

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
SHERIDAN-JOLIET LAND)
DEVELOPMENT, LLC, an Illinois limited-)
liability company, and SHERIDAN SAND)
& GRAVEL CO.,)
)
Respondents.)

PCB No. 13-19

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STATE OF ILLINOIS
Pollution Control Board

APPEARANCE

Attorney KENNETH ANSPACH hereby enters his appearance for and on behalf of respondents, SHERIDAN-JOLIET LAND DEVELOPMENT, LLC, an Illinois limited-liability company, and SHERIDAN SAND & GRAVEL CO.


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A copy of this appearance has been served upon all parties who have appeared and have not been found by the Court to be in default.

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

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MOTION TO STRIKE AND DISMISS
AND SUPPORTING MEMORANDUM

Respondents, SHERIDAN-JOLIET LAND DEVELOPMENT, LLC, an Illinois limited-liability company, and SHERIDAN SAND & GRAVEL CO. (collectively "SHERIDAN"), by their attorney, Kenneth Anspach, pursuant to Section 2-615 of the Code of Civil Procedure, 735 ILCS 2-615(a), Section 2-619((a)(9) of the Code of Civil Procedure, 735 ILCS 2-619((a)(9), and Sections 101.100, 101.500 and 101.506 of the General Rules of the Pollution Control Board, 35 Ill. Adm. Code 101.100, 101.500 and 101.506, hereby move the Pollution Control Board (the "Board") to strike and dismiss the Complaint (the "Complaint") of complainant, PEOPLE OF THE STATE OF ILLINOIS (the "STATE"), with regard to alleged violations at the N 4201 Road Site, Sheridan, Illinois, and in support thereof states as follows:

I. COUNTS I-VI ARE SUBSTANTIALLY INSUFFICIENT IN LAW AND MUST BE DISMISSED PURSUANT TO SECTION 2-615 OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 5/2-615.

SHERIDAN has moved the Board to strike and dismiss the Complaint on the basis that it is substantially insufficient in law. For purposes of ruling on a motion to dismiss, all well-pled facts contained in the pleading must be taken as true, and all inferences from them must be

drawn in favor of the non-movant. *People v. Stein Steel Mills Services, Inc.*, PCB 02-1 (Nov. 15, 2001). It is well settled in this state that, although pleadings are to be liberally construed, and a defendant's motion to dismiss admits all facts well pleaded, nonetheless, in considering a motion to dismiss, the pleadings are to be construed strictly against the pleader. *Knox College v. Celotex Corporation*, 88 Ill. 2d 407, 422 (1981). The purpose of requiring that defects in pleadings be attacked by motion is to point out the defects in the pleadings so that the pleader will have an opportunity to cure them before trial. *Id.* Notice pleading, which prevails under the federal rules is not sufficient under the Illinois Code of Civil Procedure, formerly the Illinois Civil Practice Act. *Knox College*, 88 Ill. 2d at 424. The pleader must state the facts essential to his cause of action. *Id.* A pleading which merely paraphrases the law, as though to say that the pleader's case will meet the legal requirements, without stating the facts, is insufficient. *Id.* Construing the Complaint strictly against the STATE, the Board must find that the Complaint is insufficient in law and must be stricken and dismissed.

A. COUNT I FAILS TO STATE A CAUSE OF ACTION IN REGARDS TO LOAD CHECKING BECAUSE IT ALLEGES A VIOLATION OF A NON-EXISTENT REGULATION.

Count I contains a lengthy and exhaustive recitation of various purported provisions of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/1 *et seq.* and, specifically, 415 ILCS 5/22.51, entitled Clean Construction or Demolition Debris Fill Operations ("CCDD") and of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq.* and 35 Ill. Adm. Code 1150.100 *et seq.* Of these, the only purported substantive provision of the Board CCDD Regulations alleged in Count I of the Complaint is "Section 1100.205(a)(b)(c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c), titled, Load Checking."¹ However, this Board may take judicial notice that *there is no* "Section 1100.205(a)(b)(c) of the Board

¹ Complaint, Count I, par. 15.

CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c).” It is elementary that no cause of action exists for violation of a non-existent regulation. This Board has previously held that it will not enforce a wrongly alleged regulation against a party respondent. *People v. John Prior and Industrial Salvage, Inc.*, PCB No. 93-248, July 7, 1995, 1995 Ill. ENV LEXIS 662.

Further, the Complaint alleges that because there was a violation of the non-existent “Section 1100.205(a)(b)(c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c),” then there were concomitant violations of Section 1100.201(a) of the CCDD Regulations, 35 Ill. Adm. Code 1100.201(a), Sections 22.51(a) and 22.51(b)(3)(ii) of the Act, 415 ILCS 5/22.51(a) and 22.51(b)(3)(ii), prohibiting any CCDD fill operation in violation of Board regulations.² Because the only violation alleged is that of a non-existent regulation, then the alleged violation of such non-existent regulation did not result in any violation of the cited provisions of the regulations and the Act. Similarly, there could not have been any violation of SHERIDAN’s permit, as alleged.³

Further, assuming *arguendo* the existence of “Section 1100.205(a)(b)(c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c),” the Board must note that it purportedly sets forth detailed requirements pertaining to such matters as use of an “elevated structure,” “visual inspection,” “photo ionization detector utilizing a lamp of 10.6 eV or greater,” “a flame ionization detector,” “a discharge inspection,” and “cameras or other devices.” Other such purportedly detailed requirements relate to “date and time of the inspection,” “the name of the hauling firm,” “the vehicle identification number or license plate number,” and “the source of the CCDD.”

² Complaint, Count I, par. 19.

³ *Id.*

However, Count I fails to set forth any allegation that any of these or other detailed requirements were violated. Instead, Count I simply avers that "...the Illinois EPA observed that Respondents did not implement and document a load checking program at the 4201 Road Site."⁴ That legal conclusion is *all* that is alleged in the way of any substantive factual allegation in Count I.

Charges in an administrative proceeding need not be drawn with the same refinements as pleadings in a court of law, but the charges must be sufficiently clear and specific to allow preparation of a defense, and this section requires notice of a specific violation charged and notice of the specific conduct constituting the violation. *Lloyd A. Fry Roofing Co. v. Pollution Control Board*, 20 Ill. App. 3d 301, 305 (2nd Dist. 1974). This allegation meets neither of these requirements, since it is neither clear and specific nor does it provide notice of any specific conduct constituting the violation.

Further a motion to dismiss only admits "well-pled facts." *People v. Stein Steel Mills Services, Inc.*, PCB 02-1 (Nov. 15, 2001). If a motion to dismiss admits only facts well pleaded and not conclusions, then, in considering the motion, if after deleting the conclusions that are pleaded there are not sufficient allegations of fact which state a cause of action against the defendant, the motion must be granted regardless of how many conclusions the count may contain and regardless of whether or not they inform the defendant in a general way of the nature of the claim against him. *Knox College v. Celotex Corporation*, 88 Ill.2d at 426. Deleting the conclusion that "the Illinois EPA observed that Respondents did not implement and document a load checking program at the Wiensland Site" renders Count I insufficient.

⁴ Complaint, Count I, par. 17.

Moreover, note that the sole factual allegation in Count I contains the language that “the Illinois EPA observed...”⁵ This same phrase is repeated in all counts of the Complaint.⁶ Accordingly, the allegations do not even allege the existence of a purported violation, but merely alleges what “Illinois EPA observed.” Section 31 of the Act, 415 ILCS 5/31 requires that the complaint state the manner in which and the extent to which, the person complained against is said to have violated the law. *Lloyd A. Fry Roofing Co. v. Pollution Control Board*, 20 Ill. App. 3d at 305. Needless to say, alleging something has been “observed” is not equivalent to alleging that a violation of law has *occurred*.

B. COUNTS II, III AND IV EACH FAILS TO STATE A CAUSE OF ACTION BECAUSE IT ALLEGES AN OFFENSE BASED UPON A STATUTE NO LONGER IN EFFECT.

Count II alleges that SHERIDAN violated the site of origin requirements of Section 22.51(f)(2)(A)(i) of the Act, 415 ILCS 5/22.51(f)(2)(A)(i).⁷ Count III alleges that SHERIDAN violated the soil certification requirements of Section 22.51(f)(2)(B) of the Act, 415 ILCS 5/22(f)(2)(B).⁸ Count IV alleges SHERIDAN failed to maintain the soil documentation requirements of Section 22.51(f)(2)(C) of the Act, 415 ILCS 5/22(f)(2)(C).⁹ Yet, the requirements of Sections 22.51(f)(2)(A)-(C) of the Act, 415 ILCS 5/22(f)(2)(A)-(C) are no longer in effect. The provisions of Section 22.51(f)(2)(A) of the Act, 415 ILCS 5/22(f)(2)(A), Section 22.51(f)(2)(B) of the Act, 415 ILCS 5/22(f)(2)(B) and Section 22.51(f)(2)(C) of the Act, 415 ILCS 5/22(f)(2)(C), expired on August 27, 2012 by the terms of Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1), and Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2).

Specifically, Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1) provides, in pertinent

⁵ *Id.*

⁶ Count II, par. 16; Count III, par. 17; Count IV, par. 17; Count V, par. 16; Count VI, par. 16; Count VII, par. 17; Count VIII, par. 17; and Count IX, par. 19.

⁷ Complaint, Count II, par. 17.

⁸ Complaint, Count III, par. 18.

⁹ Complaint, Count IV, par. 18.

part, as follows:

No later than one year after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-1416], the Agency shall propose to the Board, and, no later than one year after the Board's receipt of the Agency's proposal, the Board shall adopt, rules for the use of clean construction or demolition debris and uncontaminated soil as fill material at clean construction or demolition debris fill operations. (Emphasis added.)

Thus, pursuant to the terms of Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1), the General Assembly declared that by no later than two years following the amendatory enactment of P.A. 96-1416 on July 30, 2010 the Board was required to adopt “rules for the use of clean construction or demolition debris and uncontaminated soil as fill material at clean construction or demolition debris fill operations.” Those rules were adopted by the Board in PCB No. R12-9 at 36 Ill. Reg. 13892, effective August 27, 2012, as amendments to the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq.*

Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), in turn, provides that any and all requirements thereunder were only effective until the statutory deadline for the adoption of rules by the Board set forth by the General Assembly under Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1). In that regard Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2) provides, in pertinent part, as follows:

Until the effective date of the Board rules adopted under subdivision (f)(1) of this Section, and in addition to any other requirements, owners and operators of clean construction or demolition debris fill operations must do all of the following in subdivisions (f)(2)(A) through (f)(2)(D) of this Section for all clean construction or demolition debris and uncontaminated soil accepted for use as fill material. (Emphasis added.)

Thus, owners and operators of CCDD sites need only “do all the following in subdivisions (f)(2)(A) through (f)(2)(D) of this Section,” “[u]ntil the effective date of the Board rules adopted

under subdivision (f)(1) of this Section.” That date is August 27, 2012 by virtue of the Board’s rulemaking in PCB No. R12-9 at 36 Ill. Reg. 13892. In other words, the provisions of Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), were only enforceable until August 27, 2012. Thereafter, only the rules adopted by the Board “under subdivision (f)(1) of this Section” have been enforceable, *i.e.*, those rules adopted as amendments to the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq.*

The violations alleged in Counts II, III and IV against SHERIDAN are averred to have occurred on September 15, 2010. Thereafter, Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), expired on August 27, 2012, and the amendments to the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq.* took effect. Because Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), expired on August 27, 2012, it was not in effect when the Complaint was filed on October 31, 2012. By the same token, the amendments to the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq.*, were not in effect when the alleged violation occurred on September 15, 2010. Therefore, neither the statute nor the rules are enforceable against SHERIDAN.

The General Assembly quite clearly included this sunset provision¹⁰ *i.e.*, “the effective date of the Board rules,” in Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), as a means of ensuring that the Illinois Environmental Protection Agency (the “Illinois EPA”) and the Board would timely adopt a set of rules under Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1). Those administrative bodies have now done so and, therefore, Section 22.51(f)(2) of the Act, 415

¹⁰ The Board is familiar with the use of sunset provisions and has included them in its rules. *See, In The Matter Of: Radionuclide Restricted Status, Amendments to 35 Ill. Adm. Code 602.105, 602.106, 602.108, and 602.115*, No. R03-21 (Rulemaking - Public Water Supply), November 6, 2003, 2003 Ill. ENV LEXIS 666

ILCS 5/22(f)(2), ceases to exist. As the Court stated in *Mattis v. State Universities Retirement System.*, 212 Ill. 2d 58, 76 (2004):

In interpreting a statute, a court's primary goal is to ascertain the intent of the legislature. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning. If the legislative intent can be discerned from the statutory language, that intent must prevail, and no resort to other tools of statutory construction is necessary.

Here, the plain and ordinary meaning of the statutory language “owners and operators of clean construction or demolition debris fill operations” need only “do all the following in subdivisions (f)(2)(A) through (f)(2)(D) of this Section,” “[u]ntil the effective date of the Board rules adopted under subdivision (f)(1) of this Section” is that Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1), was only enforceable until the effective date of the amendments to the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq. i.e.*, August 27, 2012. Thereafter, Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), expired as if it had been repealed.

In *Wall v. Chesapeake & O. R. Co.*, 290 Ill. 227 (1919), the General Assembly also adopted a statutory amendment, and in so doing, caused the expiration of provisions that had previously existed thereunder. In holding that the plaintiff no longer could prosecute his action due to the amendment, the Court found that the amendment “had the same effect as the repeal of a statute.” *Wall v. Chesapeake & O. R. Co.*, 290 Ill. at 233. In such event, the Court ruled, it is as if the statute never existed. As the Court stated in this regard:

It is well settled if a statute giving a special remedy is repealed without a saving clause in favor of pending suits, all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect it cannot be after. If a case is appealed and pending the appeal the law is changed, the appellate court must dispose of the case under the law in force when its decision is rendered. The effect of the repeal of a statute is to obliterate the statute repealed as completely as if it had never been passed, and it must be considered as a law that never existed,

except for the purposes of those actions or suits which were commenced, prosecuted and concluded while it was an existing law. Pending judicial proceedings based upon a statute cannot proceed after its repeal. This rule holds true until the proceedings have reached a final judgment in the court of last resort, for that court, when it comes to pronounce its decision, conforms it to the law then existing, and may therefore reverse a judgment which was correct when pronounced in the subordinate tribunal from whence the appeal was taken, if it appears that pending the appeal a statute which was necessary to support the judgment of the lower court has been withdrawn by an absolute repeal. (Emphasis added.) 290 Ill. at 232-233.

Accordingly, since final relief had not been granted to the STATE under Counts II, III and IV before the expiration of Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), on August 27, 2012, “it cannot be after,” because “all suits must stop...” Counts II, III and IV, which purport to enforce the provisions of subsections (f)(2)(A) through (f)(2)(C) of Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), are, therefore, a nullity.

C. COUNT V FAILS TO STATE A CAUSE OF ACTION IN REGARDS TO RANDOM DAILY INSPECTIONS BECAUSE IT ALLEGES A VIOLATION OF A NON-EXISTENT REGULATION.

Count V alleges that SHERIDAN violated “Section 1100.205(b)(1) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(b)(1)” pertaining to “random daily discharge inspection.”¹¹ However, this Board may take judicial notice that *there is no* “Section 1100.205(b)(1) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(b)(1)” that concerns random daily inspections. Rather, Section 1100.205(b)(1) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(b)(1) actually concerns, and is entitled, “Routine Inspections,” which is something completely different.

It is elementary that no cause of action exists for violation of a non-existent regulation. This Board has previously held that it will not enforce a wrongly alleged regulation against a

¹¹ Complaint, Count V, pars. 15-16.

party respondent. *People v. John Prior and Industrial Salvage, Inc.*, PCB No. 93-248, July 7, 1995, 1995 Ill. ENV LEXIS 662. For this reasons there was also no corresponding violation of Sections 22.51(a) and 22.51(b)(3)(ii) of the Act, 415 ILCS 5/22.51(a) and 5/22.51(b)(3)(ii) as alleged.¹²

D. COUNT VI FAILS TO STATE A CAUSE OF ACTION IN REGARDS TO CALIBRATION OF THE PHOTO IONIZATION DEVICE BECAUSE IT ALLEGES A VIOLATION OF A NON-EXISTENT REGULATION.

Count VI alleges that SHERIDAN violated “Section 1100.205(h) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(h)” pertaining to “calibrat[ion] of the photoionization device.”¹³ However, this Board may take judicial notice that *there is no* “Section 1100.205(h) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(h).” It is elementary that no cause of action exists for violation of a non-existent regulation. This Board has previously held that it will not enforce a wrongly alleged regulation against a party respondent. *People v. John Prior and Industrial Salvage, Inc.*, PCB No. 93-248, July 7, 1995, 1995 Ill. ENV LEXIS 662. For this reasons there was also no corresponding violation of Section 22.51(a) and 22.51(b)(iii) and 22.51(b)(3)(ii) of the Act, 415 ILCS 5/22.51(a) and 5/22.51(b)(3)(ii) as alleged.¹⁴

II. THE COMPLAINT MUST BE DISMISSED UNDER SECTION 2-619(a)(9) OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 2-619(a)(9), AS IT IS BARRED BY THE STATE’S FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION 31 OF THE ACT, 415 ILCS 5/31.

A. COUNT VII MUST BE STRICKEN AND DISMISSED DUE TO ILLINOIS EPA’S FAILURE, UNDER SECTION 31 OF THE ACT, 415 ILCS 5/31, TO SERVE UPON SHERIDAN NOTICE OF VIOLATION OF SECTION 1150.210(b) and (c) OF THE BOARD CCDD REGULATIONS, 35 Ill. Adm. Code 1150.210(b) and (c).

¹² Complaint, Count V, par. 18.

¹³ Complaint, Count VI, pars. 15-16.

¹⁴ Complaint, Count VI, par. 17.

Count VII alleges violations of Monthly Fill Record Requirements under Section 1150.210(b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.210(b) and (c).¹⁵

However, Illinois EPA never sent SHERIDAN notice of this purported violation.

Section 31(a)(1)(B) of the Act, 415 ILCS 5/31(a)(1)(B) requires, in pertinent part, that:

Sec. 31. Notice; complaint; hearing. (a)(1) Within 180 days after becoming aware of an alleged violation of the Act, any rule adopted under the Act... the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation. At a minimum, the written notice shall contain:

(B) a detailed explanation by the Agency of the violations alleged.

Thus, Illinois EPA must serve upon alleged violators of the Act “a detailed explanation by the Agency of the violations alleged.” Section 31(c)(1) of the Act, 415 ILCS 31(c)(1) provides, in pertinent part, that:

(c)(1) For alleged violations which remain the subject of disagreement between the Agency and the person complained against following waiver pursuant to subdivision (10) of subsection (a) of this Section or fulfillment of the requirements of subsections (a) and (b) of this Section, the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred shall issue and serve upon the person complained against a written notice, together with a formal complaint, which shall specify the provision of the Act, rule, regulation, permit, or term or condition thereof under which such person is said to be in violation and a statement of the manner in and the extent to which such person is said to violate the Act, rule, regulation, permit, or term or condition thereof and shall require the person so complained against to answer the charges of such formal complaint at a hearing before the Board at a time not less than 21 days after the date of notice by the Board, except as provided in Section 34 of this Act [415 ILCS 5/34]. Such complaint shall be accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1 et seq.] to correct such violation. (Emphasis added.)

¹⁵ Complaint, Count VII, pars. 15-18.

Thus, if and only if Illinois EPA has “fulfill[ed] the requirements of subsections (a)...” of Section 31 of the Act, 415 ILCS 5/31(a), including its requirement of serving upon the alleged violator “a detailed explanation by the Agency of the violations alleged,” may the Attorney General serve a written complaint upon an alleged violator.

Count VII purports to allege that SHERIDAN failed to comply with Monthly Fill Record Requirements under Section 1150.210(b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.210(b) and (c). Yet, Illinois EPA failed to serve upon SHERIDAN pursuant to Section 31(a) of the Act, 415 ILCS 5/31(a), a detailed explanation setting forth a violation of Section 1150.210(b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.210(b) and (c). It is well settled that public documents that are included in the records of other courts and administrative tribunals may be the subject of judicial notice. *N B D Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d 512, 520-521 (2nd Dist. 1993). Accordingly, this Board may take judicial notice of Violation Notice #L-2010-01314 dated October 5, 2010 (the “Violation Notice”), a copy of which is attached hereto as Exhibit “A”, pertaining to “Sheridan/Sheridan Sand and Gravel – N 4201 Road” in the files of the Illinois EPA. Nowhere in that Violation Notice is there any notice of any alleged violation of Section 1150.210(b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.210(b) and (c).

By the express terms of Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), the Attorney General may not file a complaint against any alleged violator for any provision of the Act unless the Illinois EPA has first “fulfill[ed]” Section 31(a) of the Act, 415 ILCS 5/31(a). In other words, compliance with Section 31(a) of the Act, 415 ILCS 5/31(a), is a condition precedent to the STATE filing a complaint under the Act. That government is required to comply with a statutory condition precedent prior to bringing a complaint was the holding of *Skillet Fork River*

Outlet Union Drainage District v. Fogle (“*Skillet Fork River*”), 382 Ill. 77 (1943). There, the Court interpreted a statute, Section 5-25 of the Illinois Drainage Code, 70 ILCS 605/5-25 (formerly Section 34a of the Levee Act). That statute states, in pertinent part:

In case the owner or owners of any lands lying in any district,*** and which are assessed, fails or neglects to pay any assessment or assessments...when due, *and the same be not collected on or before the annual sale of lands for nonpayment of taxes*, the commissioners of such drainage district may file a petition or bill in the circuit court of the county *** for a foreclosure of such lien... (Emphasis added). 382 Ill. at 83.

The plaintiff drainage district filed a complaint to foreclose the lien of an assessment levied for the construction of a drainage system. Defendants, in, *inter alia*, a motion to dismiss¹⁶ averred that a delinquent return to the county collector is a prerequisite to a foreclosure action under the statute. The Court, in upholding the trial court’s dismissal of the complaint, agreed, holding:

A condition precedent to instituting a foreclosure action is that delinquent assessments shall not have been collected “on or before the annual sale of lands for nonpayment of taxes.” This provision exhibits a legislative intent that there must be recourse to the procedure incident to the annual sale of lands. Otherwise, it is meaningless. We are not warranted in attributing to the General Assembly an intent to place superfluous provisions in the statute... [T]he statutory command must be obeyed. This, plaintiffs have failed to do. 382 Ill. at 85.

Similarly, under Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), the Attorney General may not file a complaint against any alleged violator of any provision of the Act unless the Illinois EPA has first fulfilled the “condition precedent” and “statutory command” under Section 31(a) of the Act, 415 ILCS 5/31(a), to provide “a detailed explanation by the Agency of the violations alleged.”¹⁷ Otherwise, Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), would be “superfluous” and “meaningless.” Thus, like the plaintiff drainage district in *Skillet Fork River*, the STATE has

¹⁶ This issue was also raised via amendment to affirmative defenses and counterclaim.

¹⁷ Section 31(a)(1)(B) of the Act, 415 ILCS 5/31(a)(1)(B).

failed to comply with a statutory condition precedent to maintaining a complaint. Under *Skillet Fork River* this Board is required to dismiss the Complaint due to that failure.

B. COUNT VIII MUST BE STRICKEN AND DISMISSED DUE TO ILLINOIS EPA'S FAILURE, UNDER SECTION 31 OF THE ACT, 415 ILCS 5/31, TO SERVE UPON SHERIDAN NOTICE OF VIOLATION OF SECTION 1150.215(a),(b) and (c) OF THE BOARD CCDD REGULATIONS, 35 Ill. Adm. Code 1150.215(a), (b) and (c).

Count VIII alleges violations of Quarterly Fill Requirements under Section 1150.215(a), (b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.215(a), (b) and (c).¹⁸ However, Illinois EPA never sent SHERIDAN notice of this purported violation.

As set forth in Section II(A) of this Motion to Strike and Dismiss and Supporting Memorandum, Section 31(a)(1)(B) of the Act, 415 ILCS 5/31(a)(1)(B), requires that Illinois EPA must serve upon alleged violators of the Act “a detailed explanation by the Agency of the violations alleged.” Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), provides that if and only if Illinois EPA has “fulfill[ed] the requirements of subsections (a)...” of Section 31 of the Act, 415 ILCS 5/31(a), including its requirement of serving upon the alleged violator “a detailed explanation by the Agency of the violations alleged,” may the Attorney General serve a written complaint upon an alleged violator.

Count VIII purports to allege that SHERIDAN failed to comply with Quarterly Fill Requirements under Section 1150.210(b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.210(b) and (c).¹⁹ Yet, Illinois EPA failed to serve upon SHERIDAN pursuant to Section 31(a) of the Act, 415 ILCS 5/31(a), a detailed explanation setting forth a violation of Section 1150.215(a), (b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.215(a), (b) and (c). Pursuant to *N B D Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d at 520-521, this Board may take judicial notice of the Violation Notice, a copy of which is

¹⁸ Complaint, Count VIII, pars. 16-18.

¹⁹ *Id.*

attached hereto as Exhibit “A”. Nowhere in that Violation Notice is there any notice of any alleged violation of Section 1150.215(a), (b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.215(a), (b) and (c).

By the express terms of Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), the Attorney General may not file a complaint against any alleged violator for any provision of the Act unless the Illinois EPA has first “fulfill[ed]” Section 31(a) of the Act, 415 ILCS 5/31(a). In other words, compliance with Section 31(a) of the Act, 415 ILCS 5/31(a), is a condition precedent to the STATE filing a complaint under the Act. That government is required to comply with a statutory condition precedent prior to bringing a foreclosure complaint was the holding of *Skillet Fork River*. Similarly, under Section 31(c)(1) of the Act, 415 ILCS 31(c)(1) the Attorney General may not file a complaint against any alleged violator of any provision of the Act unless the Illinois EPA has first fulfilled the condition precedent under Section 31(a) of the Act, 415 ILCS 5/31(a), to provide “a detailed explanation by the Agency of the violations alleged.”²⁰ Otherwise, Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), would be “superfluous” and “meaningless.” Thus, like the plaintiff drainage district in *Skillet Fork River*, the STATE has failed to comply with a statutory condition precedent to maintaining a complaint. Under *Skillet Fork River* this Board is required to dismiss the Complaint due to that failure.

C. COUNT IX MUST BE STRICKEN AND DISMISSED DUE TO ILLINOIS EPA’S FAILURE, UNDER SECTION 31 OF THE ACT, 415 ILCS 5/31, TO SERVE UPON SHERIDAN NOTICE OF VIOLATION OF SECTION 22.51b OF THE ACT, 415 ILCS 5/22.51b.

²⁰ Section 31(a)(1)(B) of the Act, 415 ILCS 5/31(a)(1)(B).

Count IX avers that SHERIDAN failed to pay quarterly CCDD fees under Section 22.51b of the Act, 415 ILCS 5/22.51b.²¹ However, Illinois EPA never sent SHERIDAN notice of this purported violation.

As set forth in Section II(A) of this Motion to Strike and Dismiss and Supporting Memorandum, Section 31(a)(1)(B) of the Act, 415 ILCS 5/31(a)(1)(B), requires that Illinois EPA must serve upon alleged violators of the Act “a detailed explanation by the Agency of the violations alleged.” Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), provides that if and only if Illinois EPA has “fulfill[ed] the requirements of subsections (a)...” of Section 31 of the Act, 415 ILCS 5/31(a), including its requirement of serving upon the alleged violator “a detailed explanation by the Agency of the violations alleged,” may the Attorney General serve a written complaint upon an alleged violator.

Count XI purports to allege that SHERIDAN failed to pay quarterly CCDD fees under Section 22.51b of the Act, 415 ILCS 5/22.51b.²² Yet, Illinois EPA failed to serve upon SHERIDAN pursuant to Section 31(a) of the Act, 415 ILCS 5/31(a), a detailed explanation setting forth a violation of Section 22.51b of the Act, 415 ILCS 5/22.51b. Pursuant to *N B D Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d at 520-521, this Board may take judicial notice of the Violation Notice, a copy of which is attached hereto as Exhibit “A”. Nowhere in that Violation Notice is there any notice of any alleged violation of Section 22.51b of the Act, 415 ILCS 5/22.51b.

By the express terms of Section 31(c)(1) of the Act, 415 ILCS 31(c)(1) the Attorney General may not file a complaint against any alleged violator for any provision of the Act unless the Illinois EPA has first “fulfill[ed]” Section 31(a) of the Act, 415 ILCS 5/31(a). In other

²¹ Complaint, Count IX, pars. 16-20.

²² Complaint, Count IX, pars. 16-20.

words, compliance with Section 31(a) of the Act, 415 ILCS 5/31(a), is a condition precedent to the STATE filing a complaint under the Act. That government is required to comply with a statutory condition precedent prior to bringing a foreclosure complaint was the holding of *Skillet Fork River*. Similarly, under Section 31(c)(1) of the Act, 415 ILCS 31(c)(1) the Attorney General may not file a complaint against any alleged violator of any provision of the Act unless the Illinois EPA has first fulfilled the condition precedent under Section 31(a) of the Act, 415 ILCS 5/31(a), to provide “a detailed explanation by the Agency of the violations alleged.”²³ Otherwise, Section 31(c)(1) of the Act, 415 ILCS 31(c)(1) would be “superfluous” and “meaningless.” Thus, like the plaintiff drainage district in *Skillet Fork River*, the STATE has failed to comply with a statutory condition precedent to maintaining a complaint. Under *Skillet Fork River* this Board is required to dismiss the Complaint due to that failure.

D. THE COMPLAINT MUST BE STRICKEN AND DISMISSED DUE TO ILLINOIS EPA'S FAILURE TO COMPLY WITH THE REQUIREMENT UNDER SECTION 31(c)(1) OF THE ACT, 415 ILCS 5/31(c)(1), THAT IT MUST SERVE UPON SHERIDAN NOTIFICATION THAT FINANCING MAY BE AVAILABLE TO CORRECT THE ALLEGED VIOLATIONS.

As an additional requirement under Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), the STATE is required to serve with any complaint brought thereunder a notification to the defendant that financing may be available to correct the alleged violations, as follows:

Such complaint shall be accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1 et seq.] to correct such violation.

This Board may take judicial notice that no notification regarding the availability of financing accompanied the Complaint in this cause. Thus, the STATE has failed to comply with that requirement, as well. Thus, under *Skillet Fork River* this Board is also required to dismiss the Complaint due to the STATE's failure to comply with this additional “statutory command.”

²³ Section 31(a)(1)(B) of the Act, 415 ILCS 5/31(a)(1)(B).

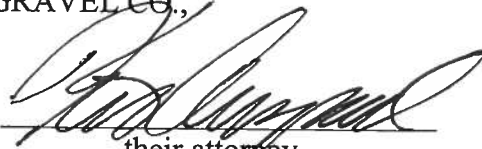
III. CONCLUSION.

In summary, Counts I-VI are substantially insufficient in law and must be stricken pursuant to 735 ILCS 5/2-615. In particular, Count I fails to state a cause of action in regards to load checking because it alleges a violation of a non-existent regulation. Counts II-IV each fail to state a cause of action because each alleges an offense based upon a statute no longer in effect. Counts V-VI each fail to state a cause of action because each alleges a violation of a non-existent regulation.

Additionally, the Complaint must be dismissed under Section 2-619(a)(9) of the Code of Civil Procedure, 735 ILCS 2-619(a)(9), as it is barred by the STATE's failure to comply with the requirements of Section 31 of the Act, 415 ILCS 5/31. In particular, Count VII must be stricken and dismissed due to Illinois EPA's failure, under Section 31 of the Act, 415 ILSC 5/31, to serve upon SHERIDAN Notice of Violation of Section 1150.210(b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.210(b) and (c). Count VIII must be stricken and dismissed due to Illinois EPA's failure, under Section 31 of the Act, 415 ILSC 5/31, to serve upon SHERIDAN notice of violation of Section 1150.215(a), (b) and (c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1150.215(a), (b) and (c). Count IX must be stricken and dismissed due to Illinois EPA's failure, under Section 31 of the Act, 415 ILSC 5/31, to serve upon SHERIDAN Notice of Violation of Section 22.51b of the Act, 415 ILCS 5/22.51b. Further, the entire complaint must be stricken and dismissed due to Illinois EPA's failure to comply with the requirement under Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1), that it must serve upon Sheridan notification that financing may be available.

WHEREFORE, SHERIDAN moves that the Complaint be stricken and dismissed.

Respondents, SHERIDAN-JOLIET LAND DEVELOPMENT, LLC, an Illinois limited-liability company, and SHERIDAN SAND & GRAVEL CO.,

By: 
their attorney

KENNETH ANSPACH, ESQ.
ANSPACH LAW OFFICE
111 West Washington Street
Suite 1625
Chicago, Illinois 60602
(312) 407-7888
Attorney No. 55305

THIS FILING IS SUBMITTED ON RECYCLED PAPER.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

815/987-7760
FAX #815/987-7760

October 5, 2010

Mr. Branko Vardijan
Sheridan-Joliet Land Development LLC
221 N. Washtenaw Ave.
Chicago, IL 60612

7008 0500 0000 3757 5478
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: **Violation Notice, L-2010-01314**
BOL #0998215024—LaSalle County
Sheridan / Sheridan Sand and Gravel N 4201 Road
Compliance File

RECEIVED

OCT 06 2010

IEPA/BOL

Dear Mr. Vardijan:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on an inspection completed on September 15, 2010 by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of alleged violations of environmental statutes, regulations, or permits as set forth in the attachment to this notice. The attachment includes an explanation of the activities that the Illinois EPA believes may resolve the specified alleged violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the alleged violations, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this notice. The response must address each alleged violation specified in the attachment and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. If a meeting is requested, it shall be held within 60 days of receipt of this notice. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject it within 30 days of receipt.

RELEASABLE

OCT 19 2010

Rockford • 4302 N. Main St., Rockford, IL
Elgin • 595 S. State, Elgin, IL 60123
Bureau of Land - Peoria • 7620 N. University St.,
Collinsville • 2009 Mall Street, Collinsville,

Harrisburg • 1001 N. Main St., Harrisburg, IL 62426 • (618) 294-4000
University St., Peoria, IL 61602 • (309) 693-6000
First St., Champaign, IL 61820 • (217) 278-5800
St., Suite 116, Marion, IL 62959 • (618) 993-7200

EXHIBIT "A"

Violation Notice, L-2010-01314
BOL #0998215024—LaSalle County
Sheridan / Sheridan Sand and Gravel N 4201 Road
October 5, 2010
Page 2

If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet provided by Section 31(a) of the Act, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

Written communications should be directed to:

Illinois EPA – Bureau of Land
Attn: Kathy Geyer
4302 N. Main Street
Rockford, IL 61103

All communications must include reference to your **Violation Notice L-2010-01314**.

The complete requirements of the Illinois Environmental Protection Act and any Illinois Pollution Control Board regulations cited herein or in the inspection report can be viewed at:

<http://www.ipcb.state.il.us/SLR/TheEnvironmentalProtectionAct.asp>

and

<http://www.ipcb.state.il.us/SLR/IPCBandIEPAEnvironmentalRegulations-Title35.asp>

If you have questions regarding this matter, please contact Kathy Geyer at 815/987-7760

Sincerely,



David S. Retzlaff
Manager, Bureau of Land
Rockford Regional Office

DSR:KG:tl

Attachment

Enclosure

cc: Mike Harsted, LaSalle County Environmental Services

RECEIVED
OCT 06 2010
IEPA/BOL

ATTACHMENT

1. Pursuant to Section 22.51(a) of the Act, No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

A violation of Section 22.51(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(a)) is alleged for the following reason: **You are operating a clean construction or demolition debris fill operation in violation of the Act and 35 Illinois Administrative Code [The Regulations].**

2. Pursuant to Section 22.51(b)(3)(i) of the Act, On or after July 1, 2008, no person shall use CCDD as fill material in a current or former quarry, mine, or other excavation without a permit granted by the Agency or in Violation of any Condition imposed by such permit.

A violation of Section 22.51(b)(3)(i) is alleged for the following reason: **You are using CCDD as fill material in a former quarry in violation of Permit Condition I.1 of permit #CCDD2007-040-DE/OP.**

3. Pursuant to Section 22.51(b)(3)(ii) of the Act; On or after July 1, 2008, no person shall use CCDD as fill material in a current or former quarry, mine, or other excavation in violation of any regulations or standards adopted by the Board under the Act.

A violation of Section 22.51(b)(3)(ii) is alleged for the following reason: **You are using CCDD as fill material in a former quarry in violation of 35 Illinois Administrative Code and the Act.**

4. Pursuant to Section 22.51(f)(2)(A)(i) of the Act; For each load of CCDD or uncontaminated soil received, until the effective date of the board rules, owners and operators of CCDD Fill operations must document the hauler name, site of origin address, and the owner or operator of the site of origin of the uncontaminated soil.

A violation of Section 22.51(f)(2)(A)(i) of the Act is alleged for the following reason: **The site of origin address (listed as the "source") on the documents at your facility are listed as "CCDD." Also, the owner is listed as Ravenswood Disposal. The site of origin, along with the owner/operator of the site of origin should be identified as the site from which the soil was removed.**

5. Pursuant to Section 22.51(f)(2)(B) of the Act; For all soil, until the effective date of the Board rules, owners and operators of CCDD Fill operations must (i) obtain certification that the site of origin (the site from which the soil was removed) has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil, OR, (ii)

* Certain portions of Section 22.51 of the Act are found in Public Act 096-1416, <http://www.ilga.gov>.

obtain Certification from a Licensed Professional Engineer that the soil is uncontaminated soil.

A violation of Section 22.51(f)(2)(B) of the Act is alleged for the following reason: **The only Certification submitted to the Agency lists Ravenswood Disposal Service, Inc. as the owner and operator of the site of origin. The Certification(s) must cover each separate site of origin (the site from which the soil was removed), and must have a Licensed Professional Engineer's Certification for commercial/industrial sites of origin.**

6. Pursuant to Section 22.51(f)(2)(C) of the Act; Until the effective date of the board rules, owners and operators of CCDD fill operations must confirm that the CCDD or uncontaminated soil was not removed from a site as part of a cleanup or removal contaminants.

A violation of Section 22.51(f)(2)(C) is alleged for the following reason: **There was no confirmation that the CCDD or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants.**

7. Pursuant to Section 22.51(f)(2)(D) of the Act; Until the effective date of the board rules, owners and operators of CCDD fill operations must document all activities required under Section 22.51(f)(2). Documentation of any chemical analysis must include, but is not limited to (i) copy of the lab analysis (ii) laboratory accreditation status, and (iii) laboratory authorized agent certification.

A violation of Section 22.51(f)(2)(D) is alleged for the following reason: **The documentation required under Section 22.51(f)(2) is not complete, as stated in numbers 4, 5 and 6 above.**

8. Pursuant to Section 1100.201(a) of 35 Illinois Adm. Code; No person shall conduct any CCDD fill operation in violation of the Act or any Regulations or Standards adopted by the Board [415 ILCS 5/22.51(a)].

A violation of Section 1100.201(a) of 35 Illinois Adm. Code is alleged for the following reason: **You have conducted a CCDD fill operation in violation of the Act and Regulations, as adopted by the Board.**

9. Pursuant to Section 1100.205(b)(1) of 35 Illinois Adm. Code; The owner or operator of any CCDD fill operation must institute a load checking program designed to detect attempts to dispose of waste at the facility, which includes a random daily discharge inspection.

A violation of Section 1100.205(b)(1) of 35 Illinois Adm. Code is alleged for the following reason: **There is no documentation that a random daily discharge inspection took place on September 2, 2010.**

10. Pursuant to Section 1100.205(c)(3) of 35 Illinois Adm. Code; The owner or operator of any CCDD fill operation must document the results of a daily random load inspection.

A violation of Section 1100.205(c)(3) is alleged for the following reason: **There is no documentation of the results of a random daily discharge inspection for September 2, 2010.**

11. Pursuant to Section 1100.205(h) of 35 Illinois Adm. Code; All field measurement activities relative to equipment and instrument operation, calibration and maintenance and data handling shall be conducted in accordance with the following:
 - 1) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods "(SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 1100.104 of this Part;
 - 2). The equipment or instrument manufacturer's or vendor's published standard operation procedures; or
 - 3) Other operating procedures specified in the Agency permit.

A violation of Section 1100.205(h) is alleged for the following reason(s): **Your Photoionization detector, a "MiniRAE 2000" model has not been calibrated in accordance with SW-846 or the published standard operating procedures, as the employees did not have physical access to the calibration gas canister on the date of the inspection.**

12. Pursuant to Permit Condition I.1 of permit #CCDD2007-040-DE/OP; the operator must implement the load checking program proposed in the application for Permit No. CCDD2007-040-DE/OP (Log No. CCDD2007-040). If materials other than CCDD are discovered the load checker must prepare a report describing the results of each inspection. Documentation of the records for the facility must be kept for minimum of three years at the facility or in some alternative location specified in the Illinois EPA permit. The documentation must be available for inspection and copying by the Illinois EPA upon request during normal business hours. Also, before the end of the operating day the operator must, by facsimile to 217-524-1991, or another method approved by the Illinois EPA, notify the Manager of the BOL Field Operations Section and provide the information described in condition I.2.c.

A violation of Permit Condition I.1 of permit no. CCDD2007-040-DE/OP is alleged for the following reason: **The load checking program proposed in the application for Permit No. CCDD2007-040-DE/OP was not implemented on September 2, 2010.**

SUGGESTED RESOLUTIONS

1. To resolve alleged violations of Sections 22.51(a), and 22.51(b)(3)(ii) of the Environmental Protection Act [415 ILCS 5/] (the "Act"), and Section 1100.201(a) of 35 Illinois Administrative Code (the "Regulations"), **IMMEDIATELY** implement steps to be in compliance with the Act and the Regulations.

2. To resolve the violation of Section 22.51(b)(3)(i) of the Act, **IMMEDIATELY** implement steps to be in compliance with Bureau of Land Permit No. CCDD2007-040-DE/OP.
3. To resolve violations of Sections 22.51(f)(2)(A)(i), 22.51(f)(2)(B), 22.51(f)(2)(C), and 22.51(f)(2)(D), **IMMEDIATELY** begin documenting the following for all CCDD and uncontaminated soil received at your fill operation:
 - a) The name of the hauler,
 - b) The address of the site of origin,
 - c) The owner and operator of the site of origin.

For all uncontaminated soil received, you must also obtain either a certification from the owner or operator of the site from which the soil was removed that the site has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil, OR, a certification from a licensed Professional Engineer that the soil is uncontaminated soil. Certifications must be on forms and in a format prescribed by the Agency (LPC-662 and LPC-663 forms)

4. To resolve the violation of Section 1100.205(b)(1) of the Regulations and Permit Condition I.1 of permit no. CCDD2007-040-DE/OP, **IMMEDIATELY** implement the load checking program proposed in the application for Permit No. CCDD2007-040-DE/OP.
5. To resolve the violation of Section 1100.205(c)(3) of the Regulations, **IMMEDIATELY** being documenting results of daily random load inspections.
6. To resolve the violation of Section 1100.205(h) of the Regulations, **IMMEDIATELY** begin calibrating the photoionization detector located at the CCDD fill operation according to requirements and guidelines found in SW-846 and the published manufacturer's Standard Operating Procedures.

A written response to this Violation Notice L-2010-01314 should be submitted to:

Illinois EPA
Bureau of Land
Attn: Kathy Geyer
4302 North Main Street
Rockford, IL 61103

BOL #0998215024 - LaSalle County
Sheridan Sand and Gravel N 4201 Road
VN L-2010-01314
Attachment - Page 5 of 5

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and must be submitted to the Illinois EPA by certified mail, within 45 days of receipt of this Violation Notice. The written response must also include a proposed Compliance Commitment Agreement that commits to specific remedial actions, includes specified times for achieving each commitment, and may include a statement that compliance has been achieved.

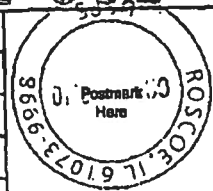
DATE: 10-14-10
 TO: BOL DIVISION FILE
 FROM: ROCKFORD REGION
 SUBJECT: CERTIFIED MAIL GREEN CARD RECEIPT FOR

VN

LPC # 0998215024 - LaSalle County
 Sheridan / Sheridan Sand & Gravel N 4201 Road
 Compliance File

For VN dated 10 / 5 / 10

RECEIVED
 RELEASABLE OCT 18 2010
 OCT 29 2010 IEPA/BOL
 REVIEWED

U.S. Postal Service		CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)			
For delivery information visit our website at www.usps.com			
OFFICIAL USE			
Postage	\$ 1.56		
Certified Fee	2.80		
Return Receipt Fee (Endorsement Required)	2.30		
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$ 6.66		
Sent To	Mr. Branko Vardijan		
Street, Apt. No. or PO Box No.	Sheridan-Joliet Land Development, LLC		
City, State, ZIP+4	221 N. Washtenaw Avenue LLC Chicago, IL 60612		
PS Form 3800, August 2006		See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Branko Vardijan
 Sheridan-Joliet Land Development, LLC
 221 N. Washtenaw Ave
 Chicago, IL 60612

VN #L-2010-01314
 0998215024 - LaSalle County

2. Article Number
 (Transfer from service label) 7008 0500 0000 3757 5478

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Agent
 Addressee

B. Received by (Printed Name)
 Dan Vardijan

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

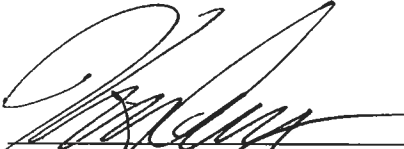
3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, that the attached Motion to Strike and Dismiss and Supporting Memorandum was ___ personally delivered, X placed in the U. S. Mail, with first class postage prepaid, ___ sent via facsimile and directed to all parties of record at the address(es) set forth below on or before 5:00 p.m. on the 30th day of November, 2012.

Elizabeth Wallace, Chief
Zemeheret Bereket-Ab
Assistant Attorneys General
Environmental Bureau
69 West Washington Street
Suite 1800
Chicago Illinois 60602



KENNETH ANSPACH, ESQ.
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