

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 IRONHUSTLER EXCAVATING, INC., an)
 Illinois corporation, RIVER CITY)
 CONSTRUCTION, LLC, an Illinois limited)
 liability company, and VENOVICH)
 CONSTRUCTION CO., an Illinois corporation,)
)
 Respondents.

PCB No. 2020-
(Enforcement)

NOTICE OF FILING

TO: See attached service list

PLEASE TAKE NOTICE that I did on September 16, 2019, file with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Notice of Filing, Complaint, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements, copies of which are attached and hereby served upon you. You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney. NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL, ATTORNEY GENERAL

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

BY: s/Raymond J. Callery
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Dated: September 16, 2019

Service List

For the Respondents

Venovich Construction Company
c/o Joseph L. Venovich, Jr., Registered Agent
207 South Sampton Street
P.O. Box 410
Tremont, IL 61568
Via certified mail – return receipt requested

Kenneth Eathington
Quinn Johnston Henderson & Pretorius
227 N.E. Jefferson Street
Peoria, IL 61602
Via regular mail

Jay H. Scholl
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602-1241
Via regular mail

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|---|---|-----------------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB NO. |
| |) | (Enforcement – Land) |
| IRONHUSTLER EXCAVATING, INC., |) | |
| an Illinois corporation, |) | |
| RIVER CITY CONSTRUCTION, LLC, |) | |
| an Illinois limited liability company, and |) | |
| VENOVICH CONSTRUCTION CO., |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondents. |) | |

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of the Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:

COUNT I
OPEN DUMPING OF WASTE

1. This Count is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2018), against Respondents IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2018), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board.

3. The Illinois Pollution Control Board ("Board") is an independent board created by the General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2018), and charged, *inter alia*, with the duty of determining standards and adopting regulations.

4. This Count is brought after providing Respondents, Ironhustler Excavating, Inc., River City Construction, LLC and Venovich Construction Co., with notice and the opportunity for a meeting with the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018).

5. Respondent, Ironhustler Excavating, Inc. ("Ironhustler"), is an Illinois corporation engaged in the business of providing construction and demolition services.

6. Respondent, River City Construction, LLC ("River City"), is an Illinois limited liability company engaged in the business of acting as a general contractor for construction and demolition projects.

7. Respondent, Venovich Construction Co. ("Venovich"), is an Illinois corporation also engaged in the business of acting as a general contractor for construction and demolition projects.

8. Venovich is the owner of certain property located at the end of King Road and along the Mackinaw River, in Hopedale Township, Tazewell County, Illinois ("Disposal Site").

9. On a date better known to Respondents, the Delavan Community Unit School District No. 703 contracted with River City for the construction of a new high school wing which included the demolition, removal and disposal of a portion of the existing building located at 817 S. Locust Street, Delavan, Tazewell County, Illinois ("Source Site").

10. On a date better known to Respondents, River City subcontracted the demolition, removal, and disposal work to Ironhustler.

11. As general contractor, River City was responsible for controlling and supervising the contract work and was responsible for the acts or omissions of its subcontractors.

12. Joseph L. Venovich, Jr. is the president and principal agent of Venovich Construction.

13. Joseph Venovich requested that Ironhustler haul "clean" concrete to the Disposal Site from the Delavan School demolition project for erosion control. Venovich Construction has an Illinois Department of Natural Resources ("Illinois DNR") permit to address stream bank erosion at the Disposal Site.

14. Joseph Venovich had previously accepted clean concrete from an earlier Ironhustler demolition project.

15. On July 13, 2017, the Illinois EPA inspected the Disposal Site. Approximately 750 cubic yards of open dumped demolition debris was located at the end of King Road along the Mackinaw River. Some of the demolition debris was located in water along the edge of the river.

16. The demolition debris contained electrical wire, metal radiators, wood, rebar, wire conduit, metal sheeting, metal angle iron, painted brick, plywood, metal studs, metal pipe, painted concrete, slag, and ceramic tile. A John Deere 650H dozer with Ironhustler markings was located at the Disposal Site.

17. After being contacted by Illinois EPA, Joseph Venovich arrived at the Disposal Site sometime after 5:00 p.m. on July 13, 2017.

18. Upon observing that general construction demolition debris had been open dumped at the Disposal Site by Ironhustler, Joseph Venovich contacted Ironhustler and demanded that the open dumped demolition debris be removed from the Disposal Site.

19. On July 13, 2017, the Illinois EPA also inspected the Source Site in Delavan, Illinois. Demolition debris was present along with a Caterpillar 329D tracked excavator and a Caterpillar 330DL tracked excavator both with Ironhustler markings.

20. On November 16, 2017, the Illinois EPA re-inspected the Disposal Site. The open dumped demolition debris had been removed. Copies of disposal receipts were submitted to Illinois EPA by Ironhustler documenting the disposal of 567.32 tons of demolition debris at the Indian Creek Landfill on July 17, 2017.

21. Respondents never applied for or were granted a permit from Illinois EPA to develop and operate a landfill at the Disposal Site.

22. Sections 3.185, 3.305, 3.385 and 3.535 of the Act, 415 ILCS 5/3.185, 3.305, 3.385 and 3.535 (2018), respectively, provide the following definitions:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

“Refuse” means waste.

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities

23. Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2018), provides the following definition:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, cigarettes, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

24. Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2018), provides, in pertinent part, the following definition:

- (a) “General construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials.

* * *

25. Section 21 of the Act, 415 ILCS 5/21 (2018), provides, in pertinent part, as follows:

No person shall:

- (a) Cause or allow the open dumping of any waste.

* * *

- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

- 1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit . . . ;
- 2. In violation of any regulations or standards adopted by the Board under this Act; or

* * *

- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

* * *

- (p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

- (1) litter;

* * *

- (4) deposition of waste in standing or flowing waters;

* * *

- (7) deposition of:

- (i) general construction or demolition debris as defined in Section 3.160(a) of this Act; . . .

* * *

26. Respondents caused or allowed general construction or demolition debris and/or other wastes to be hauled from the Source Site and open dumped at the Disposal Site.

27. By causing or allowing the open dumping of waste at the Disposal Site, Respondents violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Sections 21(a) of the Act, 415 ILCS 5/21(a) (2018);

C. Ordering Respondents to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT II
OPEN DUMPING RESULTING IN LITTER

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count II.

27. By causing or allowing the open dumping of waste in such a manner that resulted in litter at the Disposal Site, Respondents violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2018);

C. Ordering Respondents to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each

violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT III
OPEN DUMPING RESULTING IN WASTE
IN STANDING OR FLOWING WATER

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count III.

27. By causing or allowing the open dumping of waste in such a manner that waste was disposed of in standing or flowing waters at the Disposal Site, Respondents violated Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2018);

C. Ordering Respondents to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT IV
OPEN DUMPING OF DEMOLITION DEBRIS

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count IV.

27. By causing or allowing the open dumping of waste in such a manner that general construction or demolition debris was disposed of at the Disposal Site, Respondents violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2018);

C. Ordering Respondents to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT V
DEVELOPING AND OPERATING A LANDFILL WITHOUT A PERMIT

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count V.

27. Section 810.103 of the Board's Solid Waste Disposal Regulations, 35 Ill. Adm. Code 810.103, provides the following definitions:

* * *

“Facility” means a site and all equipment and fixtures on a site used to treat, store or dispose of solid or special wastes. A facility consists of an entire solid or special waste treatment, storage, or disposal operation. . . .

* * *

“Landfill” means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, landfills include waste piles, as defined in this Section.

* * *

“Solid Waste” means a waste that is defined in this Section as an inert waste, as a putrescible waste, as a chemical waste or as a special waste, and which is not also defined as a hazardous waste pursuant to 35 Ill. Adm. Code 721.

* * *

28. Section 812.101(a) of the Board’s Solid Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a), provides, in pertinent part, as follows:

All persons, except those specifically exempted by Section 21(d) of the Act, shall submit to the Agency an application for a permit to develop and operate a landfill . . .

* * *

29. By developing and operating a landfill at the Disposal Site without applying for a permit from Illinois EPA, Respondents violated Section 812.101(a) of the Board’s regulations, 35 Ill. Adm. Code 812.101(a).

30. Respondents developed and operated a landfill at the Disposal Site without a permit granted by Illinois EPA, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018);

C. Ordering Respondents to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT VI
DEVELOPING AND OPERATING A LANDFILL
IN VIOLATION OF BOARD REGULATION

1-26. Complainant realleges and incorporates herein by reference paragraphs 1

through 26 of Count I as paragraphs 1 through 26 of this Count VI.

27-29. Complainant realleges and incorporates herein by reference paragraphs 27 through 29 of Count V as paragraphs 27 through 29 of this Count VI.

30. By violating Section 812.101(a) of the Board's Solid Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a), Respondents conducted a waste-disposal operation at the Disposal Site in violation of a regulation adopted by the Board, and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 812.101(a) of the Board's Solid Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a), and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018);

C. Ordering Respondents to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the

Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT VII
WASTE DISPOSAL AT AN IMPROPER SITE

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count VII.

27-29. Complainant realleges and incorporates herein by reference paragraphs 27 through 29 of Count V as paragraphs 27 through 29 of this Count VII.

30. The Disposal Site is not a site or facility that meets the requirements of the Act and of the regulations and standards promulgated thereunder.

31. Respondents disposed of, stored and/or abandoned wastes at the Disposal Site, a site which does not meet the requirements of the Act and regulations, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, IRONHUSTLER EXCAVATING, INC., RIVER CITY CONSTRUCTION, LLC, and VENOVICH CONSTRUCTION CO., as follows:


- A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
- B. Finding that Respondents violated 21(e) of the Act, 415 ILCS 5/21(e) (2018);
- C. Ordering Respondents to cease and desist from further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

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:



ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel

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Dated: September 16, 2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

PCB No.
(Enforcement - Land)

IRONHUSTLER EXCAVATING, INC.,)
an Illinois corporation,)
RIVER CITY CONSTRUCTION, LLC,)
an Illinois limited liability company, and)
VENOVICH CONSTRUCTION CO.,)
an Illinois corporation,)

Respondents.)

STIPULATION AND PROPOSAL FOR SETTLEMENT
WITH VENOVICH CONSTRUCTION CO.

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 VENOVICH CONSTRUCTION CO., an Illinois corporation, ("Respondent" or "Venovich Construction") ("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 as to Venovich Construction.

I. STATEMENT OF FACTS

A. Parties

1. On September 16, 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 the Respondents.

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 (2018).

3. Venovich Construction is an Illinois corporation in good standing and is or was engaged in business of acting as a general contractor for construction and demolition projects.

4. Venovich Construction is also the owner of certain property located at the end of King Road and along the Mackinaw River, in Hopedale Township, Tazewell County, Illinois ("Disposal Site").

5. On a date better known to Respondents, the Delavan Community Unit School District No. 703 contracted with River City Construction, LLC ("River City") for the construction of a new high school wing which included the demolition, removal and disposal of a portion of the existing building located at 817 S. Locust Street, Delavan, Tazewell County, Illinois ("Source Site").

6. On a date better known to Respondents, River City subcontracted the demolition, removal and disposal work to Ironhustler Excavating, Inc. ("Ironhustler").

7. Joseph L. Venovich, Jr. is the president and principal agent of Venovich Construction.

8. Joseph Venovich requested that Ironhustler haul "clean" concrete to the Disposal Site from the Delavan School demolition project for erosion control. Venovich Construction has an Illinois Department of Natural Resources ("Illinois DNR") permit to address stream bank erosion at the Disposal Site.

9. Joseph Venovich had previously accepted clean concrete from an earlier Ironhustler demolition project.

10. On the morning of July 13, 2017, the Illinois EPA inspected the Disposal Site. Approximately 750 cubic yards of open dumped demolition debris was located at the end of King Road along the Mackinaw River. Some of the demolition debris was located in water along the edge of the river.

11. The demolition debris contained electrical wire, metal radiators, wood, rebar, wire conduit, metal sheeting, metal angle iron, painted brick, plywood, metal studs, metal pipe, painted concrete, slag, and ceramic tile. A John Deere 650H dozer with Ironhustler markings was located at the Disposal Site.

12. After being contacted by Illinois EPA, Joseph Venovich arrived at the Disposal Site sometime after 5:00 p.m. on July 13, 2017.

13. Upon observing that demolition debris had by open dumped at the Disposal Site by Ironhustler, Joseph Venovich contacted Ironhustler and demanded that the open dumped demolition debris be removed from the Disposal Site.

14. On November 16, 2017, Illinois EPA re-inspected the Disposal Site. The open

dumped demolition debris had been removed. Copies of disposal receipts were submitted to Illinois EPA by Ironhustler documenting the disposal of 567.32 tons of demolition debris received at the Indian Creek Landfill on July 17, 2017.

15. Respondents never applied for or were granted a permit from Illinois EPA to develop and operate a landfill at the Disposal Site.

B. Allegations of Non-Compliance

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

- | | |
|------------|--|
| Count I: | <u>OPEN DUMPING OF WASTE</u> 415 ILCS 5/21(a) (2018) |
| Count II: | <u>OPEN DUMPING RESULTING IN LITTER</u> 415 ILCS 5/21(p)(1) (2018) |
| Count III: | <u>OPEN DUMPING RESULTING IN WASTE IN STANDING OR FLOWING WATER</u> 415 ILCS 5/21(p)(4) (2018) |
| Count IV | <u>OPEN DUMPING OF DEMOLITION DEBRIS</u> 415 ILCS 5/21(p)(7)(i) (2018) |
| Count V | <u>DEVELOPING AND OPERATING A LANDFILL WITHOUT A PERMIT</u> 415 ILCS 5/21(d)(1) (2018) 35 Ill. Adm. Code 812.101(a) |
| Count VI | <u>DEVELOPING AND OPERATING A LANDFILL IN VIOLATION OF BOARD REGULATIONS</u> 415 ILCS 5/21(d)(2) (2018) 35 Ill. Adm. Code 812.101(a) |
| Count VII | <u>WASTE DISPOSAL AT AN IMPROPER SITE</u> 415 ILCS 5/21(e) (2018) |

C. Non-Admission of Violations

Respondent represents that it 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 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

On November 16, 2017, Illinois EPA re-inspected the Disposal Site. The open dumped demolition debris had been removed. Copies of disposal receipts were submitted to Illinois EPA by Ironhustler documenting the disposal of 567.32 tons of demolition debris received at the Indian Creek Landfill on July 17, 2017.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its 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 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 (2018).

II. 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. On July 13, 2017, Illinois EPA observed approximately 750 cubic yards of open dumped demolition debris at the end of King Road along the Mackinaw River. Some of the demolition debris was located in water along the edge of the river.
2. There is social and economic benefit in Respondent's current use of the Disposal Site.
3. The open dumping of demolition debris is unsuitable and improper for the Disposal Site.
4. Preventing the open dumping of demolition debris at the Disposal Site was technically practicable and economically reasonable.

5. The allegations in the Complaint were subsequently resolved.

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 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. Approximately 750 cubic yards of open dumped demolition debris was observed at the end of King Road along the Mackinaw River. Some of the demolition debris was located

in water along the edge of the river. The violations posed a significant potential for harm to human health and the environment and, if not discovered by Illinois EPA, may have had an adverse effect on the statutory or regulatory purposes or procedures for Illinois EPA's implementation of the solid waste program. After discovery of the violations by Illinois EPA, Venovich Construction promptly notified Ironhustler to remove the demolition debris from the Disposal Site.

2. Venovich Construction acted in a diligent manner to have the demolition debris removed from the Disposal Site after the discovery of the violations by Illinois EPA.

3. Since the wastes ultimately were properly managed and disposed, any economic benefit in delayed compliance was nominal.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-Five Hundred Dollars (\$2,500.00) for Venovich Construction will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Venovich Construction has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue 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

Venovich Construction shall pay a civil penalty in the sum of Twenty-Five Hundred

Dollars (\$2,500.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

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

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 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:

Raymond J. Callery
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. This Stipulation in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

2. Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

3. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondent's property 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, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

E. Release from Liability

In consideration of Respondent's payment of the \$2,500.00 penalty, its commitment to cease and desist as contained in Section V.D.2 above, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges 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 September 16, 2019. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against 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, or entity other than the Respondent.

F. Enforcement

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

KWAME RAOUL,
Attorney General
of the State of Illinois

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY:

Andrew Armstrong
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY:

Dana Vetterhoffer
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE:

09/06/2019

DATE:

9-3-19

VENOVICH CONSTRUCTION CO.,

BY:

Joseph L. Venovich, Jr.
JOSEPH L. VENOVICH, JR.,
President/Registered Agent

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

KWAME RAOUL
Attorney General
of the State of Illinois

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency


BY: _____
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: _____

DATE: _____

VENOVICH CONSTRUCTION CO.,

BY: 
JOSEPH L. VENOVICH, JR.,
President/Registered Agent

DATE: 7-30-2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--|---|---------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| by KWAME RAOUL, Attorney General |) | |
| of the State of Illinois, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 2020- |
| |) | (Enforcement) |
| IRONHUSTLER EXCAVATING, INC., an |) | |
| Illinois corporation, RIVER CITY |) | |
| CONSTRUCTION, LLC, an Illinois limited |) | |
| liability company, and VENOVIH |) | |
| CONSTRUCTION CO., an Illinois corporation, |) | |
| |) | |
| Respondents. |) | |

MOTION FOR RELIEF FROM HEARING

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. In support thereof, Complainant states as follows:

1. Simultaneously with the filing of this motion, Complainant is filing the initial Complaint in this matter as well as a Stipulation and Proposal for Settlement executed between Complainant and Respondent, VENOVIH CONSTRUCTION CO.

2. Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018), provides 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).

3. No hearing is scheduled in this matter.

4. Complainant hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018).

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL, ATTORNEY GENERAL

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

BY: s/Raymond J. Callery

Raymond J. Callery, #6193579
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62701
217/782-9031
rcallery@atg.state.il.us
ebs@atg.state.il.us

Dated: September 16, 2019

CERTIFICATE OF SERVICE

I, Raymond J. Callery, an Assistant Attorney General, certify that on the 16th day of September, 2019, I caused to be served via certified mail, return receipt requested as indicated, and by regular mail as indicated, a copy of the foregoing Notice of Filing, Complaint, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements to the following:

Venovich Construction Company
c/o Joseph L. Venovich, Jr., Registered Agent
207 South Sampton Street
P.O. Box 410
Tremont, IL 61568
Via certified mail – return receipt requested

Kenneth Eathington
Quinn Johnston Henderson & Pretorius
227 N.E. Jefferson Street
Peoria, IL 61602
Via regular mail

Jay H. Scholl
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602-1241
Via regular mail

s/Raymond J. Callery
Raymond J. Callery
Assistant Attorney General
500 South Second Street
Springfield, IL 62701
217/782-9031
rcallery@atg.state.il.us
ebs@atg.state.il.us