest and Default**

1. If the Kirby Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Kirby 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, 415 ILCS 5/42(g) (2018), interest shall

accrue on any penalty amount owed by the Mucci 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  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The case 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:

Christopher J. Grant  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington, Suite 1800  
Chicago, Illinois 60602  
cgrant@atg.state.il.us

**D. Future Compliance**

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

**E. Release from Liability**

In consideration of the Kirby Respondents' payment of the \$6,000.00 penalty, their

commitment to cease and desist as contained in Section V.D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Kirby Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on August 14, 2019. The Complainant reserves and this Stipulation is without prejudice to, all rights of the State of Illinois against the Kirby 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 Kirby 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 (2018), or entity other than the Kirby 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

KWAME RAOUL  
Attorney General of the  
State of Illinois

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

BY: Matthew J. Dunn/rb  
MATTHEW J. DUNN, Chief  
Environmental Enforcement  
Asbestos Litigation Division

DATE: 12/11/2020

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

JOHN KIM, Director  
Illinois Environmental Protection Agency

BY: Charles Gunnarson  
CHARLES GUNNARSON  
Chief Legal Counsel

DATE: 12/4/2020

JOHN KIRBY

BY: John Kirby

DATE: 11/17/2020

POLLY KIRBY

BY: Polly Kirby

DATE: 11-17-2020

*People v. William Mucci, Debra Mucci, John Kirby & Polly Kirby, PCB 20-08*