

**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. 2020-32
	)	
LANDFILL 33 LTD., an Illinois	)	
corporation, and	)	
WENDT FAMILY TRUST,	)	
an Illinois trust,	)	
	)	
Respondents.	)	

**NOTICE OF ELECTRONIC FILING**

To:    *See Service List*

PLEASE TAKE NOTICE that on the 21<sup>st</sup> day of September, 2020, the attached Post-Hearing Brief was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

Dated: September 21, 2020

Respectfully submitted,

/s/ Charles F. Helsten  
Charles F. Helsten

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 21<sup>st</sup> day of September, 2020, I have served the Notice of Electronic Filing and Post-Hearing Brief upon the following persons via certified mail and electronic transmission.

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/s/ Charles F. Helsten  
Charles F. Helsten

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**POST-HEARING BRIEF**

NOW COMES the Respondents, LANDFILL 33 LTD., an Illinois corporation and the WENDT FAMILY TRUST, an Illinois trust, Respondents, and submits its Post-Hearing Brief in the above-captioned matter as follows:

**The Stipulation and Proposal for Settlement in this Matter Properly Considers All Relevant and Required Factors in Detail**

The seminal facts involved in this matter are as follows:

- A release of leachate from the Facility resulted from a cause yet to be determined;
- Respondents’ immediate took action to stop the release of leachate from the Facility after being informed by IEPA of its occurrence (See Section D “Compliance Activities to Date” and Pages 6 and 7 “Consideration of Section 42(h) Factors” of Stipulation and Proposal for Settlement)
- Respondents’ immediately shut off the pump to the leachate collection system upon learning of the leachate release from the Facility. Respondents’ then removed the

released leachate that had collected in the unnamed tributary to the Salt Creek within 24 hours of initially being notified of the leachate release. (Id.)

- The release of leachate into the unnamed tributary to Salt Creek resulted in the death of somewhere less than 200 predominantly small to very small fish, having an assessed value of less than \$20.00 (See Page 6 “Consideration of Section 42(h) Factors” of Stipulation and Proposal for Settlement).
- After taking immediate action to clean up the leachate that had flowed from the Facility into the unnamed tributary to the Salt Creek, thereafter Respondents promptly installed a supplemental “lockout” system at the Facility designed to prevent leachate releases, and further placed the control equipment for this system upgrade inside a locked shed on the Facility grounds. Additionally, Respondents upgraded all pipelines for the Facility’s leachate control system from single to double walled pipe at a total cost of \$255,135.50 as an added preventative measure. (See Page 4 “Compliance Activities to Date” of Stipulation and Proposal for Settlement).
- At the time of the incident in question, the Respondents had no previously-adjudicated violations of the Act. (See Page 7 “Consideration of Section 42(h) Factors of Stipulation and Proposal for Settlement).
- The Stipulation and Proposal for Settlement also provides a detailed explanation of how the proposed settlement was arrived at. Going further, the Stipulation and Proposal for Settlement includes and is based upon hard, objective facts – not unsubstantiated speculation and surmise such as engaged in the Objectors here.

- Again, the Stipulation and Proposal for Settlement makes it clear that the Respondents mobilized immediately upon being notified of the release in question, the goal being to effectuate a complete cleanup within one (1) day (which, by the State's own admission in the Stipulation and Proposal for Settlement, was done).
- On each showing required by the Act the Stipulation and Proposal for Settlement provides a strong demonstration.

**Objectors Comments Provide No Basis in Law and Fact for Disapproving the Stipulation and Proposal for Settlement**

The position taken by the Objectors requires one to accept the Objectors' very narrow, very restricted version of the facts, (and none other), with no room for any other interpretation. Put a different way, any variance from the Objectors tailored version of the facts dooms the Objectors' conditions. What follows are examples of how the Objectors comments distort reality by selectively presenting bits and pieces of the facts involved in this case out of context:

- The Objectors claim widespread downstream affects here, yet these three people are the only three people among many that reside in the area that have objected to the settlement. (Query – if the adverse effects alleged here were so wide spread and egregious, than why no ground swell of protest by the other people that reside in the area in and around the Landfill?).
- In their written comment the three Objectors contend that the Facility is not suitable for the area in which it is located due to supposed threats to surface water and groundwater, yet Objectors provide no demonstrative evidence of past or present quantitative, measurable exceedances of applicable surface water or groundwater standards. Moreover, the Objectors comments conveniently ignore the fact that the

Facility has received local siting approval on at least two separate occasions, and has received permits from the Agency on multiple occasions for close to the past three decades.

- Again, in their written comments, the three Objectors allege dramatic and widespread impacts downstream of the Facility, yet Photos 1 and Photos 2 attached to the written comment obviously only depict a very small area of several square feet in diameter judging by the size of the vegetation in the foreground. (Query – again, if the alleged downstream impacts resulting from this incident were widespread and egregious, then why no other photos showing the larger extent of any supposed impacts, as opposed to just these two isolated spots?). Going further, Photos 3A, B, C and D purport to show an attempt to “ ... mask the impact of residue left on the streambed ...” yet the Respondents are at a loss to determine how these photos in any way prove that contention.
- In his oral comment, Mr. Borries takes the Respondents to task for the considerable expense and effort these parties went to to ensure that an incident such as this would never occur again, yet those types of actions are explicitly encouraged under the Act. Again, while the Respondents went the “Extra Mile” here by implementing a double redundancy system to make sure that no such incident ever occurs again, consistent with the old adage “No good deed goes unpunished”, the Objectors find fault with this approach.
- Borries also condemns the efficacy of the system which was in place on the date of the incident in question, yet conveniently ignores that fact that this system had operated without incident for almost three decades. Going further, Borries mocks

the Respondents' contention that, most likely, the incident was caused by a trespasser turning off the power switch to the leachate collection system, yet again: (1) the Objectors provide no hard substantiation of any other suspected cause and, (2) as noted above, the system had functioned without incident for almost three decades before the incident in question, all pointing to the conclusion that it is more probable than not that turning off the power switch was the work of some mischievous trespasser.

While many other examples of the Objectors' hyperbole in this matter are evident by review of the record as a whole, the examples above make clear that the Objectors' version of what transpired here is based on extremely tenuous (and strained) arguments. In short, no other version of the facts (no matter how probable or reasonable) other than that offered by the Objectors can be accepted or considered if Objectors' version is to prevail.

**The Settlement Promotes the Sound Policy of Settlement of Enforcement Cases  
Where Appropriate**

The Respondents respectfully submit that the appropriate course of action here is to approve what is, in all respects and by all accounts, an appropriate settlement. The actions described herein are not those of a chronic or intentional violator, but, rather, parties who had no record of past violations as of the date of the incident in question, took prompt action to immediately address the release within its entirety within 24 hours, and subsequently adopted multiple, redundant layers of further safeguards to ensure that this incident would not ever occur again in the future.

In summary, in an era when environmental challenges in Illinois have become increasingly more complex and governmental resources within Illinois have decreased significantly, settlements reached in cases such as this should be approved, so as to allow the State of Illinois to

devote precious and relatively scarce resources to enforcement actions against true recalcitrant parties. Going further, rejection of a settlement such as this discourages proactive conduct by the regulated community, sends the wrong message, and runs contrary to good public policy.

WHEREFORE, and for all of the above-mentioned reasons, the Respondents respectfully request that this Honorable Board approve the Stipulation and Proposal for Settlement previously agreed to by the parties.

Dated: September 21, 2020

Respectfully submitted,

/s/ Charles F. Helsten

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