

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 10-71
	)	(Enforcement-Land)
87 <sup>th</sup> & GREENWOOD, LLC, a Delaware	)	
Limited Liability Company,	)	
INNOVATIVE RECYCLING	)	
TECHNOLOGIES, INC., a Connecticut	)	
corporation, and LAND RECLAMATION	)	
SERVICES, INC., an Illinois corporation.	)	
	)	
Respondents.	)	
	)	

**NOTICE OF ELECTRONIC FILING**


To: CHRISTOPHER GRANT  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, IL 60602

JOSEPH P. ASSELTA  
Agovino & Asselta, LLP  
170 Old Country Rd., Ste 608  
Mineola, NY 11501

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an ANSWER TO COMPLAINT, NOTICE OF FILING and CERTIFICATE OF SERVICE on behalf of Respondent, INNOVATIVE RECYCLING TECHNOLOGIES, INC., copies of which are herewith served upon you.

Dated: June 4, 2010

Respectfully Submitted,

By:   
Matthew E. Cohn

Brett D Heinrich #6192276  
Matthew E. Cohn #6273807  
Megan E. Garvey #6286218  
Meckler Bulger Tilson Marick & Pearson LLP  
123 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
Phone: (312) 474 – 7900  
Fax: (312) 474 – 7898

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served copies of an ANSWER TO COMPLAINT, NOTICE OF FILING and CERTIFICATE OF SERVICE on behalf of Respondent, INNOVATIVE RECYCLING TECHNOLOGIES, INC., via United States Postal Service on or before 5:00 pm on June 4, 2010 on the following:

CHRISTOPHER GRANT  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, IL 60602

JOSEPH P. ASSELTA  
Agovino & Asselta, LLP  
170 Old Country Rd., Ste 608  
Mineola, NY 11501

Respectfully Submitted,



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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB No 2010-071  
)  
87<sup>th</sup> & GREENWOOD, LLC, a Delaware ) (Enforcement-Land)  
Limited Liability Company, INNOVATIVE )  
RECYCLING TECHNOLOGIES, INC., a )  
Connecticut corporation, and LAND )  
RECLAMATION SERVICES, INC., an )  
Illinois Corporation, )  
)  
Respondents. )

**ANSWER TO COMPLAINT**

Respondent, INNOVATIVE RECYCLING TECHNOLOGIES, INC. (“IRT”), through its attorneys, Meckler Bulger Tilson Marick & Pearson LLP, answers the Complaint filed by PEOPLE OF THE STATE OF ILLINOIS as follows:

**VIOLATIONS ALLEGED AGAINST ALL RESPONDENTS**

**COUNT I**  
**OPEN DUMPING OF WASTE**

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to the terms and provisions Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2008).

**ANSWER:** Paragraph 1 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

2. Illinois EPA is an administrative agency of the State of Illinois, established by Section 4 of the Act, 415 ILCS 5/4 (2008), and is charged, *inter alia*, with the duty of enforcing the Act and regulations promulgated by the Illinois Pollution Control Board (“Board”).

**ANSWER:** Paragraph 2 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

3. At all times relevant to this complaint, Respondent 87<sup>th</sup> & Greenwood, LLC (“87<sup>th</sup> & Greenwood”), was, and is, a Delaware limited liability company, duly authorized to transact business in Illinois.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3. 87<sup>th</sup> & Greenwood is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 3.

4. Respondent Innovative Recycling Technologies, Inc. (“IRT”) is a Connecticut corporation in good standing.

**ANSWER:** IRT admits the allegations contained in Paragraph 4.

5. At all times relevant to this Complaint, Respondent Land Reclamation Services, Inc. (“LRS”), was an Illinois corporation duly authorized to transact business in the State of Illinois. LRS was involuntarily dissolved by the Illinois Secretary of State on January 1, 2009.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5. LRS is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 5.

6. Beginning on a date better known to Respondent 87<sup>th</sup> & Greenwood, Respondent 87<sup>th</sup> & Greenwood began development and construction of a storage facility on property located at 1040 E. 87<sup>th</sup> Street, Chicago, Cook County, Illinois (“Excavation Site”).

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6. 87<sup>th</sup> & Greenwood is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 6.

7. In October 2005, a laboratory analysis of the soil from the Excavation Site was performed. The analysis showed that the soil was contaminated with a number of

non-naturally occurring compounds at levels which exceeded background levels for both the City of Chicago and the Chicago Metropolitan Area.

**ANSWER:** IRT admits the allegations contained in the first sentence of Paragraph 7. IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7, putting Complainant to its strict burden of proof to establish that the soil was contaminated and to establish the appropriate background levels.

8. 87<sup>th</sup> & Greenwood retained IRT for removal and disposal of materials excavated from the Excavation Site. Pursuant to their agreement, 87<sup>th</sup> & Greenwood paid IRT a fixed fee per truck of soil removed. IRT was responsible for selection of the disposal site and payment of disposal costs.

**ANSWER:** As to the first sentence of Paragraph 8, IRT admits only that it was retained to assist in facilitating the transportation of soil from the Excavation Site to the LRS quarry, and IRT denies the remainder of the allegations in the first sentence of Paragraph 8. As to the second sentence of Paragraph 8, IRT admits only that the fee arrangement between 87<sup>th</sup> & Greenwood and IRT for facilitating the transfer of soil from the Excavation Site to LRS was on a per truck basis, and IRT denies the remainder of the allegations contained in the second sentence of Paragraph 8. IRT denies the allegations contained in the third sentence of Paragraph 8.

9. During excavation and removal, IRT representatives were present at the Excavation Site. IRT provided oversight and supervision of the excavated materials and on-site coordination of the disposal operations.

**ANSWER:** IRT admits only that its representatives were at the Excavation Site for a portion of the time that it was facilitating the transportation of soil from the Excavation Site to the LRS quarry, and IRT denies the remainder of the allegations contained in Paragraph 9.

10. At all times relevant to the Complaint, LRS owned and operated a clean construction and demolition debris fill business located at 1127 South Chicago Street, Joliet, Will County, Illinois ("LRS Site"). At all times relevant to the Complaint, the LRS Site was not covered by an Illinois EPA Permit for the storage or disposal of waste.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10. LRS is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 10.

11. On or about November 16, 2005, LRS reviewed the October 2005 soil analysis test results, and advised 87<sup>th</sup> & Greenwood and/or IRT that it would accept the soil at the LRS Site.

**ANSWER:** Answering the allegations in Paragraph 11 directed at IRT, IRT admits only upon information and belief that on or about November 16, 2005, LRS drafted a letter stating that it had reviewed analytical test results from the Excavation Site and that the soil from the Excavation Site could be placed in its quarry, and IRT denies the remainder of the allegations in Paragraph 11 directed at it. As to remainder of the allegations contained in Paragraph 11 directed at LRS and 87<sup>th</sup> & Greenwood, an answer is neither necessary nor appropriate.

12. Beginning on or about January 15, 2006, the Respondents arranged for soil from the Excavation Site, containing compounds at levels above background for urban areas, to be brought to the LRS Site, and, for a fee paid by IRT to LRS, deposited on the ground at the LRS Site.

**ANSWER:** Answering the allegations directed at IRT, IRT admits only that it assisted in facilitating the transportation of soil from the Excavation Site to the LRS quarry. IRT denies that a fee was paid by IRT to LRS. IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of the allegations in Paragraph 12 directed at it, putting Complainant to its burden of proof to establish, among other things, the levels of compounds in the soil, the appropriate background levels, and the rationale for using background levels as standards for evaluating whether

or not soil could be placed in the LRS quarry. As to allegations contained in Paragraph 12 directed at LRS and 87<sup>th</sup> & Greenwood, an answer is neither necessary nor appropriate.

13. Between at least January 15, 2006, and February 15, 2006, the Respondents arranged for approximately 350 loads of soil from the Excavation Site to be dumped at the LRS Site.

**ANSWER:** Answering for allegations directed at IRT, IRT admits only that it assisted in facilitating the transportation of soil in approximately 350 trucks from the Excavation Site to the LRS quarry, and denies the remainder of the allegations contained in Paragraph 13 directed at it. As to allegations contained in Paragraph 13 directed at LRS and 87<sup>th</sup> & Greenwood, an answer is neither necessary nor appropriate.

14. On February 8, 2006, Illinois EPA inspectors visited the LRS Site, and observed several piles of the soil brought from the Excavation Site. The Illinois EPA inspectors took samples of the soil for analysis.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14.

15. Test results from the soil samples taken by Illinois EPA on February 8, 2006 confirmed that the soil taken from the Excavation Site contained a number of compounds at levels which exceeded background levels for both the City of Chicago and the Chicago Metropolitan Area. Contaminants identified above background levels in the testing included, but were not limited to, benzo(a)anthracene, carbazole, cadmium, copper, iron, lead, magnesium, beryllium, antimony, and total chromium.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 15, putting Complainant to its burden of proof to establish, among other things, the levels of compounds in the soil and the appropriate background levels.

16. At the direction of Illinois EPA, beginning on or about August 15, 2006, the soil from the Excavation site was removed from the LRS Site and taken to a permitted disposal facility in Hammond, Indiana.

**ANSWER:** IRT admits only that it was informed that the soil from the Excavation site was removed from the LRS Site and taken to a permitted disposal facility in Munster, Indiana, and IRT denies the removal of the allegations contained in Paragraph 16 directed at it.

17. On April 3, 2006 Illinois EPA sent a Violation Notice (“VN”) to LRS by certified mail, return receipt requested. The VN alleged violations of the Act related to the dumping of the excavated soil at the LRS Site.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17. LRS is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 17.

18. On June 20, 2006, Illinois EPA sent a VN to 87<sup>th</sup> & Greenwood by certified mail, return receipt requested. The VN alleged violations of the Act related to the dumping of the excavated soil at the LRS Site.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18. 87<sup>th</sup> & Greenwood is Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 18.

19. On July 16, 2006, Illinois EPA sent a VN to IRT by certified mail, return receipt requested. The VN alleged violations of the Act related to the dumping of the excavated soil at the LRS Site.

**ANSWER:** IRT admits only that it received a VN from the Illinois EPA, but not as to the contents of the VN.

20. On July 10, 2006, LRS submitted a proposed Compliance Commitment Agreement (“CCA”) to Illinois EPA. On August 8, 2006, Illinois EPA sent a letter rejecting the proposed CCA by certified mail, return receipt requested.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20. LRS is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 20.



21. On August 10, 2006, 87<sup>th</sup> & Greenwood submitted a proposed CCA to Illinois EPA. On September 14, 2006, Illinois EPA sent a letter rejecting the proposed CCA by certified mail, return receipt requested.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as the truth or falsity of the allegations contained in Paragraph 21. 87<sup>th</sup> & Greenwood is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 21.

22. On August 22, 2006, IRT submitted a proposed CCA to Illinois EPA. On September 14, 2006, Illinois EPA sent a letter rejecting the proposed CCA by certified mail, return receipt requested.

**ANSWER:** IRT admits only that it submitted a CCA to the Illinois EPA and that it received a letter from the Illinois EPA in response, but not as to the contents of the CCA and the letter.

23. On June 14, 2007, Illinois EPA sent a Notice of Intent to Pursue Legal Action ("NIPLA") to LRS by certified mail, return receipt requested.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as the truth or falsity of the allegations contained in Paragraph 23. LRS is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 23.

24. On June 14, 2007, Illinois EPA sent a NIPLA to 87<sup>th</sup> & Greenwood by certified mail, return receipt requested.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as the truth or falsity of the allegations contained in Paragraph 24. 87<sup>th</sup> & Greenwood is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 24.

25. On June 14, 2007, Illinois EPA sent a NIPLA to IRT by certified mail, return receipt requested.

**ANSWER:** IRT admits only that it received a NIPLA from the Illinois EPA, but not as to the contents of the NIPLA.

26. Section 21(a) of the Act, 415 ILCS 5/21(a) (2008), provides, in pertinent part, as follows:

No person shall:

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

\* \* \*

**ANSWER:** Paragraph 26 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

27. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), provides, as follows:

“PERSON” is an 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.

**ANSWER:** Paragraph 27 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

28. 87<sup>th</sup> & Greenwood, a limited liability company, IRT, a Connecticut corporation, and LRS, a dissolved Illinois corporation, are “persons” as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008).

**ANSWER:** Paragraph 28 sets forth legal conclusions to which an answer is neither necessary nor appropriate. IRT admits that it is a Connecticut Corporation. As to remainder of the allegations contained in Paragraph 28 directed at LRS and 87<sup>th</sup> & Greenwood, an answer is neither necessary nor appropriate.

29. Section 3.305 of the Act, 415 ILCS 5/3.305 (2008), provides, as follows:

“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.

**ANSWER:** Paragraph 29 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

30. Section 3.385 of the Act, 415 ILCS 5/3.385 (2008), provides, as follows:

“REFUSE” means waste.

**ANSWER:** Paragraph 30 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

31. Section 3.535 of the Act, 415 ILCS 513.535 (2008), provides, in pertinent part, as follows:

“WASTE” means any garbage...or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities....

**ANSWER:** Paragraph 31 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

32. The soil from the Excavation Site, containing compounds at levels above background for urban areas, which was dumped at the LRS Site, was “discarded material” and therefore “waste” as that term is defined by Section 3.535 of the Act, and therefore also “refuse” as defined by Section 3.385 of the Act, 415 ILCS 5/3.535 and 5/3.385 (2008).

**ANSWER:** Paragraph 32 sets forth legal conclusions to which an answer is neither necessary nor appropriate. To the extent Paragraph 32 contains any allegations of fact, IRT denies the allegations directed at it, putting Complainant to its burden of proof to establish, among other things, the levels of compounds in the soil, the appropriate background levels, and the rationale for using background levels as standards for evaluating whether or not soil could be placed in the LRS quarry.

33. Section 3.185 of the Act, 415 ILCS 5/3.185 (2008), provides, as follows:

“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.

**ANSWER:** Paragraph 33 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

34. Section 3.460 of the Act, 415 ILCS 5/3.460 (2008), provides, as follows:

“Site” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

**ANSWER:** Paragraph 34 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

35. The Respondents caused and/or allowed waste to be deposited on the LRS Site in such a manner that waste could enter the environment or be emitted into the air. The Site is therefore a “disposal site” as those terms are defined and used in the Act.

**ANSWER:** Paragraph 35 sets forth legal conclusions to which an answer is neither necessary nor appropriate. To the extent Paragraph 35 contains any allegations of fact, IRT denies each and every such allegation directed at it.

36. Section 3.445 of the Act, 415 ILCS 5/3.445 (2008), provides, in pertinent part, as follows:

“SANITARY LANDFILL” means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, ...

**ANSWER:** Paragraph 36 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

37. At all times relevant to this complaint, the LRS Site was not permitted by the Illinois EPA for the disposal of waste, and thus did not fulfill the requirements of a sanitary landfill as defined in the Act.

**ANSWER:** IRT lacks specific knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 37. LRS is a Respondent in this case and is the most appropriate party to answer the allegations of Paragraph 37.

38. By causing and allowing the disposal of waste from the Excavation Site at the LRS Site, a site that did not fulfill the requirements of a sanitary landfill, the Respondents caused and allowed the open dumping of waste, in violation of Section 21(a) of the Act, 415 ILCS 5/21 (a) (2008).

**ANSWER:** IRT denies each and every such allegation contained in Paragraph 38 directed at it. As to allegations contained in Paragraph 38 directed at LRS and 87<sup>th</sup> & Greenwood, an answer is neither necessary nor appropriate.

**COUNT II**  
**WASTE DISPOSAL AT AN IMPROPER SITE**

1-35. Complainant realleges and incorporates by reference herein paragraphs 1 through 25, paragraphs 27 through 28, and paragraphs 30 through 37 of Count I, as paragraphs one through 35 of this Count II.

**ANSWER:** IRT readopts its answers Paragraphs 1 through 25, 27 through 28, and 30 through 37 of this pleading as if more fully set forth herein.

36. Section 21(e) of the Act, 415 ILCS 5/21(e) (2008) provides, as follows:

No person shall

\* \* \*

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.

**ANSWER:** Paragraph 36 sets forth legal conclusions to which an answer is neither necessary nor appropriate.

37. The Respondents disposed of waste at the LRS Site, a site that was not permitted for waste disposal by the Illinois EPA and therefore did not meet the requirements of the Act. The Respondents thereby violated Section 21 (e) of the Act, 415 ILCS 5/21 (e) (2008).

**ANSWER:** IRT denies each and every such allegation in Paragraph 37 directed at it. As to allegations contained in Paragraph 37 directed at LRS and 87<sup>th</sup> & Greenwood, an answer is neither necessary nor appropriate.

**VIOLATIONS ALLEGED AGAINST RESPONDENT  
LAND RECLAMATION SERVICES, INC. ONLY**

**COUNT III**

**CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT**

1-29. Complainant realleges and incorporates by reference herein paragraphs I through 17, paragraphs 20, 23, 27 through 28, and paragraphs 30 through 37 of Count I, as paragraphs one through 29 of this Count III.

**ANSWER:** IRT readopts its answers Paragraphs 1 through 17, 20, 23, 27 through 28, and 30 through 37 of this pleading as if more fully set forth herein.

30. Section 21 of the Act, 415 ILCS 5/21 (2008), provides, in pertinent part, 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

\* \* \*

**ANSWER:** The allegations contained in Paragraph 30 are not directed at IRT and therefore an answer is neither necessary nor appropriate.

31. Beginning on or about January 15, 2006, Respondent LRS caused and allowed the disposal of approximately 350 truckloads of waste at the LRS Site, and thereby conducted a waste disposal operation, without having applied for or obtained a permit from Illinois EPA.

**ANSWER:** The allegations contained in Paragraph 31 are not directed at IRT and therefore an answer is neither necessary nor appropriate.

32. Respondent LRS, by its actions as alleged herein, violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2008).

**ANSWER:** The allegations contained in Paragraph 32 are not directed at IRT and therefore an answer is neither necessary nor appropriate.

Dated: June 4, 2010

INNOVATIVE RECYCLING  
TECHNOLOGIES, INC.,

By:   
One of Its Attorneys

Brett Heinrich (Atty. No. 6192276)  
Matthew Cohn (Atty. No. 6273807)  
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