

Respectfully submitted,

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

By: s/ Evan J. McGinley
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Date: November 27, 2019

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

For the Respondent Landfill 33 Ltd.

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For the Respondent Wendt Family Trust

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CERTIFICATE OF SERVICE

I, Evan J. McGinley, a Senior Assistant Attorney General, certify that on the 27th day of November 2019, I caused to be served by Certified Mail, Return Receipt Requested the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

s/ Evan J. McGinley
Evan J. McGinley

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.
)	
LANDFILL 33 LTD., an Illinois)	
corporation, and)	
WENDT FAMILY TRUST,)	
an Illinois trust,)	
)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondents, LANDFILL 33 LTD., an Illinois Corporation (“Landfill 33”), and WENDT FAMILY TRUST, an Illinois trust, as follows:

COUNT I
WATER POLLUTION

1. This Count is brought by the Attorney General on his 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).

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

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

4. At all times relevant to this Complaint, Landfill 33 was and is an Illinois corporation in good standing.

5. At all times relevant to this Complaint, Wendt Family Trust was and is an Illinois Trust.

6. At all times relevant to this Complaint, Landfill 33 has operated a municipal solid waste landfill business located at 1713 South Willow Street, Effingham, Illinois (“Facility”).

7. At all times relevant to this Complaint, Wendt Family Trust has owned the Facility.

8. On October 15, 1996, the Illinois EPA approved Landfill 33 Permit No.1995-231-LFM (“Permit”). The Permit has been modified, and as of the date of filing this Complaint, Landfill 33 is operating pursuant to modification No. 80 of the Permit.

9. The Permit authorizes Landfill 33 to operate a leachate collection and treatment system at the Facility which includes two systems for leachate extraction from the landfill, one located on the north side (“Northern Extraction System”) and one on the south side of the landfill (“Southern Extraction System”).

10. The Facility’s Northern Extraction System is on the north side of the fill operation, which, at all times relevant to this Complaint, was the active fill area. The northern extraction system pumps leachate from the north cell into a large holding tank (“Northern Tank”). The tank then flows by a pipe to the municipal wastewater treatment plant (“WWTP”) for treatment.

11. The Facility’s Southern Extraction System pumps leachate from an extraction well inside the landfill through a pump (“Well Pump”) to a 2,500 gallon fiberglass tank (“Southern

Tank”) which is buried in the fill. A separate pump on the surface of the landfill (“Surface Pump”) located in a small shack pumps the leachate from the Southern Tank to the larger Northern Tank by a pipe, the leachate then flows to the WWTP for treatment.

12. Downhill from the south side of the landfill is a ditch that drains the south and part of the western slope of the landfill (“Ditch”). At the bottom of the Ditch is an unnamed tributary to Salt Creek, and the last 20 feet of the Ditch merges with the unnamed tributary.

13. On May 29, 2017, the Illinois Emergency Management Agency (“IEMA”) received a report that aquatic life had been killed in a creek, located nearby the Facility. IEMA forwarded the report to Illinois EPA.

14. On May 29, 2017, or on a date or dates better known to the Respondents, a crack existed in the outer wall of a double-walled pipe leading from the tank to the Surface Pump. The cracked portion of the pipe was within the tank of the Southern Extraction System and resulted in leachate flowing in the space between the inner and outer walls of the pipe and up through a separation in the concrete in the pump shack’s flooring. The overflow from the crack flowed downhill from the Facility into the Ditch and then into the unnamed tributary to Salt Creek.

15. On May 29, 2017, Conservation Police Officers from the Illinois Department of Natural Resources (“IDNR”) responded to the IEMA report. At the time of the IDNR inspection, the Facility was emitting an “odorous discharge” from the Ditch to the unnamed tributary downstream to Salt Creek, and approximately 538 yards of the unnamed tributary to Salt Creek was affected. An estimated 184 fish were killed, consisting of mostly cheek chubs, 2 small bass, 4 darters, and a few silverjaw minnows and stonerollers.

16. On May 30, 2017, Illinois EPA inspected the Facility in response to the IEMA complaint (May 30th Inspection). At the time of the Illinois EPA inspection, the Surface Pump in

the Southern Extraction System was turned off and no longer pumping leachate from the Southern Tank to the Northern Tank. The sub-surface pump was still operational and sending leachate into the Southern Tank.

17. At the time of the May 30, 2017 Illinois EPA inspection, the Ditch, located downhill from the south side of the landfill, where the leachate had flowed was largely empty, though visibly wet, until the last 20 feet of the Ditch where it converged with the unnamed tributary to Salt Creek. The last 20 feet of the Ditch had formed a "Leachate Pool," which contained black ponded liquid approximately 8 inches deep and smelled strongly of landfill leachate. A dead frog was in the water of the unnamed tributary to Salt Creek near the Leachate Pool.

18. At the time of the May 30th Inspection, samples were taken in three areas: the Leachate Pool, and in the unnamed tributary to Salt Creek, 50 feet upstream and 50 feet downstream of the Leachate Pool. The Leachate Pool sample showed a result of 1360 milligrams per liter ("mg/L") for Biochemical Oxygen Demand Five-Day ("BOD₅") and 108 mg/L for Total Suspended Solids ("TSS"); the upstream sample showed a result of non-detect for both BOD₅ and TSS; the downstream sample showed a result of 8.5 mg/L for BOD₅, and 9 mg/L for TSS.

19. Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

20. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

21. Landfill 33 and Wendt Family Trust each constitute a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

22. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides as follows:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

23. Leachate is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

24. Section 3.550 of the Act, 415 ILCS 5/3.550 (2018), provides as follows:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

25. The unnamed tributary to Salt Creek, the Ditch, and the Leachate Pool constitute “waters” as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2018).

26. Section 3.545 of the Act, 415 ILCS 5/3.545 (2018), provides as follows:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

27. The Respondents’ release of leachate that flowed into the unnamed tributary to Salt Creek and contributed to the deaths of approximately 184 fish constituted “water pollution,” as that term is defined by 415 ILCS 5/3.545 (2018).

28. By causing, threatening, or allowing the discharge of leachate into the environment so as to cause water pollution, the Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LANDFILL 33, LTD. and WENDT FAMILY TRUST:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);
3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);
4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II
OFFENSIVE DISCHARGES

1-25 Plaintiff realleges and incorporates by reference herein paragraphs 1 through 25 of Count I as paragraph 1 through 25 of this Count II.

26. Pursuant to the authority granted in Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2018), the Board has promulgated rules and regulations to control water pollution in Illinois, codified at 35 Ill. Adm. Code, Subtitle C, Chapter 1 (“Board Water Pollution Regulations”).

27. Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code

304.106, provides as follows:

Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

28. Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code

301.275, provides as follows:

“Effluent” means any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer, and the runoff from land used for the disposition of wastewater or sludges, but does not otherwise include nonpoint source discharges such as runoff from land or any livestock management facility or livestock wastehandling facility subject to regulation under Subtitle E.

29. The leachate which discharged into the unnamed tributary to Salt Creek, the Ditch, and the Leachate Pool constitutes “effluent” as that term is defined by Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.275.

30. By causing or allowing the discharge of leachate from the Facility into the unnamed tributary to Salt Creek, the Respondents caused or allowed “offensive discharges” and thereby violated Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106.

31. By violating Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106, the Respondents thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LANDFILL 33, LTD. and WENDT FAMILY TRUST:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Section 304.106 of the Board Regulations, 35 Ill. Adm. Code 304.106;
3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Section 304.106 of the Board Regulations, 35 Ill. Adm. Code 304.106;
4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III
OFFENSIVE CONDITIONS

1-26 Complainant realleges and incorporates by reference paragraphs 1 through 25 of Count I, and paragraph 26 of Count II as paragraphs 1 through 26 of this Count III.

27. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.

28. The discharge of leachate from Respondents' Southern Extraction System into the unnamed tributary to Salt Creek altered the odor, color, and turbidity of waters of the state and therefore caused or allowed offensive conditions.

29. By causing or allowing the discharge of contaminants from its operating system to enter the Salt Creek, the Respondents violated Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LANDFILL 33, LTD. and WENDT FAMILY TRUST:

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

2. Finding that Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
VIOLATION OF WATER QUALITY STANDARDS

1-26 Complainant realleges and incorporates by reference paragraphs 1 through 25 of Count I, and paragraph 26 of Count II as paragraphs 1 through 26 of this Count IV.

27. Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120, provides as follows:

Except as provided in 35 Ill. Adm. Code 306. Subpart C, all effluents containing deoxygenating wastes shall meet the following standards:

- a) No effluent shall exceed 30 mg/L of five day biochemical oxygen demand (BOD₅) (STORET number 00310) or 30 mg/L of suspended solids (STORET number 00530)...

28. Samples taken of the leachate effluent from the Facility exceeded the 30 mg/L effluent concentration limit for BOD₅ and the 30 mg/L effluent concentration limit of suspended solids, and therefore violated the effluent standard set by Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(a).

29. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides as follows:

Violation of Water Quality Standards

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard....

* * *

30. By exceeding the applicable effluent standards for BOD₅ and suspended solids set by Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(a), Respondents violated applicable water quality standards. The Respondents thereby violated Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, and Section 12(a) of the Act, 415 ILCS 5/12(a)(2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LANDFILL 33, LTD. and WENDT FAMILY TRUST:

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

2. Finding that Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Sections 304.120 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120 and 304.105;

3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Sections 304.120 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120 and 304.105;

4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V
WATER POLLUTION HAZARD

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 and 20 through 27 of Count I as paragraphs 1 through 26 of this Count V.

27. Section 12(d) of the Act, 415 ILCS 5/12(d) (2018), provides as follows:

No person shall:

* * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

28. The Respondent, by depositing contaminants, specifically, leachate, upon the land, created a water pollution hazard.

29. By depositing contaminants upon the land, specifically leachate, in such a place and manner so as to create a water pollution hazard, Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LANDFILL 33 LTD., and WENDT FAMILY TRUST:

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

2. Finding that Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);

3. Ordering Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);

4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT VI
FAILING TO OBTAIN NPDES PERMIT FOR DISCHARGE OF CONTAMINANTS

1-24. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 and 20 through 25 of Count I as paragraphs 1 through 24 as this Count VI.

25. Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), provides as follows:

No person shall:

* * *

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES [National Pollutant Discharge Elimination System] permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

26. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the

NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful

27. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides as follows:

“CWA” means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the “Clean Water Act”, Public Law 95-217, enacted December 12, 1977, as amended).

28. Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14), provides as follows:

The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

29. The cracked pipe and the Ditch discharging the pooled leachate are each a “point source” as that term is defined in Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14).

30. At all times relevant to this Complaint, the Respondents were not authorized by a NPDES permit to discharge from a point source into waters of the State.

31. By discharging contaminants from a point source into waters of the State, Respondents caused, threatened, or allowed the discharge of contaminants into waters of the State from a point source without an NPDES permit, and therefore violated Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LANDFILL 33 LTD and WENDT FAMILY TRUST:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering Respondents to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VII
CONDUCTING A WASTE DISPOSAL OPERATION IN VIOLATION
OF PERMIT

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 and 20-21 of Count I as paragraphs 1 through 20 of this Count VII.

21. Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018), provides as follows:

No person shall:

* * *

(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, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder. . . .

22. Section 3.535 of the Act, 415 ILCS 5/3.535 (2018), provides, in pertinent part, as follows:

“Waste” means any garbage . . . or any 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. Landfill 33 contains “waste” as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2018).

24. Section 3.180 of the Act, 415 ILCS 5/3.480 (2018), provides as follows:

“Storage” means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.

25. Landfill 33 conducts “storage” as that term is defined in Section 5/3.480, 415 ILCS 5/3.480 (2018).

26. Landfill 33 therefore “conducts [a] waste-storage . . . operation” and is subject to Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018).

27. Section II.2.b. and II.2.c. of the Permit under Modification No. 80, provides as follows:

2. The operator of this solid waste facility shall not conduct the operation in a manner which results in any of the following:

* * *

- b. leachate flows entering waters of the State;

- c. leachate flows exiting the landfill confines (ie., the facility boundaries established for the landfill in a permit or permits issued by the Illinois EPA); . . .

28. On May 29, 2017, and such other date or dates better known to the Respondent, the Respondent conducted the operations of its landfill at the Facility such that (a) leachate flows entered waters of the State, and (b) leachate flows exited the landfill confines at the Site, thereby violating Conditions II.2.b. and II.2.c. of Permit Modification No. 80.

29. By violating Conditions II.2.b and II.2.c of Permit Modification No. 80, the Respondent also violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent LANDFILL 33 LTD:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018), and Conditions II.2.b and II.2.c of Permit Modification No. 80;
3. Ordering Respondents to cease and desist from any further violations of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018), and Conditions II.2.b and II.2.c of Permit Modification No. 80;
4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f).(2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT VIII
ALLOWING LEACHATE FLOWS FROM A SANITARY LANDFILL OPERATION
INTO WATERS OF THE STATE

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 and 20-21 of Count I as paragraphs 1 through 20 of this Count VIII.

21. Sections 21(o)(2) and (3) of the Act, 415 ILCS 5/21(o)(2) and (3) (2018), provide as follows:

No person shall:

* * *

(o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

* * *

(2) leachate flows entering waters of the State;

(3) leachate flows exiting the landfill confines (as determined by the boundaries established for the landfill by a permit issued by the Agency); . . .

22. Pursuant to authority granted under the Act, the Illinois Pollution Control Board ("Board") has promulgated standards for solid waste landfills, codified at 35 Ill. Adm. Code Part 811 ("Board Solid Waste Landfill Regulations").

23. Section 811.101(b) of the Board Solid Waste Landfill Regulations, 35 Ill. Adm. Code 811.101(b), provides as follows:

(b) All general provisions of 35 Ill. Adm. Code 810 apply to this Part.

24. Section 810.103 of the Board Solid Waste Landfill Regulations, 35 Ill. Adm. Code 810.103, provides the following definitions:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water or into any well such that solid waste or any constituent of the solid waste may enter the environment by being emitted into the air or discharged into any waters, including groundwater.... If the solid waste is accumulated and not confined or contained to prevent its entry into the environment, or there is no certain plan for its disposal elsewhere, such accumulation will constitute disposal.

“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. All structures used in connection with or to facilitate the waste disposal operation will be considered a part of the facility. A facility may include, but is not limited to, one or more solid waste disposal units, buildings, treatment systems, processing and storage operations, and monitoring stations.

“Household waste” means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

“Inert waste” means any solid waste that will not decompose biologically, burn, serve as food for vectors, form a gas, cause an odor, or form a contaminated leachate, as determined in accordance with 35 Ill. Adm. Code 811.202(b). Such inert wastes will include only non-biodegradable and non-putrescible solid wastes. Inert wastes may include, but are not limited to, bricks, masonry, and concrete (cured for 60 days or more).

“Landfill” means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal. . . .

“Leachate” means liquid that has been or is in direct contact with a solid waste.

“Municipal solid waste landfill unit” or “MSWLF unit” means a contiguous area of land or an excavation that receives household waste, and that is not a land application, surface impoundment, injection well, or any pile of non-containerized accumulations of solid, non-flowing waste that is used for treatment or storage. A MSWLF unit may also receive other types of RCRA Subtitle D wastes, such as commercial solid waste, non-hazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned or operated. [A] MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A sanitary landfill is subject to regulation as a MSWLF if it receives

household waste. . . . But, a landfill that receives residential lead-based paint waste and which does not receive any other household waste is not a MSWLF unit.

“Operator” means the person responsible for the operation and maintenance of a solid waste disposal facility.

“Owner” means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. The “owner” is the “operator” if there is no other person who is operating and maintaining a solid waste disposal facility.

“Putrescible waste” means a solid waste that contains organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or which is capable of providing food for birds and vectors. Putrescible wastes may form a contaminated leachate from microbiological degradation, chemical processes, and physical processes. Putrescible waste includes, but is not limited to, garbage, offal, dead animals, general household waste, and commercial waste. All solid wastes that do not meet the definition of inert or chemical wastes will be considered putrescible wastes.

“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.

25. Landfill 33 is the “operator” of the Facility as that term is defined in Section 810.103 of the Board Solid Waste Landfill Regulations, 35 Ill. Adm. Code 810.103.

26. Wendt Family Trust is the “owner” of the Facility as that term is defined in Section 810.103 of the Board Solid Waste Landfill Regulations, 35 Ill. Adm. Code 810.103.

27. The waste disposed within the Site is “household waste,” “putrescible waste” and “solid waste” as those terms are defined in Section 810.103 of the Board Solid Waste Landfill Regulations, 35 Ill. Adm. Code 810.103.

28. The Facility constitutes a “facility,” a “landfill” and a “MSWLF unit” as those terms are defined in Section 810.103 of the Board Solid Waste Landfill Regulations, 35 Ill. Adm. Code 810.103.

29. "Leachate," as that term is defined in Section 810.103 of the Board Solid Waste Landfill Regulations, 35 Ill. Adm. Code 810.103, is generated in the landfill at the Facility.

30. Landfill 33 and Wendt Family Trust therefore are, respectively, owner and operator of (a) a putrescible waste and a solid waste landfill and (b) a MSWLF unit, and conduct waste-storage, waste-treatment, or waste disposal operations at the Site.

31. On May 29, 2017, and such other date or dates better known to the Respondents, the Respondents conducted a sanitary landfill operation at at the Facility such that (a) leachate flows entered waters of the State, and (b) leachate flows exited the landfill confines at the Facility.

32. By allowing the leachate flows from the facility to exit the confines thereof and enter the waters of the state, Respondents violated Sections 21(o)(2) and (3) of the Act, 415 ILCS 5/21(o)(2) and (3) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent LANDFILL 33 LTD and WENDT FAMILY TRUST:

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

2. Finding that Respondents violated Sections 21(o)(2) and (3) of the Act, 415 ILCS 5/21(o)(2) and (3) (2018);

3. Ordering Respondents to cease and desist from any further violations of Sections 21(o)(2) and (3) of the Act, 415 ILCS 5/21(o)(2) and (3) (2018);

4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IX
PENALTY FOR KILLING AQUATIC LIFE

1-25. Complainant realleges and incorporates by reference herein paragraphs 1 through 25 of Count I as paragraphs 1 through 25 of this Count IX.

26. Section 42(c) of the Act, 415 ILCS 5/42(c) (2018), provides as follows:

- (c) Any person that violates this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

27. By causing the discharge of leachate, a contaminant, that flowed downhill from the Facility into a ditch and then into the unnamed tributary to Salt Creek, waters of the state, Respondent caused the death of an estimated 184 fish.

28. The value of the dead fish, combined with the costs undertaken by the Department of Natural Resources, is \$467.82.

29. By violating the Act and causing the death of fish, pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c), Respondent is liable to the State for the reasonable value of the fish that were killed and the costs undertaken by the State.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LANDFILL 33 LTD and the WENDT FAMILY TRUST:

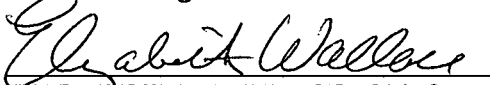
1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents violated Section 42(c) of the Act, 415 ILCS 5/42 (c)(2018);
3. Ordering Respondents to cease and desist from any further violations of Section 42(c) of the Act, 415 ILCS 5/42 (c)(2018);
4. Assessing a civil penalty against the Respondent on Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Imposing upon Respondents the reasonable value of the fish for deposit into the Wildlife and Fish Fund in the State Treasury pursuant to Sections 42(c) of the Act, 415 ILCS 5/42(c) (2018):
6. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

7. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS
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