

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DODGE COUNTY

STATE OF WISCONSIN
17 West Main Street
PO Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

WATERTOWN TIRE
RECYCLERS LLC
W7932 Provimi Road
Watertown, WI 53094,

Defendant.

Case No. 2006-CX-_____

Complex Forfeiture: 30109

STIPULATION AND ORDER FOR JUDGMENT

The plaintiff State of Wisconsin brought this action against defendant Watertown Tire Recyclers LLC for violations of state laws governing solid waste management at a waste tire recycling facility on Provimi Road in The Town of Shields, Watertown, Dodge County. The parties to this action wish to settle this matter by agreement and avoid further litigation, and, therefore, enter into this stipulation.

IT IS STIPULATED AND AGREED by the parties that this case shall be settled on the merits and with prejudice, subject to the following terms and conditions, which shall be incorporated into a judgment in this action. This Stipulation also addresses two other pending actions involving Watertown Tire Recyclers LLC and relating to its operations at the Provimi Road site, namely *Citizens for a Safe Environment, et al. v. Watertown Tire*

Recyclers, Dodge County Case No. 05-CV-255, and *Watertown Tire Recyclers LLC v. Town of Shields*, Dodge County Case No. 06-CV-280.

1. The Defendant Watertown Tire Recyclers LLC shall pay a judgment in the amount of \$320,000, comprising:

a. response costs of \$120,000 incurred by the City of Watertown, \$25,000 incurred by the Town of Shields, and \$122,893.21 incurred by 94 other local entities as set forth in Exhibit A attached to the Stipulation, under Wis. Stat. § 166.22(4)-(5), for a total of response costs of \$267,893.21;

b. actual and necessary expenses of \$31,000 incurred by the Department of Natural Resources under Wis. Stat. § 292.11(7)(b);

c. forfeitures of \$15,436.61 for the violations described in the complaint, plus \$3,859.15 for the 25% penalty surcharge under Wis. Stat. § 814.75(18), \$1,543.66 for the 10% environmental surcharge under Wis. Stat. § 814.75(12), the \$25 court costs under Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge required by Wis. Stat. § 814.75(3), the \$68 court support services surcharge as required by Wis. Stat. § 814.75(2), a \$154.37 jail surcharge under Wis. Stat. § 814.75(14), and the \$12 justice information system surcharge required by Wis. Stat. § 814.75(15), for a total of forfeitures and surcharges of \$21,106.79.

2. In view of the defendant's financial situation based on information provided by the defendant and Thomas Springer, the defendant shall pay the total amount of \$320,000 according to the schedule set forth below:

- a. Payment in the amount of \$64,000 shall be made, by check payable to the City of Watertown and delivered to counsel for plaintiff at the address listed below by July 7, 2006.
- b. Payment in the amount of \$36,000 shall be made by check payable to the City of Watertown and delivered to counsel for plaintiff at the address listed below by May 15, 2007.
- c. Payment in the amount of \$35,000, to be distributed to the local entities listed in Exhibit A, shall be made by check payable to the State of Wisconsin and delivered to counsel for plaintiff at the address listed below by May 15, 2008.
- d. Payment in the amount of \$65,000, to be distributed to the local entities listed in Exhibit A, shall be made by check payable to the State of Wisconsin and delivered to counsel for plaintiff at the address listed below by May 15, 2009.
- e. Payment in the amount of \$22,893.21, to be distributed to the local entities listed in Exhibit A, shall be made by check payable to the State of Wisconsin and delivered to counsel for plaintiff at the address listed below by May 15, 2010.
- f. Payment in the amount of \$31,000 shall be made by check payable to the Department of Natural Resources and delivered to counsel for plaintiff at the address listed below by May 15, 2010.
- g. Payment in the amount of \$25,000 shall be made by check payable to the Town of Shields and delivered to counsel for plaintiff at the address listed below by May 15, 2010.

h. Payment in the amount of \$20,000 shall be made by check payable to the City of Watertown and delivered to counsel for plaintiff at the address listed below by May 15, 2010.

i. Payment in the amount of \$21,106.79 shall be made by May 15, 2010, by check payable to the Dodge County Clerk of Circuit Court and delivered to the Clerk of Court, 210 West Center Street, Juneau, Wisconsin 53039-1091. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

3. The payments made as required under paragraphs 2(c), 2(d) and 2(e) shall be distributed by the Department of Justice to 95 local entities according to the schedule set forth in Exhibit A attached to this Stipulation. The local entities listed in Exhibit A have on documents held at the Department of Justice agreed to accept these payments in full satisfaction of their fire response claims, thereby waiving all rights to those claims.

4. The payments that are due in 2007, 2008 and 2009 will be made in part from receivables due the defendant under the Auburndale Agreement dated November 1, 2005 and defendant assigns these receivables, less the monthly payment amount defendant owes to Greenman for purchase of the Greenman routes, to the State of Wisconsin. The defendant also grants the State a security interest in these receivables and agrees to execute any documents reasonably necessary to perfect the security interest.

5. The defendant will cause Auburndale to directly deposit the receivables into an escrow account at ISB Community Bank in Ixonia, Wisconsin. Funds on deposit

in the escrow account will be for the sole benefit of Greenman Technologies of Wisconsin, Inc., the state and the local entities entitled to receive payments under this Stipulation, and the defendant agrees to escrow these funds pursuant to the Letter of Understanding attached hereto as Exhibit B.

6. The payments that are due on May 15, 2010, may be made from the sale of the Provimi Road property owned by Thomas Springer, and Thomas Springer will be afforded a reasonable time to prepare the property for sale after ceasing tire collection and transportation activities.

7. Up to \$20,000 due the State under paragraphs 1(c) and 2(i) will be used toward the costs of replacing any well that is impacted above state health standards as a result of contaminants from the fire, with any unspent money remaining as of May 15, 2010 to be paid to the State of Wisconsin as forfeitures and statutory surcharges.

8. By affixing his signature below, Thomas Springer shall fully guarantee the debts and obligations of the defendant as provided in this Stipulation or as imposed by the Court, and shall pay or cause to be paid to each of the entities the payments described in paragraphs 1-2 above if the defendant fails to make the payments when due or, to the extent not prohibited by law, at the time the defendant becomes bankrupt or insolvent or otherwise unable or unwilling to discharge all its obligations imposed upon it under this Stipulation or as imposed by the Court.

9. Within 10 days of entry of judgment in this case, Thomas Springer shall grant to the plaintiff a mortgage lien in the amount of \$120,000, which shall be recorded against parcel number 040-0914-2524-002 at W7910 Provimi Road and N724 Rich Road

in the town of Shields, further described as Lot 1 CSM 4509 IN V28 P258 Being PT SE ¼ NW ¼ SEC 25 T9N R14E, in the Town of Shields, Dodge County, Wisconsin.

10. In addition to the payments required in paragraph 2, the defendant and Thomas Springer shall arrange for the piles of contaminated soil remaining on the Provimi Road site to be removed and properly disposed of in a landfill by July 31, 2006, at an approximate cost of \$75,000.

11. In addition to the payments required in paragraph 2, the defendant and Thomas Springer and Springer Express Freight shall not undertake any tire shredding or recycling activities on the Provimi Road site, or engage in any uses on the Provimi Road site that might be allowed as nonconforming uses or by variances received other than the tire collection and transportation activities currently permitted by the Department of Natural Resources, except that nothing in this stipulation shall prevent Dodge County from rezoning the Provimi Road site or granting permits or variances subsequent to the date of this stipulation, nor from enforcing the terms of the Dodge County Land Use Code subject to the terms of this stipulation.

12. The defendant and Thomas Springer and Springer Express Freight shall cease tire collection and transportation activities on the Provimi Road site by May 15, 2010. On May 15, 2010, or on the date that the defendant and Thomas Springer and Springer Express Freight cease tire collection and transportation activities if before May 15, 2010, all existing rights to use the site, including any and all rights to nonconforming uses and uses allowed by variance, shall be extinguished except for permitted uses in an A-1 agricultural zoning district under the Dodge County Land Use Code. No existing

uses other than permitted uses in an A-1 agricultural zoning district may be transferred or assigned to any person except as a successor to the defendant or Thomas Springer or Springer Express Freight under the terms of this stipulation and order. Nothing in this stipulation shall prevent Dodge County from rezoning the Provimi Road site or granting permits or variances subsequent to the date of this stipulation, nor from enforcing the terms of the Dodge County Land Use Code subject to the terms of this stipulation.

13. If the defendant and Thomas Springer and Springer Express Freight cease tire collection and transportation activities on the Provimi Road site at any time before May 15, 2010 and there is a breach of this Agreement, Thomas Springer shall immediately sell the Provimi Road property and he and defendant shall pay all amounts due under paragraphs 2(e), 2(f), 2(g), 2(h) and 2(i), but Thomas Springer shall be afforded a reasonable time to prepare the property for sale after ceasing tire collection and transportation activities.

14. Until the defendant and Thomas Springer and Springer Express Freight cease tire collection and transportation activities on the Provimi Road site, defendant and Thomas Springer and Springer Express Freight shall operate only between 5:15 a.m. and 8:00 p.m., Monday through Saturday.

15. Dodge County Case No. 05-CV-255, *Citizens for a Safe Environment, et al. v. Watertown Tire Recyclers LLC et al.* shall be dismissed without prejudice, and may be reopened upon motion of a party to that action only if the court in that action finds that the defendant or Thomas Springer or Springer Express Freight have not complied with their obligations under this Stipulation and Order. Any statutes of limitation applicable to

this action shall be tolled through May 15, 2010. Until such date defendant and Thomas Springer and Springer Express Freight waive any defenses to the reopening of the action on grounds of statutes of limitation, laches, or any ground other than compliance with the terms of this stipulation and order.

16. Dodge County Case No. 06-CV-280, *Watertown Tire Recycler, LLC v. Town of Shields*, shall be dismissed with prejudice within 10 days of the date of entry of judgment in this case.

17. Thomas Springer may not sell the Provimi Road property before May 15, 2010 unless he receives express, written permission from the Attorney General. If, prior to May 15, 2010, he provides full payment to the state of the amount remaining due under the judgment, then this paragraph is null and void.

18. The Department of Natural Resources will do unannounced onsite inspections of the Provimi Road site every 3 months at irregular intervals until May 15, 2010, or the tire-related operations at the Provimi site cease, whichever is earlier, and shall distribute copies of the inspection reports to a designated member of Citizens for a Safe Environment and to Dodge County and to defendant.

19. The defendant and Thomas Springer represent that they have provided a full, true, and accurate presentation of the defendant's and Thomas Springer's financial conditions to the state during the negotiation of this stipulation and they acknowledge that the parties have negotiated the terms of this Stipulation in good faith and in reliance on those representations.

20. If the defendant fails to mail a check for the required amount on or before a payment date set forth in this stipulation, or if defendant fails to comply with any other term in this stipulation, then it shall be in default of this stipulated judgment. If it is in default in any respect, all obligations remaining under this stipulation shall be accelerated and shall be immediately due and payable as set forth under this stipulation, and all uses, including any non-conforming uses or uses granted by variances, shall immediately cease, other than permitted uses in an agricultural A-1 zoning district.

21. The Department of Justice shall take action, which may include seeking contempt, to enforce this Stipulation and Order if the defendant or Thomas Springer or Springer Express Freight does not strictly comply with any of its terms, or with any of the state's collection and transportation requirements.

22. Nothing in the Stipulation and Order shall deprive the parties, signatories, or members of the public of their rights under the law.

23. Thomas Springer agrees that he will keep the stock of Watertown Tire Recyclers in his sole name and that he will execute a valid will that provides that if he dies before 2010, the personal representative of his estate will continue the active tire collection and transportation business of Springer Express Freight until no later than May 15, 2010.

24. The accompanying order for judgment and judgment may be entered and docketed incorporating the terms of this stipulation without further notice.

25. This Stipulation may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Stipulation and all of which, when

taken together, will be deemed to constitute one and the same stipulation. A facsimile signature shall be as good as an original.

Dated: _____
PEGGY A. LAUTENSCHLAGER
Attorney General

Dated: _____
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ORDER FOR JUDGMENT

The court approves the terms of the foregoing stipulation in *State v. Watertown Tire Recyclers LLC*, Case No. 06-CX-____, and incorporates them in the judgment and directs the clerk to enter and docket the judgment accordingly. The judgment includes provisions for the cessation of tire collection and transportation activities on the Provimi Road site by May 15, 2010, the removal of piles of contaminated soil by July 31, 2006, and the payment of \$320,000 between May 2006 and May 2010.*

Dated this ____ day of _____, 2006.

BY THE COURT:

Circuit Court Judge

*The payment schedule is as follows:

By July 7, 2006: \$64,000 to Department of Justice for City of Watertown
By May 15, 2007: \$36,000 to Department of Justice for City of Watertown
By May 15, 2008: \$35,000 to Department of Justice for local entities
By May 15, 2009: \$65,000 to Department of Justice for local entities
By May 15, 2010: \$31,000 to Department of Justice for Department of Natural Resources,
\$21,106.79 to Clerk of Courts,
\$22,893.21 to Department of Justice for local entities,
\$25,000 to Department of Justice for Town of Shields,
\$20,000 to Department of Justice for City of Watertown