

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 WESS WHITTAKER, d/b/a WHITTAKER )  
 AUTO SALVAGE, an unincorporated )  
 entity, )  
 )  
 Respondent. )

PCB No. 14-100  
(Enforcement - Water)

**NOTICE OF ELECTRONIC FILING**

To: *Via Email*  
 Richard S. Porter  
 Jeffrey P. Zanchelli  
 Hinshaw & Culbertson LLP  
 100 Park Avenue  
 P.O. Box 1389  
 Rockford, IL 61105-1389

*Via Email*  
 Bradley P. Halloran  
 Hearing Officer  
 Illinois Pollution Control Board  
 James R. Thompson Center, Suite 11-500  
 100 W. Randolph Street  
 Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 7<sup>th</sup> day of May, 2014, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement, a true and correct copy of which is attached hereto and is hereby served upon you.

By: \_\_\_\_\_



Ryan G. Rudich  
 Assistant Attorney General  
 Environmental Bureau  
 69 W. Washington St., 18<sup>th</sup> Floor  
 Chicago, IL 60602  
 (312) 814-1511

DATE: May 7, 2014

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-100
	)	(Enforcement - Water)
	)	
WESS WHITTAKER, d/b/a WHITTAKER	)	
AUTO SALVAGE, an unincorporated	)	
entity,	)	
	)	
Respondent.	)	

**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) (2012), 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) (2012). In support of this motion, Complainant states as follows:

1. On January 14, 2014, 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 (2012), against the Respondent ("Complaint").
2. The parties have reached agreement on all outstanding issues in the Complaint.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.


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) (2012).

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) (2012), and such other relief as the Board deems proper.

Respectfully submitted,

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

BY:

  
\_\_\_\_\_  
Ryan G. Rudich  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-1511

DATE: May 7, 2014

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
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Complainant,	)	
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v.	)	PCB No. 14-100
	)	(Enforcement - Water)
	)	
WESS WHITTAKER, d/b/a WHITTAKER	)	
AUTO SALVAGE, an unincorporated	)	
entity,	)	
	)	
Respondent.	)	

**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 WESS WHITTAKER, d/b/a WHITTAKER AUTO SALVAGE, an unincorporated entity (“Respondent”), (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. (2012), 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 January 14, 2014, 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 (2012), 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 (2012).

3. At all times relevant to the Complaint, Respondent was and is an Illinois resident.

4. At all times relevant to the Complaint, Respondent owned and operated an automobile salvage facility located at 1365 N. 45<sup>th</sup> Road, Earlville, LaSalle County, Illinois ("Facility" or "Site").

**B. Allegations of Non-Compliance**

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

Count I: Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

Count II: Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

**C. Non-Admission of Violations**

Respondent represents that he has 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, Respondent does not

affirmatively admit the allegations of violations as referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such an admission.

## **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 his 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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), 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 Complainant alleges that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
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 coverage under an NPDES permit for the Facility and operating the Facility in a manner that does not threaten water pollution was 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 was informed on July 19, 2011 that he was required to obtain an NPDES permit for his automobile salvage business. Respondent alleges he attempted to obtain an NPDES permit through the State of Illinois' website, but did not successfully complete the online application. He did not obtain coverage under the General NPDES Permit for Discharges Associated with Industrial Activity until July 25, 2013.

2. Respondent did not submit his Notice of Intent for coverage under the General NPDES Permit for Discharges Associated with Industrial Activity until September 12, 2012, over a year after he was informed that he was required to obtain an NPDES permit for his automobile salvage business.

3. Respondent avoided at least one year of permit fees, valued at \$500.00, by not obtaining coverage under the General NPDES Permit for Discharges Associated with Industrial Activity until 2013. The value to Respondent of delaying the cost of having a consultant prepare



and submit a Notice of Intent for coverage under the General NPDES Permit for Discharges Associated with Industrial Activity and a Stormwater Pollution Prevention Plan was at least \$174.00. The total economic benefit of Respondent's noncompliance was thus at least \$674.00.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Thousand Two Hundred Dollars (\$5,200.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. On May 13, 2010, an order was entered by the Circuit Court for the Thirteenth Judicial Circuit, LaSalle County, against Respondent and Jessica Whittaker, d/b/a Whittaker Auto Salvage, for land and water pollution violations, including the release of automotive fluids to the ground, open dumping, improper handling of waste and improper storing of used tires. The Court imposed a \$10,000.00 civil penalty for the violations.

6. Respondent did not disclose the violations complained of 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**

The Respondent shall pay a civil penalty in the sum of Five Thousand Two Hundred Dollars (\$5,200.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

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

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent 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 Respondent 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 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 the certified check or money order.

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

Ryan G. Rudich  
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, 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.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$5,200.00 penalty and its 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 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 on January 14, 2014. 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 (2012), or entity other than the Respondent.

**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.

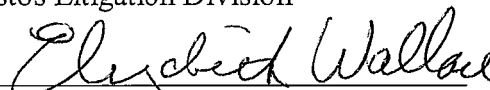
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS    ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

LISA BONNETT, Director  
Illinois Environmental Protection Agency

BY:   
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 5/5/14

DATE: 5/23/14

WESS WHITTAKER  
d/b/a WHITTAKER AUTO SALVAGE

BY: \_\_\_\_\_  
WESS WHITTAKER

DATE: \_\_\_\_\_

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

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

LISA BONNETT, Director  
Illinois Environmental Protection Agency

BY: \_\_\_\_\_  
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

WESS WHITTAKER  
d/b/a WHITTAKER AUTO SALVAGE

BY:   
\_\_\_\_\_ WESS WHITTAKER

DATE: 04-04-14

**CERTIFICATE OF SERVICE**

I, RYAN G. RUDICH, an Assistant Attorney General, do certify that I caused to be served on this 7<sup>th</sup> day of May, 2014, the attached Notice of Electronic Filing, Motion for Relief from Hearing Requirement, and Stipulation and Proposal for Settlement upon (a) Richard S. Porter and Jeffrey P. Zanchelli *via email* and (b) Bradley P. Halloran *via email*.

  
RYAN G. RUDICH