

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

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.

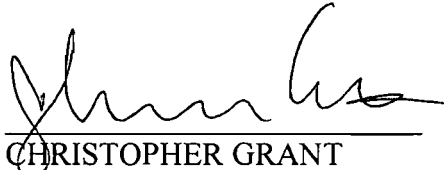
No. PCB 10-71  
(Enforcement-Land)

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that we have today, April 21, 2011, filed a Stipulation and Proposal for Settlement between Complainant and Respondents 87<sup>th</sup> & Greenwood LLC and Innovative Recycling Technologies, Inc., along with a Motion to Waive the Requirement of a Hearing, with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. True and accurate copies of the documents so filed are attached herewith and served upon you.

PEOPLE OF THE STATE OF ILLINOIS

BY:



CHRISTOPHER GRANT  
Environmental Bureau  
Assistant Attorney General  
69 W. Washington Street, #1800  
Chicago, Illinois 60602  
(312) 814-5388

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**MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the  
requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. On August 19, 2010, the Board granted summary judgment against Respondent  
Land Reclamation Services, Inc.

2. Along with this Motion, Complainant is filing a Partial Stipulation and Proposal  
for Settlement executed between Complainant and Respondents 87<sup>th</sup> & GREENWOOD LLC,  
and INNOVATIVE RECYCLING TECHNOLOGIES, INC.

3. Section 31 of the Act, 415 ILCS 5/31 (2010), provides, in pertinent part, 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).

\* \* \*

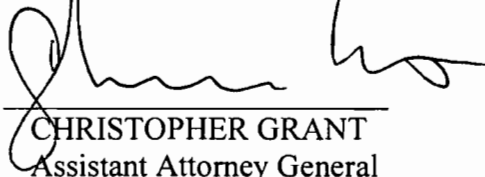
4. No hearing is now scheduled in this matter.
5. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
by LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:



CHRISTOPHER GRANT  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, Illinois 60602  
(312) 814-5388

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**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH RESPONDENTS 87<sup>TH</sup> & GREENWOOD, LLC, AND INNOVATIVE RECYCLING TECHNOLOGIES, INC**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), Respondent 87<sup>TH</sup> & GREENWOOD, LLC ("87<sup>th</sup> & Greenwood"), and Respondent INNOVATIVE RECYCLING TECHNOLOGIES, INC. ("IRT") ("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 alleged violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2010), 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.

## I. STATEMENT OF FACTS

### A. Parties

1. On March 19, 2010, a Complaint was filed 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 upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), 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 (2010).

3. At all times relevant to the Complaint, Respondent 87<sup>th</sup> & Greenwood was and is an Illinois-registered limited liability company that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent IRT was a Connecticut corporation, in good standing.

5. Respondent 87<sup>th</sup> & Greenwood is the developer and owner of a storage facility located at 1040 E. 87<sup>th</sup> Street, Chicago, Cook County, Illinois ("Excavation Site").

6. Respondent IRT was retained by 87<sup>th</sup> & Greenwood during development of the storage facility, to assist in removal and disposal of soil from the Excavation Site. Complainant has alleged that the soil contained a number of compounds at levels which exceeded background levels for both the City of Chicago and the Chicago Metropolitan Area, including but not limited to, benzo(a)anthracene, cadmium, copper, iron, lead, magnesium, beryllium, antimony, and total chromium.

7. In February of , 2006, the Respondents arranged for soil from the Excavation Site

to be disposed at property owned and operated by Respondent Land Reclamation Services, Inc. ("LRS"), 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. The soil from the Excavation Site has been removed from the LRS Site and transported to an acceptable facility in Indiana.

8. On August 19, 2010, the Board entered an order finding Respondent LRS in violation as alleged by Complainant, and assessing a civil penalty of \$20,000.00 against LRS.

**B. Covered Matter**

This Stipulation only relates to and resolves Complainant's claims against Respondents 87<sup>th</sup> & Greenwood and IRT.

**C. Allegations of Non-Compliance**

Complainant contends that Respondents 87<sup>th</sup> & Greenwood and IRT have violated the following provisions of the Act and Board regulations:

Count I: OPEN DUMPING OF WASTE, violation of 415 ILCS 5/21(a) (2010);

Count II: WASTE DISPOSAL AT AN IMPROPER SITE, violation of 415 ILCS 5/21(e) (2010).

**D. Non-Admission of Violations**

87<sup>th</sup> & Greenwood and IRT represent that they have 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, the Respondents do not affirmatively admit the allegations of violation within the Complaint and as referenced herein, and this Stipulation shall not be interpreted as including such admission.

**E. Compliance Activities to Date**

The contaminated soil from the Excavation Site has been removed from the LRS Site and disposed at a properly permitted facility.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents 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 the Respondents 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 (2010).

**III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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. The alleged improper disposal of contaminated soil at the LRS Site created the risk of off-site migration of contaminants, and therefore the health and welfare of persons.
2. There is social and economic benefit to development of the Excavation Site provided that all waste generated is disposed of at a permitted facility.
3. The LRS Site was not permitted for the acceptance of waste, and therefore was not suitable for the dumping of materials from the Excavation Site.
4. Disposal of contaminated soil at a permitted facility is both technically practicable and economically reasonable.
5. All contaminated soil originally dumped at the LRS Site has been removed and disposed of at a suitably developed and permitted facility.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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; and
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.

In response to these factors, the Parties to the Stipulation state as follows:

1. The alleged improper disposal of soil from the Excavation Site occurred in February, 2006.
2. Respondents 87<sup>th</sup> & Greenwood and IRT demonstrated some diligence by participating, along with LRS, in the removal of the soil at issue soil from the LRS Site to a properly permitted facility.
3. Respondents 87<sup>th</sup> & Greenwood and IRT may have initially gained an economic benefit from dumping the soil at the LRS Site rather than at a permitted facility. However, Complainant believes that the subsequent investigation and compliance costs have removed any economic benefit which may have accrued from disposal at the LRS Site.
4. Complainant has determined, based upon the specific facts of this matter, that a civil penalty of Fifteen Thousand Dollars (\$15,000.00) against Respondents 87<sup>th</sup> & Greenwood and IRT will serve to deter further violations and aid in future voluntary compliance with the Act

and Board regulations.

5. Neither Respondent 87<sup>th</sup> & Greenwood nor IRT have any 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. ✓

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. Respondent 87<sup>th</sup> & Greenwood shall pay a civil penalty in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

2. Respondent IRT shall pay a civil penalty in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) within thirty (30) days for the date the Board adopts and accepts this Stipulation.

### B. Interest and Default

1. If either Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, that Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately from that Respondent. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees from that Respondent.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2010), interest shall accrue on any penalty amount owed by a Respondent but 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, case number and the Respondents' federal tax identification numbers 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:

Christopher Grant, AAG  
Environmental Bureau  
Illinois Attorney General'S Office  
69 W. Washington Street, #1800  
Chicago, Illinois 60602

**D. Future Compliance**

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

2. The Respondents shall cease and desist from future violations of the Act and

Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

1. In consideration of Respondent 87<sup>th</sup> & Greenwood's payment of a \$7,500.00 penalty, its commitment to cease and desist as contained in Section V.D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondents 87<sup>th</sup> & Greenwood 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 March 19, 2010. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondent 87<sup>th</sup> & Greenwood 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.

2. In consideration of the Respondent IRT's payment of a \$7,500.00 penalty, its commitment to cease and desist as contained in Section V.D. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondent IRT 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 March 19, 2010. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondent IRT 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.

3. 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 (2010), or entity other than Respondents 87<sup>th</sup> & Greenwood and IRT.

#### **H. Enforcement and Modification of Stipulation**

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.

#### **I. 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

LISA MADIGAN  
Attorney General  
State of Illinois

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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

LISA BONNETT, Interim Director  
Illinois Environmental Protection Agency

BY:  (e)  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KIM  
Chief Legal Counsel


DATE: 4/5/11

DATE: 3/30/11

FOR RESPONDENT 87<sup>TH</sup> &  
GREENWOOD LLC

DATE: 3/23/11

BY:



Name: JAMES G. WILLIAMS

Title: Managing Member

FOR RESPONDENT INNOVATIVE  
RECYCLING TECHNOLOGIES, INC.

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FOR RESPONDENT 87<sup>TH</sup> &  
GREENWOOD LLC

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FOR RESPONDENT INNOVATIVE  
RECYCLING TECHNOLOGIES, INC.

BY: \_\_\_\_\_

DATE: 4/11/11

Name: John Duro

Title: VP.



