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JAN 12 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	
)	PCB 04-08
GREG PREY, individually and doing)	
business as KING TIRE,)	(Enforcement)
)	
Respondent.)	

TO: Mr. Greg Prey	Mr. Brad Halloran
King Tire	Hearing Officer
237 1 st Street	100 W. Randolph, Suite 11-500
LaSalle, IL. 61301-2302	Chicago, Il. 60601

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, January 12, 2004, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached herewith and served upon you.

Respectfully submitted,

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

BY: *Paula Becker Wheeler*
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-1511

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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 Respondent.)

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POLLUTION CONTROL BOARD

PCB 04-08

(Enforcement)

TO: Mr. Greg Prey Mr. Brad Halloran
King Tire Hearing Officer
237 1st Street 100 W. Randolph, Suite 11-500
LaSalle, IL. 61301-2302 Chicago, IL. 60601

MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On July 14, 2003, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On January 12, 2004, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective June 26, 2002, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

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).

3. No hearing is currently scheduled in the instant case.

4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2), effective June 26, 2002.

Respectfully submitted,

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

By: _____

Paula Becker Wheeler

PAULA BECKER WHEELER
Assistant Attorney General

Environmental Bureau
188 W. Randolph St., 20th Fl.
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PCB 04-08
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and respondent, GREG PREY, an individual doing business as King Tire, do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). 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 full 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 this or any other proceeding except to enforce the terms of this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future

enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2002).

I.
JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the 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 Proposal for Settlement and to legally bind them to it.

III.
APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent, and each of them, and on any officer, director, agent, employee or servant of Respondent, as well as Respondent's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of officers, directors, agents, servants, or employees of respondent to take such action as shall be required to comply with the provisions of

this settlement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brought this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, GREG PREY, is an Illinois resident, doing business as King Tire.

B. Facility Description

Respondent owns and operates a business involved in the sale of new and used tires. The business is located at 237 1st Street, LaSalle, LaSalle County, Illinois. The facility stores and sells new and used tires. Between 50 and 2400 tires new, used and waste tires have been stored on the premises at various times. The Respondent is also a registered tire transporter in the State of Illinois.

C. Noncompliance

Complainant has alleged the following violations of the Act against the Respondent:

- COUNT I: TIRE REGISTRATION VIOLATIONS, violations of Sections 55(d) (1), 55.6(b), and 21(k) of the Act, 415 ILCS 5/55(d) (1), 55.6(b), and 5/21(k) (2002);
- COUNT II: TIRE STORAGE VIOLATIONS, violations of Sections 55(a) (4) and (e) of the Act, 415 ILCS 5/55(a) (4) and (e) (2002), and 35 Ill. Adm. Code 848.202(b) (1), (2), (4), and (5);
- COUNT III: TIRE TRANSPORTER VIOLATIONS, violations of Section 55(g) of the Act, 415 ILCS 5/55(g) (2002), and 35 Ill. Adm. Code 848.601(a).

D. Response to allegations

Respondent admits the allegations in the complaint.

V.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

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.

ANALYSIS:

The parties mutually state as follows:

1. *Character and Degree of Injury:*

The impact to the public from the alleged violations of the Act was the threat of disease vector from the water accumulated in the tires, and the risk of air pollution from possible combustion of tires which are stored so closely together.

2. *Social and Economic Benefit:*

The parties agree that operation of Respondent's business is of social and economic benefit, provided it operates in conformance with the requirements of the Act and pertinent Board tire regulations.

3. *Suitability to the Area:*

Operation of Respondent's business at the Site is suitable to the area, provided that the Act and its rules and regulations for safe tire storage and registrations are followed.

4. *Technical Practicability:*

Proper registration, payment of fees, and safe storage of new, used and waste tires is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondent is currently in compliance.

VI.
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 requirements of this Act and regulations 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.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

Complainant has alleged that the failure to register and pay the fees occurred from January to October of 2001. The tire storage violations and tire transporter violation occurred on October 5, 2001 and other unknown dates. Since other dates are unknown, the duration is estimated at less than one month for the

storage violations.

2. *Diligence of Respondent:*

The Respondent was diligent in that all violations were cured by the next inspection in 2002. The Respondent has been cooperative with the Agency and the Attorney General's Office.

3. *Economic Benefit of Noncompliance:*

The Respondent did not receive any substantial economic benefit from the alleged noncompliance. The civil penalty contained herein recovers any economic benefit obtained by Respondent from the alleged noncompliance.

4. *Deterrence:*

A penalty of Five Thousand Dollars (\$5000.00) against the Respondent will deter future noncompliance by the Respondent and others.

5. *Compliance History:*

The Respondent has no previously adjudicated violations of the Act and Board Regulations.

VII.

TERMS OF SETTLEMENT

1. The Respondent admits the violations as alleged in the complaint against him.

2. The Respondent shall pay a total penalty of the sum of Five Thousand Dollars (\$5000.00), payable as follows:

a. An initial payment of TWO THOUSAND FIVE HUNDRED

(\$2500.00) shall be due 30 days after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. The remaining payment of TWO THOUSAND FIVE HUNDRED (\$2500.00) shall be payable in two (2) quarterly installments, the first coming due four (4) months after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement, in the amount of \$1250.00. A final payment in the amount of \$1250.00 shall be due seven (7) months after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement.

b. The payments shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund("EPTF"), and shall be sent by first class mail to:

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

3. Respondent's Social Security number must be on the certified check or money order. For issues relating to the payment of the penalty, the Respondent may be reached at the following address:

Mr. Greg Prey
237 1st Street
LaSalle, Illinois 61301

A copy of the certified check or money order, and all related

correspondence, shall be sent by first class mail to:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, Illinois 60601

4. If the Respondent fails to make any payment specified within Section VII.2.a. of this Stipulation Order on or before the date upon which the payment is due, the Respondent will be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately.

5. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

VIII.
INTEREST ON PENALTIES

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. 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.

4. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's Social Security number shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Paula Becker Wheeler
Assistant Attorney General (or other designee)
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

IX.

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 Stipulation, 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.

X.
CEASE AND DESIST

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 IV.C. of this Stipulation and Proposal for Settlement.

XI.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal state or local regulations, including but not limited to the Act and Board regulations.

XII.
RELEASE FROM LIABILITY

In consideration of the Respondent's payment as described in paragraph VII.2. above, and the Respondent's commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and regulations which were the subject matter of the Complaint herein, upon the payment of all monies owed. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undisclosed violations, or obtain penalties with respect thereto.

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

AGREED:

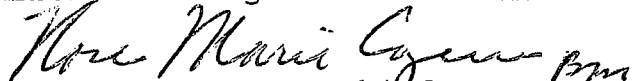
FOR THE COMPLAINANT:

GREG PREY

LISA MADIGAN
Attorney General of
the State of Illinois

Dated: _____

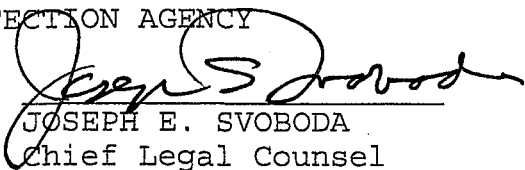
Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 12/22/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:


JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 12/18/03

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

AGREED:

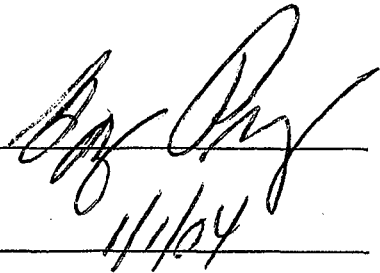
FOR THE COMPLAINANT:

LISA MADIGAN
Attorney General of
the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

GREG PREY

Dated: _____



Handwritten signature of Greg Prey and date 11/16/04.

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: _____

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 12th day of January, 2004, the foregoing Stipulation and Proposal for Settlement and Motion to Request Relief from Hearing Requirement and Notice of Filing, by U.S. Mail upon the following persons:

Mr. Greg Prey
King Tire
237 1st Street
LaSalle, IL. 61301-2302

Mr. Brad Halloran
Hearing Officer
100 W. Randolph, Suite 11-500
Chicago, IL. 60601

Paula Becker Wheeler

PAULA BECKER WHEELER