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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JAN 15 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB 98-80
)	(Tire Cost Recovery)
CRAIG LINTON, an individual,)	
and RANDY ROWE, an individual,)	
)	
Respondents.)	

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING


TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE THAT we have today filed **Stipulation and Proposal For Settlement** and Certificate Of Service, copies of which are attached hereto and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General
State of Illinois

By: 
Gerald T. Karr
Assistant Attorney General
188 West Randolph Street, 20th
Environmental Bureau
Chicago, Illinois 60601
(312) 814-3369

Dated: January 15, 2004

SERVICE LIST

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Mr. Craig Linton
P.O. Box 84
Marseilles, Illinois 61341

Mr. Randy Rowe
2900 El Camino Avenue
Las Vegas, Nevada 89102

JAN 15 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**STATE OF ILLINOIS
Pollution Control Board**

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 CRAIG LINTON, an individual, and)
 RANDY ROWE, an individual,)
)
 Respondents.)

PCB 98-80

(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 Respondents, CRAIG LINTON and RANDY ROWE, (hereinafter referred to as "Linton", "Rowe" or collectively as "Respondents"), do hereby agree to this Stipulation and Proposal for Settlement. 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 Section 39(i) and 42(h) of the Act, 415 ILCS 5/39(i), 5/42(h)(2002). This agreement shall be null and void unless the Board approves and

disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

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 through 58.17 (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 Respondents including their successors, assigns, heirs, agents and executors. The Respondents shall not raise, as a defense to any action to enforce this Stipulation and Proposal for Settlement, the failure of any of its agents to take such action as shall be required to comply with the terms of this Stipulation and Proposal for Settlement.

IV.

STATEMENT OF FACTS

A. **Parties**

1. The Attorney General of the State of Illinois brings 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 him under Section 31 of the Act, 415 ILCS 5/31 (2002).

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

3. Respondent Craig Linton is an individual with the last known address of 947 Clayton Street, Marseilles, LaSalle County, Illinois 61341. Respondent Randy Rowe is an individual with the last known address of 340 Main Street, Marseilles, LaSalle County, Illinois 61341.

B. Facility Description

The parcel of land (the "Site") that is the subject of this action is located just southwest of the intersection of Illinois Routes 6 and 71 in Ottawa, LaSalle County, Illinois. A legal description of the Site is attached hereto as Exhibit A.

C. Violations

The Complaint alleges the following violations of the Act, 415 ILCS 5/1 *et seq.*, (1996), and are outlined as follows:

VIOLETION OF TITLE XIV: USED TIRES:
Violation of Section 55.3(g) of the Act, 415 ILCS 5/55.3(g) (1996).

1. On November 21, 1995, the Illinois EPA issued formal written notices pursuant to Section 55.3(d) of the Act, 415 ILCS 5/55.3(d)(1994), to the Respondents ("Notice"), which stated that the used and waste tires posed a threat to the environment because the water which had accumulated in them provided a habitat for disease-spreading mosquitoes and other nuisance organisms. These Notices required the Respondents to clean up the used and waste tires at the Site.

2. On December 27, 1995 Rowe was personally served with a copy of the Notice. On

December 28, 1995, Linton was personally served with a copy of the Notice.

3. The Respondents failed to remove the waste tires and clean up the used and waste tires at the Site as requested by the Illinois EPA in the Notices.

4. The Illinois EPA's tire removal contractor conducted clean up work at the Site from March 4, 1996 to March 7, 1996, removing approximately six hundred tons of used and waste tires.

5. The Illinois EPA incurred costs in the amount of \$46,215.01 in cleaning up the Site.

6. On December 9, 1997 a complaint was filed seeking, pursuant to Section 55.3(g) of the Act, 415 ILCS 55.3(g) (1996), to recover the clean up costs incurred by the Illinois EPA.

7. The Illinois EPA reviewed extensive financial documentation submitted by the Respondents which demonstrates an inability to pay in full the State's costs of \$46, 215.01.

V.

EXPLANATION OF PAST FAILURES TO COMPLY WITH THE ACT

Respondents have asserted the lack of funds as their explanation for failure to comply with the Act.

VI.

FUTURE PLANS OF COMPLIANCE

Respondents 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.

VII.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Pursuant to Section 55.3(k) of the Act, 415 ILCS 5/55.3(k)(2002) , Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), is not applicable to actions to recover costs incurred by the Illinois EPA in conducting tire removals.

VIII.

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...

This matter is an action to recover costs incurred by the Illinois EPA in conducting a waste and used tire clean up, no penalty is sought.

IX.

TERMS OF SETTLEMENT

1. Respondents admit that they are liable for the costs incurred by the State of Illinois in conducting the used/waste tire clean up pursuant to Section 55.3 of the Act, 415 ILCS 5/55.3 (2002).

2. Respondents shall pay Illinois EPA past costs in the amount of six thousand (\$6,000.00) into the Used Tire Management Fund. The payment shall be made within thirty (30) days of the date of the Board Order. The "Board Order" means the order in which the Pollution Control Board adopts a final order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the **Illinois Environmental Protection Agency, for deposit into the Used Tire Management Fund**, 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. The Social Security number of both Respondents must be on the certified check or money order. For issues relating to the payment of the past costs, Respondents may be reached at the following address:

Craig Linton
P.O. Box 84
Marseilles, Illinois 61341

Randy Rowe
2295 East 22nd Street
Marseilles, Illinois 61341

X.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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

XI.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have right of entry to Respondents' Site at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of Respondents' Site, the Illinois EPA, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples as they deem

necessary in order to conduct their inspection.

XII

GRANT OF LIEN

In consideration of the clean-up activities conducted by the Illinois EPA on the Respondent's Site and the fact that the Site will be enhanced in excess of the settlement payment received, Respondents expressly grant of their own free will to the Illinois EPA and its assigns a lien on the Site in the amount of \$40,215.01.

XIII.

RELEASE FROM LIABILITY

In consideration of Respondents' payment of \$6,000.00 in past due Illinois EPA costs, granting of the lien in the amount of \$40,215.01 and their commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges Respondents from any further liability or penalties for violations of the Act and regulations which were the subject matter of the complaint herein, upon the completion of all activities required hereunder and 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 violations which were not the subject matter of this Complaint or obtain penalties with respect thereto.

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

AGREED:

FOR RESPONDENTS:

FOR THE COMPLAINANT:

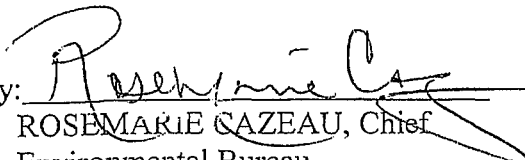
CRAIG LINTON

LISA MADIGAN
Attorney General of the
State of Illinois

Dated: _____

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

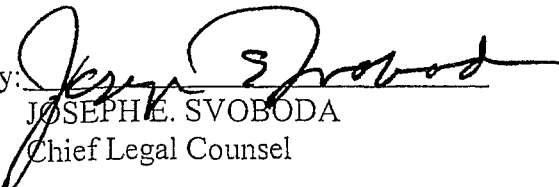
RANDY ROWE

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau

Dated: _____

Dated: 9/26/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

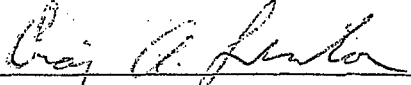
Dated: 9/19/03

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

AGREED:

FOR RESPONDENTS:

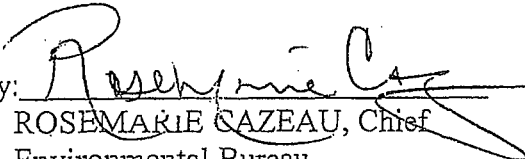
FOR THE COMPLAINANT:


CRAIG LINTON

LISA MADIGAN ✓
Attorney General of the
State of Illinois

Dated: 10-5-03

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

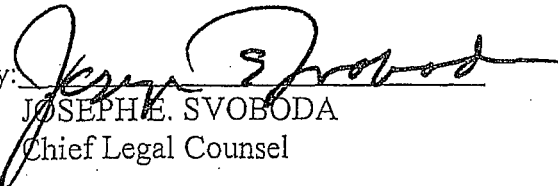
By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau

RANDY ROWE

Dated: 9/26/03

Dated: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 9/19/03

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

AGREED:

FOR RESPONDENTS:

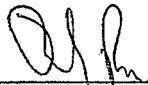
FOR THE COMPLAINANT:

CRAIG LINTON

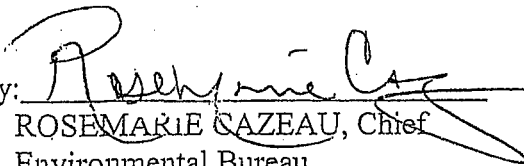
LISA MADIGAN ✓
Attorney General of the
State of Illinois

Dated: _____

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



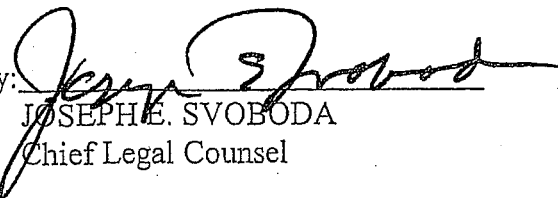
RANDY ROWE

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau

Dated: 10-11-03

Dated: 9/26/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 9/19/03

CERTIFICATE OF SERVICE

I, GERALD T. KARR , an Assistant Attorney General in this case, do certify that on this 15th day of January, 2004, I caused to be served by U.S. Mail the following documents upon the persons listed on the attached Service List by depositing same in the U.S. Mail depository located at 100 West Randolph Street, Chicago, Illinois, in an envelope with sufficient postage prepaid.

1) Notice of Filing

2) Stipulation and Proposal For Settlement


Gerald T. Karr