

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. 13-20

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Pollution Control Board

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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.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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 moves the Pollution Control Board (the "Board") to strike and dismiss the Complaint (the "Complaint") of complainant, PEOPLE OF THE STATE OF ILLINOIS ("the STATE") regard to alleged violations at the Wiensland Site, Sheridan, Illinois, and in support thereof states as follows:

I. COUNTS I-III 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."<sup>1</sup> However, this Board may take judicial notice that *there is no* "Section 1100.205(a)(b)(c) of the Board

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<sup>1</sup> 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), and 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.<sup>2</sup> 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.<sup>3</sup>

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.”

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<sup>2</sup> Complaint, Count I, par. 19.

<sup>3</sup> *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 Wiensland Site."<sup>4</sup> 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 (2<sup>nd</sup> 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.

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<sup>4</sup> Complaint, Count I, par. 18.

Moreover, note that the sole factual allegation in Count I contains the language that “the Illinois EPA observed...”<sup>5</sup> This same phrase is repeated in all counts of the Complaint.<sup>6</sup> 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. COUNT II FAILS TO STATE A CAUSE OF ACTION IN REGARDS TO SOIL CERTIFICATION BECAUSE IT ALLEGES AN OFFENSE BASED UPON A STATUTE NEITHER IN EFFECT WHEN THE ALLEGED OFFENSE OCCURRED, NOR WHEN THE COMPLAINT WAS FILED.

Count II alleges that on March 18, 2010, SHERIDAN violated the soil certification requirements of Sections 22.51(f)(2)(B)(i) and (ii) of the Act, 415 ILCS 5/22(f)(2)(B)(i) and (ii).<sup>7</sup> However, this Board may take judicial notice that Sections 22.51(f)(2)(B)(i) and (ii) of the Act, 415 ILCS 5/22(f)(2)(B)(i) and (ii), were not enacted into law until July 30, 2010 pursuant to P.A. 96-1416. The defect caused by charging an offense based upon a statute not in effect when the alleged offense occurred is fatal, rendering the entire instrument invalid. *People v. Tellez-Valencia*, 188 Ill. 2d at 526-527.

Sections 22.51(f)(2)(B)(i) and (ii) of the Act, 415 ILCS 5/22(f)(2)(B)(i) and (ii), were also not in effect when the Complaint was filed on October 31, 2012. The provisions of Section 22.51(f)(2)(B)(i) and (ii) of the Act, 415 ILCS 5/22(f)(2)(B)(i) and (ii), 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

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<sup>5</sup> *Id.*

<sup>6</sup> Count II, par. 15; Count III, par. 23; and Count IV, par. 19.

<sup>7</sup> Complaint, Count II, par. 18.

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 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 Count II against SHERIDAN are averred to have occurred on March 18, 2010. Elsewhere in the Complaint, *e.g.*, Count I, par. 18, the STATE references a different date, *i.e.*, March 18, 2011, in what appears to be an internal inconsistency in the pleading. If the actual date was March 18, 2010, then it was before either Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), or the amendments to the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq.*, became effective. If the actual date was March 18, 2011, then it was while Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2) was effective, but before that section of the statute expired and the amendments to the Board CCDD Regulations, 35 Ill. Adm. Code 1100.101 *et seq.* took effect. Either way, because the statute 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. Therefore, neither the statute nor the rules are enforceable against SHERIDAN.

The General Assembly quite clearly included this sunset provision<sup>8</sup> *i.e.*, “the effective

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<sup>8</sup> 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



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 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

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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 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...” Count II, which purports to enforce the provisions of subsections (B)(i) and (ii) of Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), is, therefore, a nullity.

**C. COUNT III FAILS TO STATE A CAUSE OF ACTION IN REGARDS TO LOAD CHECKING BECAUSE IT ALLEGES A VIOLATION OF A STATUTE NOT IN EFFECT AND A NON-EXISTENT REGULATION.**

Count III alleges that SHERIDAN failed to adhere to record keeping requirements under Section 22.51(f)(3) of the Act, 415 ILCS 5/22(f)(3).<sup>9</sup> Yet, that section of the statute contains a direct reference to Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), and is only enforceable to the extent that Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), is enforceable. Specifically, Section 22.51(f)(3) of the Act, 415 ILCS 5/22(f)(3) states, in pertinent part, as follows:

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<sup>9</sup> Complaint, Count III, par. 24.

Owners and operators of clean construction or demolition debris fill operations *must maintain all documentation required under subdivision (f)(2) of this Section* for a minimum of 3 years following the receipt of each load of clean construction or demolition debris or uncontaminated soil, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. (Emphasis added.)

Thus, Section 22.51(f)(3) of the Act, 415 ILCS 5/22(f)(3) requires maintaining documentation required under Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2). Yet, as set forth in Section I(B) of this Motion to Strike and Dismiss and Supporting Memorandum, Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), is no longer enforceable. Obviously, if the documentation requirements of Section 22.51(f)(2) of the Act, 415 ILCS 5/22(f)(2), are no longer enforceable, then the requirement that such documentation be maintained under Section 22.51(f)(3) of the Act, 415 ILCS 5/22(f)(3), is also unenforceable. Therefore, Count III is also a nullity.

Count III also alleges that SHERIDAN violated “Section 1100.205(i) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(i).” However, this Board may take judicial notice that *there is no* “Section 1100.205(i) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(i).” 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 these reasons there was also no corresponding violation of Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) or SHERIDAN’s permit as alleged.<sup>10</sup>

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

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<sup>10</sup> *Id.*

STATE'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION 31 OF THE ACT, 415 ILCS 5/31.

A. COUNT IV 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.

Count IV alleges that SHERIDAN failed to pay quarterly CCDD fees under Section 22.51b of the Act, 415 ILCS 5/22.51b.<sup>11</sup> 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:

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(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*

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<sup>11</sup> Complaint, Count IV, pars. 16-20.

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.)

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 IV purports to allege that SHERIDAN failed to pay quarterly CCDD fees under Section 22.51b of the Act, 415 ILCS 5/22.51b.<sup>12</sup> 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. 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 (2<sup>nd</sup> Dist. 1993). Accordingly, this Board may take judicial notice of Violation Notice #L-2011-01132 dated May 3, 2011 (the “Violation Notice”), a copy of which is attached hereto as Exhibit “A”, pertaining to “Sheridan/Sheridan Sand and Gravel – Wiensland” in the files of the Illinois EPA. 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.<sup>13</sup>

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

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<sup>12</sup> Complaint, Count IV, pars. 16-20.

<sup>13</sup> Curiously, the only reference in the Violation Notice to fees may be found at pars. 15-16 thereof, which purport to allege a violation of “Section 22.15b of the Act” (emphasis added.). That section of the Act provides for fees for owners and operators of sanitary landfills, and has nothing whatsoever to do with CCDD operations or fees, which arise under Section 22.51b of the Act.

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 filing a complaint was the holding of *Skillet Fork River, supra*, 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 dismiss<sup>14</sup> 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

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<sup>14</sup> This issue was also raised via amendment to affirmative defenses and counterclaim.

Act, 415 ILCS 5/31(a), to provide “a detailed explanation by the Agency of the violations alleged.”<sup>15</sup> 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.

B. 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.”

III. CONCLUSION.

In summary, Counts I-III 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. Count II fails to state a cause of action in regards to soil certification because it alleges an offense based upon a statute

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<sup>15</sup> Section 31(a)(1)(B) of the Act, 415 ILCS 5/31(a)(1)(B).

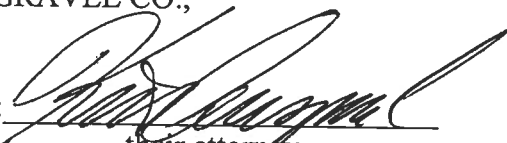
not in effect when the alleged offense occurred. Count III fails to state a cause of action because it alleges a violation of a statute not in effect and a non-existent regulation.

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 IV 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.

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 to correct the alleged violations.

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

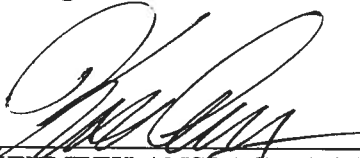
THIS FILING IS SUBMITTED ON RECYCLED PAPER.



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 30<sup>th</sup> 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.  
ANSPACH LAW OFFICE  
111 West Washington Avenue  
Suite 1625  
Chicago, Illinois 60602  
(312) 407-7888



# 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 #815/987-7005

7008 0500 0000 3757 7458  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

May 3, 2011

Sheridan-Joliet Land Development  
Attn: Branko Vardijan  
221 N. Washtenaw Avenue  
Chicago, IL 60612

Re: **Violation Notice, #L-2011-01132**  
BOL # 0991105008 - LaSalle County  
Sheridan / Sheridan Sand and Gravel - Wiensland  
Compliance File

**RECEIVED**  
MAY 04 2011  
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 upon an inspection completed on March 18, 2011, and file reviews completed on April 5, 2011, and April 20, 2011 by a representative 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**  
MAY 27 2011

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760  
Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131  
Bureau of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462  
Collinsville • 2009 Mall Street, Collinsville, IL 6222

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60015 • (847) 294-4000  
Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463  
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800  
Suite 116, Marlon, IL 62959 • (618) 993-7200

EXHIBIT "A"

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.

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>

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-2011-01132**. If you have questions regarding this matter, please contact **Kathy Geyer** at **815/987-7760**.

Sincerely,



David S. Retzlaff  
Manager-Bureau of Land  
Field Operations Section  
Rockford Regional Office

DSR:KG

Attachment

Enclosure

RECEIVED

MAY 04 2011

IEPA/BOI

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 Sections 22.51(b)(3)(i), 22.51(b)(3)(ii), 22.51(f)(2), and 22.51(f)(3) of the Act; and 1100.201(a), 1100.205(i), 1100.210, 1150.110, 1150.200, 1150.205, 1150.210, 1150.215, and 1150.300 of 35 Ill. Adm. Code (Regulations).**

2. Pursuant to Section 22.51(b)(3)(i) of the Act, On and after July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation (i) without a permit granted by the Agency for the clean construction or demolition debris fill operation or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this act and with Board regulations and standards adopted under this Act.

A violation of Section 22.51(b)(3)(i) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(b)(3)(i)) is alleged for the following reasons: **You are operating a clean construction or demolition debris fill operation in violation of Condition 1.1 of Permit #CCDD-042-DE/OP.**

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

A violation of Section 22.51(b)(3)(ii) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(b)(3)(ii)) is alleged for the following reasons: **you are operating a clean construction or demolition debris fill operation in violation of Sections 22.51(a), 22.51(b)(3)(i), 22.51(b)(3)(ii), 22.51(f)(2), and 22.51(f)(3) of the Act; and 1100.201(a), 100.205(i), 1100.210, 1150.110, 1150.200, 1150.205, 1150.210, 1150.215, and 1150.300 of 35 Ill. Adm. Code (Regulations).**

4. Pursuant to Section 22.51(f)(2) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(f)(2)), 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. The requirements in subdivisions (f)(2)(A) through (f)(2)(D) of this Section shall not limit any rules adopted by the Board.

(A) Document the following information for each load of clean construction or demolition debris or uncontaminated soil received: (i) the name of the hauler, the address of the site of origin, and the owner and the operator of the site of origin of the clean construction or demolition debris or uncontaminated soil, (ii) the weight or volume of the clean construction or demolition debris or uncontaminated soil, and (iii) the date the clean construction or demolition debris or uncontaminated soil was received.

(B) For all soil, obtain either (i) 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 (ii) a certification from a licensed Professional Engineer that the soil is uncontaminated soil. Certifications required under this subdivision (f)(2)(B) must be on forms and in a format prescribed by the Agency.

(C) Confirm that the clean construction or demolition debris or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants, including, but not limited to, activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; as part of a Closure or Corrective Action under the Resource Conservation and Recovery Act, as amended; or under an Agency remediation program such as the Leaking Underground Storage Tank Program or Site Remediation Program, but excluding sites subject to Section 58.16 of this Act where there is no presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on, or from the real property.

(D) Document all activities required under subdivision (f)(2) of this Section. Documentation of any chemical analysis must include, but is not limited to, (i) a copy of the lab analysis, (ii) accreditation status of the laboratory performing the analysis, and (iii) certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of accreditation.

A violation of Section 22.51(f)(2)(B)(i) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(f)(2)(B)(i)) is alleged for the following reason: **You are operating a CCDD fill operation without obtaining 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.**

5. Pursuant to Section 22.51(f)(2) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(f)(2)), 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. The requirements in subdivisions (f)(2)(A) through (f)(2)(D) of this Section shall not limit any rules adopted by the Board.

(A) Document the following information for each load of clean construction or demolition debris or uncontaminated soil received: (i) the name of the hauler, the address of the site of origin, and the owner and the operator of the site of origin of the clean construction or demolition debris or uncontaminated soil, (ii) the weight or volume of the clean construction or demolition debris or uncontaminated soil, and (iii) the date the clean construction or demolition debris or uncontaminated soil was received.

(B) For all soil, obtain either (i) 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 (ii) a certification from a licensed Professional Engineer that the soil is uncontaminated soil. Certifications required under this subdivision (f)(2)(B) must be on forms and in a format prescribed by the Agency.

(C) Confirm that the clean construction or demolition debris or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants, including, but not limited to, activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; as part of a Closure or Corrective Action under the Resource Conservation and Recovery Act, as amended; or under an Agency remediation program such as the Leaking Underground Storage Tank Program or Site Remediation Program, but excluding sites subject to Section 58.16 of this Act where there is no presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on, or from the real property.

(D) Document all activities required under subdivision (f)(2) of this Section. Documentation of any chemical analysis must include, but is not limited to, (i) a copy of the lab analysis, (ii) accreditation status of the laboratory performing the analysis, and (iii) certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of accreditation.

A violation of Section 22.51(f)(2)(B)(ii) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(f)(2)(B)(ii)) is alleged for the following reason: **You are operating a CCDD fill operation without obtaining 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.**

6. Pursuant to Section 22.51(f)(3) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(f)(3)), owners and operators of clean construction or demolition debris fill operations must maintain all documentation required under subdivision (f)(2) of this Section for a minimum of 3 years following the receipt of each load of clean construction or demolition debris or uncontaminated soil, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. Copies

of the documentation must be made available to the Agency and to units of local government for inspection and copying during normal business hours. The Agency may prescribe forms and formats for the documentation required under subdivision (f)(2) of this Section. Chemical analysis conducted under subdivision (f)(3) of this Section must be conducted in accordance with the requirements of 35 Ill. Adm. Code 742, as amended and "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication No. SW-846, as amended.

A violation of Section 22.51(f)(3) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(f)(3)) is alleged for the following reason: **The documentation required under Section 22.51(f)(2) of the Act was not available to the Agency during normal business hours.**

7. Pursuant to Section 1100.201(a) of 35 Illinois Administrative 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 35 Ill. Adm. Code, Section 1100.201(a) is alleged for the following reason: **You are conducting a CCDD fill operation in violation of Sections 22.51(a), 22.51(b)(3)(i), 22.51(b)(3)(ii) and 22.51(f)(2) of the Act; and 1100.201(a), 1100.205(i), 1100.210, 1150.110, 1150.200, 1150.205, 1150.210, 1150.215, and 1150.300 of 35 Ill. Adm. Code (Regulations).**

8. Pursuant to Section 1100.205 of the Regulations, the owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of waste at the facility. At a minimum, the load checking program must consist of the following components:

- a) Routine inspections

- 1) An inspector designated by the facility must inspect every load before its acceptance at the facility utilizing an elevated structure, a designated ground level inspection area, or another acceptable method as specified in the Agency permit. In addition to a visual inspection, the inspector must use an instrument with a photo ionization detector utilizing a lamp of 10.6 eV or greater or an instrument with a flame ionization detector, or other monitoring devices approved by the Agency, to inspect each load. All instruments shall be interpreted based on the manufacturer's margin or error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used by the Agency during an Agency inspection must result in the rejection of the inspected load.
- 2) Cameras or other devices may be used to record the visible contents of shipments. Where such devices are employed their use should be designated on a sign posted near the entrance to the facility.

- b) Random inspections

- 1) In addition to the inspections required under subsection (a) of this Section, an inspector designated by the facility must conduct a discharge inspection of at least one randomly selected load delivered to the facility each day. The driver of the randomly selected load must be directed to discharge the load at a separate, designated location within the facility. The inspector must conduct an inspection of the discharged material that includes, but is not limited to, additional visual inspection and additional instrument testing using the instruments required under subsection (a)(1) of this Section. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used by the Agency during any Agency inspection must result in the rejection of the inspected load.
  - 2) Cameras or other devices may be used to record the visible contents of shipments. Where such devices are employed, their use should be designated on a sign posted near the entrance to the facility.
- c) Documentation of Inspection results  
The documentation for each inspection must include, at a minimum, the following:
- 1) The 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) The results of the routine inspection required under subsection (a) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection;
  - 3) The results of any random inspection required under subsection (b) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection; and
  - 4) The name of the inspector.
- d) Rejection of loads
- 1) If material other than CCDD is found or suspected, the owner or operator must reject the load and present the driver of the rejected load with written notice of the following:
    - A) That only CCDD is accepted for use as fill at the facility;



- B) That the rejected load contains or is suspected to contain material other than CCDD, and that the material must not be taken to another CCDD fill operation and must be properly recycled or disposed of at a permitted landfill;
  - C) That for all inspected loads the owner or operator is required to record, at a minimum, the 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 fill and is required to make this information available to the Agency for inspection.
- 2) The owner or operator must ensure the cleanup, transportation, and proper disposal of any material other than CCDD that remains at the facility after the rejection of a load.
- e) The owner or operator must take special precautionary measures as specified in the Agency permit prior to accepting loads from persons or sources found or suspected to be responsible for sending or transporting material other than CCDD to the facility. The special precautionary measures may include, but are not limited to, questioning the driver about the load prior to its discharge and increased visual inspection and instrument testing of the load.
  - f) If material other than CCDD is discovered to be improperly accepted or deposited at the facility, the owner or operator must remove and properly dispose of the material.
  - g) The owner or operator must ensure that all appropriate facility personnel are properly trained in the identification of material that is not CCDD.
  - h) 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 operating procedures; or
    - 3) Other operating procedures specified in the Agency permit.
  - i) Documentation required under this Section must be kept for a minimum of 3 years at the facility or in some alternative location specified in the Agency permit. The documentation must be available for inspection and copying by the Agency upon request during normal business hours.

A violation of 35 Illinois Administrative Code, Section 1100.205(i) is alleged for the following reason: **The documentation required under this Section is missing or otherwise unavailable for the time period from March 9, 2011 until the date of the inspection.**

9. Pursuant to Section 1100.210 of the Regulations, the owner or operator must maintain an operating record at the facility or in some alternative location specified in the Agency permit. The owner or operator must make the operating record available for inspection and copying by the Agency upon request during normal business hours. Information maintained in the operating record must include, but is not limited to, the following:
- a) Any information submitted to the Agency pursuant to this Part, including, but not limited to, copies of all permits, permit applications, and annual reports;
  - b) Written procedures for load checking, load rejection notification, and training required under Section 1100.205 of this Part.

A violation of 35 Illinois Administrative Code, Section 1100.210 is alleged for the following reason: **Load checking records, along with Daily, Monthly, and Quarterly Fill Summaries were not available at the facility during the inspection.**

10. Pursuant to Section 1150.110 of the Regulations, Copies of all records required to be kept under this Part (Procedures for Operation of the CCDD Fill Operation Fee System), shall be retained by the site operator for three years and must be made available at the site during the normal business hours of the operator for inspection and photocopying by the Agency.

A violation of Section 1150.110 of 35 Ill. Adm. Code is alleged for the following reason: **there were no Daily Fill Records, Monthly Fill Records, or Quarterly Fill Summaries available at the site during the inspection.**

11. Pursuant to Section 1150.200 of the Regulations,
- a) The operator of a CCDD fill operation shall keep a daily record of the CCDD and the uncontaminated soil accepted for use as fill material at the CCDD fill operation.
  - b) For purposes of reporting and submitting fees, the operator shall prepare the following records from the Daily Record:
    - 1) Monthly Fill Record; and
    - 2) Quarterly Fill Summary,
  - c) Operators of CCDD fill operations shall submit each Monthly Fill Record, each Quarterly Fill summary, and each fee payment:
    - 1) On the basis of weight, in tons, where the operator has weighed the CCDD and the uncontaminated soil received with a device for which certification has been obtained under the Weights and Measures Act [225 ILCS 470]:  
or

- 2) On the basis of volume, as measured in cubic yards, where the measurement of the CCDD and the uncontaminated soil received is based on volume.
- d) Each Monthly Fill Record and Quarterly Fill Summary submitted to the Agency must be on forms and in a format as prescribed and provided by the Agency.
- e) The Monthly Fill Record and Quarterly Fill Summary must be kept in accordance with Section 1150.110 of this Part.

A violation of Section 1150.200 of 35 Ill. Adm. Code is alleged for the following reason: **The daily and monthly fill records, along with the quarterly fill summaries, on the basis of weight in tons or volume in cubic yards; have not been kept at the facility.**

12. Pursuant to Section 1150.205 of the Regulations,
  - a) The Daily Fill Records must be maintained at the site of the CCDD fill operation, and must include the Agency designated site number and the site name.
  - b) For each load of CCDD or uncontaminated soil accepted for use as fill material at the CCDD fill operation the following information just be recorded in the Daily Fill Record, in addition to any other information required by the Act and rules adopted thereunder:
    - 1) The date and day of the week the load was accepted.
    - 2) The quantity, in tons weighed or cubic yards measured, of CCDD or uncontaminated soil accepted for use as fill material at the CCDD fill operation.

A violation of Section 1150.205 of the Regulations is alleged for the following reason: **The required daily fill record, recording the date and day of the week, along with the quantity in tons weighed or cubic yards measured of CCDD or uncontaminated soil accepted for use as fill material, was not available or maintained at the facility.**

13. Pursuant to Section 1150.210 of the Regulations,
  - a) Monthly Fill Records must be maintained at the site of the CCDD fill operation and must include the following information:
    - 1) The Agency designated site number, the site name, and the calendar month for which the record applies.
    - 2) The total quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured, for each day of the calendar month.
  - b) On or before April 15, July 15, October 15 and January 15, the owner or operator of the CCDD fill operation shall submit to the Agency the Monthly Fill Records for the preceding three calendar months. The Monthly Fill Records must be submitted to the Address in Section 1150.305.
  - c) Upon issuance of a valid CCDD fill operation permit pursuant to 35 Ill. Adm. Code 1100, and until termination of such permit, the owner or operator of the CCDD fill operation shall submit Monthly Fill Records to the Agency in

accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.

A violation of Section 1150.210 of the Regulations is alleged for the following reason: **The required Monthly Fill Record was not maintained at the site of the CCDD Fill Operation, and was not submitted to the Agency on or before October 15, 2010, January 15, 2011, and April 15, 2011; and the Monthly Fill Record was not submitted in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.**

14. Pursuant to Section 1150.215 of the Regulations,
- a) The Quarterly Fill Summary must be maintained at the site of the CCDD fill operation and must include the following information:
    - 1) The Agency designated site number, the site name, and the calendar quarter for which the summary applies.
    - 2) The total quantity of CCDD and uncontaminated soil accepted for use as fill material in tons weighed or cubic yards measured:
      - A) for each month of the calendar quarter;
      - B) for the entire calendar quarter; and
      - C) for the calendar year-to-date.
    - 3) The fee rate applicable under Section 22.51b of the Act.
  - b) The Quarterly Fill Summary must be received by the by the Agency on or before April 15, July 15, October 15 and January 15 of each year and must cover the preceding three calendar months. The Quarterly Fill Summary must be submitted to the address in Section 1150.305.
  - c) Upon issuance of a valid CCDD fill operation permit pursuant to 35 Ill. Adm. Code 1100, and until termination of such permit, the owner or operator of the CCDD fill operation shall submit a Quarterly Fill Summary to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.

A violation of Section 1150.215 of the Regulations is alleged for the following reason: **The Quarterly Fill Summary was not maintained at the site of the CCDD fill operation; the Quarterly Fill Summary was not received by the Agency on or before October 15, 2010, January 15, 2011 and April 15, 2011; and the Quarterly Fill Summary was not submitted to the Agency regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.**

15. Pursuant to Section 1150.300 of the Regulations,
- a) Payment of the fee due under Section 22.51b of the Act must be made on a quarterly basis with the submission of the Quarterly Fill Summary. Such payment

FEE

must be received by the Agency on or before April 15, July 15, October 15 and January 15 of each year and must cover the preceding three calendar months.

- b) The fee payment due must be calculated by multiplying the quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured, as reported on the Quarterly Fill Summary, times the applicable rate in Section 22.15b of the Act.

A violation of Section 1150.300 (a) of the Regulations is alleged for the following reason: **The payment of the fee due under Section 22.15b of the Act was not made on or before October 15, 2010, January 15, 2011 and April 15, 2011.**

16. Pursuant to Section 1150.305 of the Regulations, payment must be made by check or money order payable to Illinois Environmental Protection Agency. To pay by Electronic Fund Transfer ("EFT"), please submit a request for EFT to the address below. Payment and forms must be mailed to the Agency at the following address:

Illinois Environmental Protection Agency  
Division of Administration, Fiscal Services  
1021 North Grand Avenue East  
Springfield, IL 62794-9276

A violation of Section 1150.305 of the Regulations is alleged for the following reason: **The payment of the fees due under Section 22.15b of the Act was not made by check or money order (or any other manner) payable to Illinois Environmental Protection Agency.**

17. Pursuant to Permit Condition I.1 of Permit no. CCDD2007-042-DE/OP, The operator must implement the load checking program proposed in the application for Permit No. CCDD2007-042-DE/OP (Log No. CCDD2007-042). 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 a 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 Manger of the BOL Field Operations Section and provide information described in Special Condition 1.2.c.

A violation of Permit Condition I.1 of Permit No. CCDD2007-042-DE/OP is alleged for the following reason: **The load checking program proposed in the application for Permit No. CCDD2007-042DE/OP has not been implemented, and documentation of the records have not been kept for a minimum of three years at the facility or in some alternative location specified in the Illinois EPA permit, making the records unavailable for inspection and copying by the Illinois EPA during normal business hours.**

### SUGGESTED RESOLUTIONS

1. To be in compliance with Sections 22.51(a) of the Act and 1100.201(a) of 35 Illinois Adm. Code, IMMEDIATELY bring your CCDD fill operation into compliance with the Act and Regulations adopted by the Board.
2. To be in compliance with Sections 22.51(b)(3)(i), 22.51(b)(3)(ii), and 22.51(f)(3) of the Act; 1100.205(i) and 1100.210 of 35 Illinois Administrative Code, and Permit Condition I.1 of permit #CCDD2007-042-DE/OP, within 30 days of receipt of this Notice, implement the load checking program, along with the recordkeeping requirements proposed in the application for Permit No. CCDD2007-042-DE/OP. Documentation must be kept up to date and kept for a minimum of three years at the facility, as stated on page 3 of application Log no. CCDD2007-042.
3. To be in compliance with Sections 22.51(f)(2)(B)(i) and 22.51(f)(2)(B)(ii) of the Act, for all uncontaminated soil received as fill, IMMEDIATELY begin obtaining (i) a certifications 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, (ii) certifications from a licensed Professional Engineer that the soil is uncontaminated soil. Certifications must be on either form LPC-662 or LPC-663, whichever is appropriate. Certifications must be made available for inspection or copying by IEPA personnel during normal business hours.
4. To be in compliance with Section 1150.110 of 35 Illinois Administrative Code, within 30 days of receipt of this Violation Notice, begin retaining AT THE SITE all records required to be kept under Part 1150.
5. To be in compliance with Section 1150.200 of 35 Illinois Administrative Code, within 30 days of receipt of this Violation Notice,
  - a) Begin keeping a Daily Record of the CCDD and uncontaminated soil accepted for use as fill material;
  - b) For purposes of reporting and submitting fees, prepare Monthly Fill Records and Quarterly Fill Summaries from the Daily Record;
  - c) Submit Monthly Fill Records and Quarterly Fill Summaries, along with fee payments on the basis of weight in tons, or, on the basis of volume in cubic yards. Monthly Fill Records and Quarterly Fill Summaries must be submitted on forms and in a format as prescribed and provided by the Agency.
  - d) Keep the Monthly Fill Records and Quarterly Fill Summaries in accordance with Section 1150.110.

6. To be in compliance with Section 1150.205 of 35 Illinois Administrative Code, within 30 days of receipt of this Violation Notice:
  - a) Begin maintaining AT THE SITE the Daily Fill Records, which must include the Agency designated site number and the site name.
  - b) For each load accepted, record the date and day of the week the load was accepted along with the quantity in tons weighed or cubic yards measured of CCDD or uncontaminated soil accepted for use as fill material.
  
7. To be in compliance with Section 1150.210 of 35 Illinois Administrative Code, within 30 days of receipt of this Violation Notice:
  - a) Begin maintaining AT THE SITE: Monthly Fill Records, which must include the Agency designated site number, the site name, and the calendar month from which the record applies; along with the total quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured for each day of the calendar month.
  - c) Submit the Monthly Fill Records which were due on or before: October 15, 2010, January 15, 2011, and April 15 2011, each for the previous 3 calendar months. The Monthly Fill Records must be submitted to the address given in Section 1150.305.
  - d) Until termination of the valid CCDD fill operation permit, submit Monthly Fill Records to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material.
  
8. To be in compliance with Section 1150.215 of 35 Illinois Administrative Code, within 30 days of receipt of this Violation Notice:
  - a) Begin maintaining AT THE SITE Quarterly Fill Summaries, which must include the Agency designated site number, the site name, the calendar quarter for which the summary applies, the total quantity of CCDD and uncontaminated soil accepted for use as fill material in tons weighed or cubic yards measured, and the fee rate applicable under Section 22.51b of the Act.
  - b) Submit the Quarterly Fill Summaries which were due on or before: October 15, 2010, January 15, 2011 and April 15, 2011, each recording activities for the previous 3 calendar months. The Quarterly Fill Summaries must be submitted to the address given in Section 1150.305.
  - c) Until termination of the valid CCDD fill operation permit, submit Quarterly Fill Summaries to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material.
  
9. To be in compliance with Sections 1150.300(a), and 1150.305 of 35 Ill. Adm. Code; within 30 days of receipt of this Violation Notice, submit Quarterly Fill Summaries, along with any fees due to the Agency for the time period from July 30, 2010 through March 30, 2011. The payment must be made by check or money order

0997105008—Lasalle County  
Sheridan Sand and Gravel - Wienstand  
L-2011-01132 - Attachment  
Compliance File

payable to Illinois Environmental Protection Agency. To pay by Electronic Fund Transfer ("EFT"), submit a request for EFT to the address below. DO NOT mail payment or Summaries to the Rockford Regional Office. Payment and forms must be mailed to the Agency at the following address:

Illinois Environmental Protection Agency  
Division of Administration, Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

A written response to this Violation Notice #L-2011-01132 should be submitted to:

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

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.



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Sent To: **Sheridan-Joliet Land Development**  
 Attn: **Branko Vardijan**  
 Street, Apt. No., or PO Box No.: **221 N. Washtenaw Avenue**  
 City, State, ZIP+4: **Chicago, IL 60612**

PS Form 3800, August 2005 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:

**Sheridan-Joliet Land Development**  
**Attn: Branko Vardijan**  
**221 N. Washtenaw Avenue**  
**Chicago, IL 60612**

**VN #L-2011-01132**  
**0991105008 - LaSalle County**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) **Branko Vardijan** C. Date of Delivery **5/7/11**

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

2. Article Number (Transfer from service label) **7008 0500 0000 3757 7458**