

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 SHERIDAN-JOLIET LAND)
 DEVELOPMENT, LLC, an Illinois)
 limited liability company, and)
 SHERIDAN SAND & GRAVEL CO.,)
 an Illinois corporation,)
 (Wiensland Site))
)
 Respondents.)

PCB No. 13-20
(Enforcement-Land)

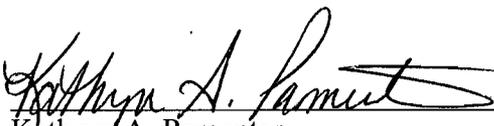
NOTICE OF FILING

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PLEASE TAKE NOTICE that on the 27th day of February, 2013, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Response to Respondents' Motion to Strike and Dismiss, a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
 of the State of Illinois

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DATE: February 27, 2013

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by LISA MADIGAN, Attorney General)	
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limited-liability company, and SHERIDAN)	
SAND & GRAVEL CO.,)	
)	
Respondents.)	

**COMPLAINANT’S RESPONSE TO
RESPONDENTS’ MOTION TO STRIKE AND DISMISS**

NOW COMES, Complainant, People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois (“People” or “Complainant”), and responds to Sheridan-Joliet Land Development, LLC’s (“Sheridan-Joliet”) and Sheridan Sand & Gravel Co.’s (“Sheridan Sand” and together with Sheridan-Joliet, the “Respondents”) Motion to Strike and Dismiss the People’s Complaint. In support of this response, the People state as follows:

BACKGROUND

Sheridan-Joliet owns a clean construction or demolition debris (“CCDD”) facility at 105 S. Wiensland Road, Sheridan, LaSalle County, Illinois (the “Wiensland Site”), and Sheridan Sand operates the Site. (Complaint at p. 2, ¶¶ 4-5.) On November 18, 2008, the Illinois Environmental Protection Agency (the “Illinois EPA”) issued Permit No. CCDD2007-042-DE/OP (the “Wiensland Permit”) to the Respondents to develop a new fill operation at the Wiensland Site. (*Id.* at p. 2, ¶ 6.)

On March 18, 2011, the Illinois EPA conducted an inspection of the Wiensland Site to determine regulatory status and compliance with the Illinois Environmental Protection Act (the "Act"), the Illinois Pollution Control Board's (the "Board") regulations and the Wiensland Permit. (*Id.* at p. 6, ¶ 17.) During the inspection, the Illinois EPA found that:

- The Respondents had not implemented and documented any load checking program at the Wiensland Site. (*Id.* at p. 7, ¶ 18.)
- The Respondents failed to obtain a certification (the "Soil Certification") from either (i) 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 licensed professional engineer that the soil is uncontaminated soil. (*Id.* at p. 9, ¶ 18.)
- The Respondents did not maintain the required daily fill records at the Wiensland Site. (*Id.* at p. 14, ¶ 23.)
- The Respondents did not maintain at the Wiensland Site, and timely submit to the Illinois EPA, the monthly fill records for the months of July 2010 through December 2010 and January 2011 through March 2011. (*Id.*)
- The Respondents did not maintain at the Wiensland Site, and timely submit to the Illinois EPA, the quarterly fill summaries for the quarters ending September 30, 2010, December 31, 2010 and March 31, 2011. (*Id.*)
- The Respondents failed to timely submit to the Illinois EPA quarterly fee payments for the quarters ending September 30, 2010, December 31, 2010 and March 31, 2011. (*Id.* at p. 17, ¶ 19.)

On October 31, 2012, the Complainant filed a four-count Complaint against the Respondents, alleging that the Respondents failed to:

- (a) implement and document a load checking program in violation of Sections 22.51(a), (b)(3)(i) and (b)(3)(ii) of the Act, 415 ILCS 5/22.51(a), (b)(3)(i) and (b)(3)(ii) (2010), 35 Ill. Adm. Code 1100.201(a), 1100.205(a), (b) and (c) and Wiensland Permit condition I.1.;
- (b) obtain the Soil Certification in violation of Sections 22.51(a), (f)(2)(B) of the Act, 415 ILCS 5/22.51(a), (f)(2)(B) (2010), and 35 Ill. Adm. Code 1100.201(a);
- (c) comply with daily, monthly and quarterly recordkeeping requirements in violation of Sections 22.51(a), (b)(3)(ii) and (f)(3) of the Act, 415 ILCS 22.51(a), (b)(3)(ii)

and (f)(3) (2010), and 35 Ill. Adm. Code 1100.201(a), 1100.205(i), 1150.110, 1150.200, 1150.205, 1150.210 and 1150.215; and

- (d) submit quarterly fees in violation of Sections 21(k), 22.51(a) and 22.51(b)(3)(ii) of the Act, 415 ILCS 5/21(k), 22.51(a) and 22.51(b)(3)(ii) (2010), and 35 Ill. Adm. Code 1100.201(a) and 1150.300(a).

On November 30, 2012, the Respondents filed their Motion.¹

ARGUMENT

I. Legal Standard for a Motion to Strike or Dismiss Pleadings

In *People v. Inverse Investments, L.L.C.*, PCB 11-79, 2012 WL 586821, slip op. (Feb. 16, 2012), the Board set forth its standard for ruling on a motion to strike or dismiss. “[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief.” *Inverse Investments*, 2012 WL 586821 at *8 (quoting *Smith v. Central Illinois Regional Airport*, 207 Ill.2d 578, 584-85, (2003)). In making this determination, “the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant.” *Id.* (citing *Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *In re Chicago Flood Litigation*, 176 Ill.2d 179, 184 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill.2d 428, 438 (1989)); *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 47 (Oct. 18, 2012) (“we construe the allegations of the complaint in the light most favorable to the plaintiff”). Moreover, “all inferences from those facts must be considered in the light most favorable to the non-movant.” *Id.* (citing *People v.*

¹ Though seeking the dismissal of the entire Complaint, the Motion contains no argument regarding (a) the contention in Count I that the Respondents violated Wiensland Permit Operating Condition 1.1., which independently required the implementation of a load checking program, and thereby violated Section 22.51(b)(3)(i) of the Act, 415 ILCS 22.51(b)(3)(i) (2010), or (b) the allegations in Count III that the Respondents violated 35 Ill. Adm. Code 1150.110, 1150.200, 1150.205, 1150.210 and 1150.215, which required daily, monthly and quarterly recordkeeping, and thereby violated Sections 22.51(a) and (b)(3)(ii) of the Act, 415 ILCS 5/22.51(a), (b)(3)(ii) (2010), and 35 Ill. Adm. Code 1100.201(a). As a result, each of those alleged violations in Counts I and III remains.

Stein Steel Mills Svcs., PCB 02-1 (Nov. 15, 2001); *Nash v. Jimenez*, PCB 7-97 (Aug. 19, 2010); *Chicago Coke v. IEPA*, PCB 10-75 (Sept. 2, 2010)).

II. Section 31 of the Act Does not Bar the Attorney General from Bringing Complaints on Her Own Motion, and the Illinois EPA Complied with Section 31 of the Act in Providing Notice of the Respondents' Violations.

Paragraph 1 of the Complaint provides that the Attorney General filed the cause of action against the Respondents “on her own motion.” (Complaint at p. 1, ¶ 1.) “[T]he Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State.” *People v. NL Indus.*, 152 Ill.2d 82, 103 (1992) (citation omitted); see also *Pioneer Processing, Inc. v. E.P.A.*, 102 Ill.2d 119, 138 (1984) (“[the Attorney General] has the duty and authority to represent the interests of the People of the State to insure a healthful environment.”) In addition, the cause of action against the Respondents was brought at the request of the Illinois EPA. (Complaint at p. 1, ¶ 1.)

The Respondents contend that Count IV of the Complaint must be dismissed because the Illinois EPA allegedly failed to comply with Section 31 of the Act, 415 ILCS 5/31 (2010). (Motion at pp. 11-14.) Specifically, the Respondents assert that the Illinois EPA did not send them a notice of violation regarding their failure to pay quarterly fees. *Id.* This argument ignores the Board’s decision in *People v. Sheridan Sand & Gravel Co.*, PCB 06-177, 2007 WL 1816057, slip op. (June 7, 2007), in which the Board stated:

“The Board has extensively addressed the requirements of Section 31 of the Act. In considering the legislative history of the 1996 amendments to Section 31 the Board has repeatedly found that they were not intended to bar the Attorney General from prosecuting an environmental violation. See *People v. Eagle-Picher-Boge*, PCB 99-152 (July 22, 1999); *People v. Geon*, PCB 97-62 (Oct. 2, 1997); and *People v. Heuermann*, PCB 97-92 (Sept. 18, 1997).”

* * *

Further, the Board finds that because the Attorney General brought the complaint on her own motion, whether or not the Agency complied with Section 31 of the

Act (415 ILCS 5/31 (2004)) has no bearing on the allegations in the complaint. 2007 WL 1816057, at *13-*14 (quoting *People v. Chiquita Processed Foods, L.L.C.*, PCB 02-156, slip op. 4-5 (Nov. 21, 2002)). Notwithstanding this established precedent in a prior case against one of the Respondents, the Respondents cite *Skillet Fork River Outlet Union Drainage District v. Fogle*, 382 Ill. 77 (1943). (Motion at p. 13.) *Skillet Fork* is inapposite, as it does not address the argument raised in *Sheridan Sand* or this case. Specifically, *Skillet Fork* considered neither the Attorney General's constitutional authority to bring environmental enforcement actions, nor violations of the Act.

Even if their Section 31 argument were correct, the Respondents misstate the record. The Illinois EPA sent the Respondents a notice of violation concerning their failure to pay quarterly fees pursuant to 35 Ill. Adm. Code 1150.300. (See Violation Notice #L-2011-01132 dated May 3, 2011, a true and correct copy of which attached hereto as Exhibit A (the "Violation Notice")). Paragraph 15 of the Violation Notice states, "[p]ursuant 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. . . . 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 [sic] of the Act was not made on or before October 15, 2010, January 15, 2011 and April 15, 2011." (Violation Notice at pp. 11-12, ¶ 15.) Although the Illinois EPA inadvertently referenced Section 22.15b for Section 22.51b in the Violation Notice, the Illinois EPA properly referenced Section 22.51b in Paragraph 15(a) of the Violation Notice and the Respondents properly received notice of the violation of 35 Ill. Adm. Code 1150.300, which is the violation sought to be enforced through the Complaint. (Complaint at p. 17.)

The Respondents' Section 31 argument is both legally and factually incorrect. Applying *Sheridan Sand* and considering the Violation Notice provisions, the Respondents' Motion as to Count IV of the Complaint should be denied.

III. The Complaint Properly Cites Section 22.51(f)(2) of the Act, Section 22.51(f)(3) of the Act and "Old" 35 Ill. Adm. Code 1100.205(a), (b), (c) and (i).

A. Section 22.51(f)(2) of the Act has not been Repealed and does not Contain a Statute of Limitations Provision.

Section 22.51 of the Act sets forth requirements for owners and operators of CCDD fill operations, 415 ILCS 5/22.51 (2010), including to (a) document detailed information for each load of CCDD or uncontaminated soil received, (b) obtain a Soil Certification, (c) confirm that the CCDD or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants and (d) document the foregoing activities, 415 ILCS 5/22.51(f)(2)(A)-(D) (2010). Compliance with Sections 22.51(f)(2)(A)-(D) of the Act was required "[u]ntil the effective date of the Board rules adopted under subdivision (f)(1) of this Section. . . ." 415 ILCS 5/22.51(f)(2) (2010). On August 23, 2012, the Board adopted the final rule for CCDD fill operations, which became effective on August 27, 2012. *See In the Matter of: Proposed Amendments to Clean Construction or Demolition Debris Fill Operations (CCDD): Proposed Amendments to 35 Ill. Adm. Code 1100 (R12-9; Aug. 23, 2012) (the "CCDD Amendments"); 36 Ill. Reg. 13892.* After August 27, 2012, instead of satisfying Sections 22.51(f)(2)(A)-(D) of the Act, 415 ILCS 5/22.51(f)(2)(A)-(D) (2010), owners and operators were required to comply with the requirements of "new" 35 Ill. Adm. Code 1100.205. (*Id.*) The certification requirements of "new" 35 Ill. Adm. Code 1100.205 are more stringent than those in Section 22.51(f)(2) of the Act. *Compare* 415 ILCS 5/22.51(f)(2) (2010) and 35 Ill. Adm. Code 1100.205.

As alleged in Count II of the Complaint, the Respondents failed to obtain a Soil Certification for a pile of soil observed on the Wiensland Site on March 18, 2011. (Complaint at pp. 8-10.) On this date, the Respondents' failure to obtain a Soil Certification constituted a violation of Section 22.51(f)(2)(B) of the Act, 415 ILCS 22.51(f)(2)(B) (2010), as "new" 35 Ill. Adm. Code 1100.205(a) did not yet exist. As such, the Complaint properly cites Section 22.51(f)(2)(B) of the Act as opposed to retroactively applying "new" 35 Ill. Adm. Code 1100.205. In *Commonwealth Edison Co. v. Will County Collector*, 196 Ill.2d 27 (2001), the Illinois Supreme Court analyzed whether newly enacted legislation applied retroactively to violations committed prior to its enactment. Adopting the retroactivity analysis set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), the *Commonwealth Edison* court stated that the primary consideration was whether the General Assembly expressly indicated the "temporal reach" of the amendments. *Commonwealth Edison*, 196 Ill.2d at 39; *see also Caveney v. Bower*, 207 Ill.2d 82, 91 (2003). Here, the legislature expressly provided that Section 22.51(f)(2)(B) of the Act applied to violations committed before the effective date of the CCDD Amendments, August 27, 2012. 415 ILCS 5/22.51(f)(2)(B) (2010) (the statute applies, "[u]ntil the effective date of the Board rules adopted under subdivision (f)(1) of this section. . . ."). In addition, the CCDD Amendments unambiguously state that their effective date was August 27, 2012. 36 Ill. Reg. 13892. Because Section 1100.205 of the CCDD Amendments may not be applied retroactively, Section 22.51(f)(2)(B) of the Act governs with respect to the Respondents' violations.

Even if this express indication of temporal reach did not exist, Section 4 of the Statute on Statutes, 5 ILCS 70/4 (2010),² constitutes “a general saving clause in which ‘the legislature has clearly indicated the ‘temporal reach’ of *every* amended statute. . . . This court has interpreted section 4 to mean that procedural changes to statutes may be applied retroactively, while substantive changes may not.” *People v. Atkins*, 217 Ill.2d 66, 71 (2005) (quoting *Caveney*, 207 Ill.2d at 92 (emphasis in original)). “New” 35 Ill. Adm. Code 1100.205(a) imposes soil certification requirements that are more stringent than Section 22.51(f)(2)(B) of the Act, thereby constituting substantive changes which may not be applied retroactively. *See, e.g., Atkins*, 217 Ill.2d at 72 (substantive amendment which altered the scope of the statute could not be applied retroactively). Accordingly, pursuant to *Commonwealth Edison* and *Caveney*, though filed after the effective date of the CCDD Amendments, the Complaint properly cites Section 22.51(f)(2)(B) of the Act, as opposed to “new” 35 Ill. Adm. Code 1100.205.

In their Motion, the Respondents do not contest that they violated Section 22.51(f)(2)(B) of the Act, 415 ILCS 5/22.51(f)(2)(B) (2010). Rather, the Respondents contend that their March 18, 2011 violations were only enforceable until August 27, 2012, the effective date of the CCDD Amendments. (Motion at p. 7.) The Respondents first argue that Section 22.51(f)(2) “expired as if it had been repealed.” (*Id.* at p. 8.) The General Assembly knows how to expressly repeal a statute. *See, e.g., 230 ILCS 5/54.5* (effective May 26, 2008). By its terms, Section 22.51(f)(2) of the Act has not been expressly repealed. *See 415 ILCS 5/22.51(f)(2)* (2010). Rather, consistent with the General Assembly’s express intent, the Board established amendments to 35 Ill. Adm.

² Section 4 of the Statute on Statutes provides, “[n]o new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law. . . save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. . . .” 5 ILCS 70/4 (2010). *Caveney* held that Section 4 of the Statute on Statutes applies to both civil and criminal cases. *Caveney*, 207 Ill.2d at 92-93.

Code Part 1100 which, among other things, continued to require owners and operators of CCDD fill operations to obtain soil certifications, though pursuant to more rigorous requirements than those of Section 22.51(f)(2)(B) of the Act. *See* “new” 35 Ill. Adm. Code 1100.205.

Moreover, Section 22.51(f)(2) of the Act has not been impliedly repealed or preempted. *Lily Lake Road Defenders v. County of McHenry*, 156 Ill.2d 1, 8 (1993) (discussing doctrines of repeal by implication versus preemption). The doctrine of repeal by implication “is applied when two enactments of the *same* legislative body are irreconcilable. . . .” *Id.* (emphasis in original). In this case, the General Assembly enacted Section 22.51(f)(2) of the Act, whereas the Board enacted the CCDD Amendments. *See* 415 ILCS 22.51(f)(2) (2010); 35 Ill. Adm. Code Part 1100. In addition, the CCDD Amendments are consistent, not irreconcilable, with Section 22.51(f)(2) of the Act. *Compare* 415 ILCS 5/22.51(f)(2)(A)-(D) (2010) and “new” 35 Ill. Adm. Code 1100.205. Similarly, the doctrine of preemption exists where “enactments of two unequal legislative bodies (e.g., Federal and State) are inconsistent.” *Lily Lake*, 156 Ill.2d at 8. The requirements of Section 22.51(f)(2) are incorporated into Section 1100.205 of the CCDD Amendments (though more stringently) and as such, are consistent. Further, preemption is not applicable here because the Board cannot preempt or repeal an act of the legislature. *See, e.g., Village of LaGrange et al. v. McCook Cogeneration Station, L.L.C. et al.*, PCB 96-41, slip op. at *3 (Dec. 7, 1995) (“The Board, as an agency of the executive branch of the state government, has no authority to affect repeal of a law enacted by the state legislature.”). Accordingly, the doctrines of repeal by implication and preemption are inapplicable.

In arguing that Section 22.51(f)(2) of the Act expired or was repealed, Respondents rely on *Wall v. Chesapeake & O. Ry. Co.*, 290 Ill. 227 (1919). (Motion at pp. 8-9.) *Wall* considered whether a statute, repealed by the legislature while an appeal was pending, applied when the

court rendered its decision. *Wall*, 290 Ill.2d at 232. Unlike the statute at issue in *Wall*, Section 22.51(f)(2) of the Act was never repealed. In addition, the *Wall* court stated that “[i]t is well settled that, 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.” *Id.* Yet, Section 22.51(f)(2) of the Act does not afford any special remedy. See 415 ILCS 5/22.51(f)(2) (2010). Section 42 of the Act, 415 ILCS 5/42 (2010), sets forth the only remedy for a violation of Section 22.51 of the Act. Based on the foregoing, Section 22.51(f)(2) has not been repealed, expressly or impliedly, and may be enforced against the Respondents who violated that Section of the Act prior to August 27, 2012.

Second, the Respondents argue that Section 22.51(f)(2) of the Act contains a “sunset provision.” (Motion at p. 7.) As an example, the Respondents cite *In the Matter of: Radionuclide Restricted Status, Amendments to 35 Ill. Adm. Code 602.105, 602.106, 602.108 and 602.115* (R3-21; Nov. 6, 2003) (the “Radionuclide Amendments”). (*Id.* at n.8.) The Radionuclide Amendments expressly added a “‘sunset’ provision under which the exemption [at issue] expires on December 8, 2009.” (R3-21 at p. 1.) Unlike the Radionuclide Amendments, neither Section 22.51(f)(2) of the Act, nor Section 1100.205 of the CCDD Amendments expressly includes a sunset provision. As a result, Respondents’ “sunset provision” argument requires reading a statute of limitations into Section 22.51(f)(2) of the Act where none exists. Had the legislature intended for there to be a time limit for the enforcement of Section 22.51(f)(2) of the Act, 415 ILCS 5/22.51(f)(2) (2010), they could have included a provision establishing a statute of limitations. The General Assembly chose not to do so. Even if Section 22.51(f)(2) of the Act contained a statute of limitations provision, it would not apply to the State in environmental enforcement cases:

Unless the terms of a statute of limitations expressly include the State, county, municipality or other governmental agencies, the statute, so far as public rights are concerned, as distinguished from private and local rights, is inapplicable to them. The question is whether the State (or its agency or subdivision) is asserting public rights on behalf of all the people of the State or private rights on behalf of a limited group. Here, the Agency argues, and we agree, that what the Agency seeks is to protect the public's right to a clean environment.

Pielet Bros. Trading, Inc. v. Pollution Control Bd., 110 Ill. App. 3d 752, 758 (5th Dist. 1982)

(internal citations omitted.)

The Respondents contend that neither the soil certification requirements in Section 22.51(f)(2)(B) of the Act, nor in Section 1100.205 of the CCDD Amendments apply to their violations. This argument is contrary to the legislature's intent evidenced in the language of those provisions and produces an absurd result. *Stewart v. Industrial Comm'n*, 115 Ill.2d 337, 341 (1987) (stating that it is a cardinal rule of statutory interpretation that absurd results must be avoided). Because Section 22.51(f)(2)(B) of the Act has not been repealed, expressly or impliedly, and does not contain a statute of limitations provision, the Complaint properly alleges that the Respondents violated that statute.

B. The Respondents' Independent Violation of Section 22.51(f)(3) of the Act May be Enforced.

Owners and operators of CCDD fill operations were required to maintain all Section 22.51(f)(2)(A)-(D) documentation for a minimum of three years following the receipt of each load of CCDD or uncontaminated soil. 415 ILCS 5/22.51(f)(3) (2010). After August 27, 2012, instead of satisfying Section 22.51(f)(3) of the Act, 415 ILCS 22.51(f)(3) (2010), owners and operators were required to comply with the three-year document retention requirement set forth in "new" 35 Ill. Adm. Code 1100.205(c). 36 Ill. Reg. 13892. The document retention requirements of "new" 35 Ill. Adm. Code 1100.205(c) are substantially similar to those of

Section 22.51(f)(3) of the Act. *Compare* 415 ILCS 5/22.51(f)(3) (2010) and “new” 35 Ill. Adm. Code 1100.205(c).

As set forth in Count III of the Complaint, the Respondents failed to maintain the Soil Certification for a minimum of three years following the receipt of the load of CCDD or uncontaminated soil observed on March 18, 2011. (Complaint at pp. 8-9, ¶¶ 15-18; pp. 10-11, ¶ 16.) By failing to do so, the Respondents violated, among other provisions, Section 22.51(f)(3) of the Act, 415 ILCS 22.51(f)(3) (2010). The Respondents contend that because Section 22.51(f)(3) of the Act contains a “direct reference” to Section 22.51(f)(2) of the Act, Section 22.51(f)(3) is only enforceable to the extent Section 22.51(f)(2) is enforceable. (Motion at p. 10.) Yet, Section 22.51(f)(3) of the Act contains duties independently enforceable from those set forth in Section 22.51(f)(2) of the Act. In addition, Section 22.51(f)(3) of the Act has not been repealed and does not contain any language prohibiting its enforcement against violators of the statute prior to August 27, 2012. *See* 415 ILCS 5/22.51(f)(3) (2010); *see also supra* at pp. 7-10. Therefore, Count III of the Complaint properly alleges that the Respondents violated Section 22.51(f)(3) of the Act, 415 ILCS 22.51(f)(3) (2010).

C. “Old” 35 Ill. Adm. Code 1100.205(a), (b), (c) and (i) Remains Enforceable Against the Respondents.

Originally enacted on August 24, 2006, Part 1100 of Title 35 of the Illinois Administrative Code sets forth rules for CCDD fill operations. 35 Ill. Adm. Code 1100 *et seq*; 30 Ill. Reg. 14534. On August 27, 2012, the Board’s amendments to the rules for CCDD fill and uncontaminated soil operations became effective. 36 Ill. Reg. 13892. As a result, owners and operators of CCDD fill operations were required to comply with the old rules until August 27, 2012, and thereafter the new rules governed. *Id.* At issue in this case are the Board rules regarding the implementation of a load checking program, random inspections of loads,

documentation of such inspections and the three-year document retention requirement. (Complaint at Count I (pp. 1-7) and Count III (¶¶ 17, 24).) The Board made no substantive changes in the amendments to these respective rules. Compare “old” 35 Ill. Adm. Code 1100.205(a), (b), (c), (i) with “new” 35 Ill. Adm. Code 1100.205(b)(1), (2), (3), and (c) (See CCDD Amendments at pp. 18-24.)

The Respondents contend that “there is no” Section 1100.205(a), (b), (c) and (i) of Title 35 of the Illinois Administrative Code. (Motion at pp. 2-3, 10.) This argument ignores the express language of the CCDD Amendments which unambiguously provides an effective date of August 27, 2012. 36 Ill. Reg. 13892. Therefore, Counts I and III of the Complaint properly cite “old” 35 Ill. Adm. Code 1100.205(a), (b), (c), (i) with respect to the Respondents’ March 18, 2011 violations. See *Commonwealth Edison*, 196 Ill.2d at 39; see also *Caveney*, 207 Ill.2d at 91.

IV. Count I Of The Complaint Sets Forth Sufficient Factual Allegations of Respondents’ Violation of “Old” 35 Ill. Adm. Code 1100.205(a), (b) and (c).

In determining the adequacy of the allegations of a complaint, the Board considers whether the pleader alleged specific ultimate facts supporting the cause of action, as opposed to legal conclusions. *Inverse Investments*, 2012 WL 586821 at *9.

A complaint’s allegations are “sufficiently specific if they reasonably inform the defendants by factually setting forth the elements necessary to state a cause of action.” *People v. College Hills Co.*, 91 Ill.2d 138, 145, 435 N.E.2d 463, 467 (March 16, 1982). Fact-pleading does not require a complainant to set out its evidence: “[t]o the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts.” *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill.2d 300, 308, 430 N.E.2d 1005, 1008-09 (1981) (quoting *Board of Education v. Kankakee Federation of Teachers Local No. 886*, 46 Ill.2d 439, 446-47 (1970)).

Id. at *9. Count I of the Complaint alleges that the Respondents failed to implement and document a load checking program at the Site based on the Illinois EPA’s March 18, 2011 inspection of the Site. (Complaint at pp. 6-7, ¶¶ 17-19.) These factual allegations support the

legal conclusion that the Respondents violated Sections 22.51(a) and 22.51(b)(3)(i), (ii) of the Act, 415 ILCS 5/22.51(a) and 22.51(b)(3)(i), (ii) (2010), and 35 Ill. Adm. Code 1100.201(a) and 1100.205(a), (b) and (c). (*Id.* at p. 7, ¶ 19.)

The Respondents contend that Count I of the People's Complaint is insufficient, because it does not include any specific allegations regarding the 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; 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. (Motion at pp. 3-4.) However, by alleging that Respondents failed to implement any load checking program at the Wiensland Site, the People have alleged that the Respondents failed to implement each required component of a load checking program. Applying the *Inverse Investments* standard, Count I of the Complaint is sufficiently specific as to the fact that no load checking program existed at the Wiensland Site on March 18, 2011.³

V. Dismissal of the Complaint Pursuant to Section 31(c)(1) of the Act is Unwarranted.

Section 31(c)(1) of the Act requires the Office of the Illinois Attorney General to serve a complaint on the person alleged to have violated the Act, specifying “the provision of the Act, rule, regulation, permit, or term or condition thereof under which such person is said to be in violation. . . .” 415 ILCS 5/31(c)(1) (2010). In addition, “[s]uch complaint shall be

³ The Respondents incorrectly contend that the Complaint alleges observations of the Illinois EPA as opposed to violations that occurred. (Motion at p. 5.) For example, Paragraph 18 of Count I references Illinois EPA's observation of a violation: “[d]uring the March 18, 2011 inspection, the Illinois EPA observed that Respondents did not implement and document a load checking program at the Wiensland Site.” Paragraph 19 of Count I then asserts that a violation occurred: “[b]y failing to implement and document a load checking program. . . .” See also Count II, ¶¶ 18-19; Count III, ¶¶ 23-24; Count IV, ¶¶ 19-20. Accordingly, the Complaint is “sufficiently specific” to “factually [set] forth the elements necessary to state a cause of action.” *Inverse Investments*, 2012 WL 586821, at *9.

accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act, to correct such violation.” *Id.* The Illinois Environmental Facilities Financing Act (the “Financing Act”) does not provide financing for the payment of a civil penalty:

(a) The General Assembly finds:

* * *

- (iv) that it is desirable to provide additional and alternative methods of financing the costs of the acquisition and installation of the devices, equipment and facilities required to comply with the quality and land reclamation standards;
- (v) that the alternative method of financing provided in this Act is therefore in the public interest and serves a public purpose in protecting and promoting the health and welfare of the citizens of this state by reducing, controlling and preventing environmental damage;

* * *

- (vii) that it is desirable to promote the use of alternative methods for managing hazardous wastes and to provide additional and alternative methods of financing the costs of establishing the recycling, incineration, physical, chemical and biological treatment, and other facilities necessary to meet the requirements of the Environmental Protection Act.

20 ILCS 3515/2 (2010). The Financing Act, and the corresponding Section 31(c)(1) notification, address financing to correct “violations.” In this case, the Complaint seeks only the payment of a civil penalty for the Respondents’ violations of the Act, the Board regulations and the Wiensland Permit, as the violations were corrected prior to the filing of the Complaint. Accordingly, the Respondents’ Motion based on Section 31(c)(1) of the Act should be denied.⁴

⁴ Although the Respondents had notice of the financing provision in Section 31(c)(1) of the Act as evidenced by the argument in their Motion, on February 27, 2013, an Amended Notice of Electronic Filing was filed with the Board and served on the Respondents, which includes the financing notification and thereby cures any deficiency. *See Exhibit B* attached hereto.

CONCLUSION

Based on the foregoing, the Respondents have not established that there is “no set of facts that could be proved which would entitle the plaintiff to relief.” *Inverse Investments*, 2012 WL 586821 at *8. Taking all well-pled allegations of the Complaint as true and drawing all reasonable inferences from them in favor of the Complainant, *id.*, the Respondents’ Motion should be denied.⁵

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

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

By:



KATHRYN A. PAMENTER
Assistant Attorney General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-0608

⁵ To the extent the Board determines that the CCDD Amendments apply retroactively, Complainant will seek leave to amend the Complaint to cite the new regulations. Regardless of that decision, Complainant will seek leave to file an amended complaint to (a) correct the typographical errors in Paragraphs 15 and 18 of Count II which state “March 18, 2010,” instead of “March 18, 2011,” the date of the Illinois EPA inspection, and (b) delete Paragraph 17 of Count II, as the Board has adopted the rules prescribed under Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1) (2010), as of the date of the filing of the Complaint.

EXHIBIT A



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

May 3, 2011

7008 0500 0000 3757 7458
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

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Sheridan Sand and Gravel – Wicnsland
VN #L-2011-01132
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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

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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.

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(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.

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(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

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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

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- 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;

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- 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.

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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

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- 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

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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

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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 I.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.**

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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.

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Sheridan Sand and Gravel - Wiansland
L-2011-01132 - Attachment
Compliance File

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**

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Sheridan Sand and Gravel - Wiensland
L-2011-01132 - Attachment
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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.

7008 0500 0000 3757 7458

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For delivery information visit our website at www.usps.com

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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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 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:

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

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
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Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

**State of Illinois
Environmental Protection Agency
Rockford Regional Office
4302 North Main Street
Rockford, Illinois 61103**

KG/TL

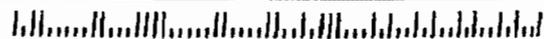


EXHIBIT B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 SHERIDAN-JOLIET LAND)
 DEVELOPMENT, LLC, an Illinois)
 limited liability company, and)
 SHERIDAN SAND & GRAVEL CO.,)
 an Illinois corporation,)
)
 Respondents.)

PCB No. 13-20
(Enforcement-Land)

AMENDED NOTICE OF ELECTRONIC FILING

TO: Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co.
 c/o Mr. Branko Vardijan c/o Kenneth Anspach, Esq.
 221 N. Washtenaw Avenue Anspach Law Office
 Chicago, IL 60612 111 West Washington Street, Suite 1625
 (Via Certified Mail) Chicago, Illinois 60602
 (Via Regular Mail)

PLEASE TAKE NOTICE that on October 31, 2012, we filed the initial Complaint in this matter with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A true and accurate copy of the Complaint was previously served upon you. Financing may be available, through the Illinois Environmental Facilities Financing Act, to correct the violations alleged in the Complaint.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

RESPECTUFLY SUBMITTED,

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General of the State of Illinois

BY: 
 Kathryn A. Pamentor
 Environmental Bureau
 Assistant Attorney General
 69 W. Washington Street, #1800
 Chicago, Illinois 60602
 (312) 814-0608

CERTIFICATE OF SERVICE

I, Kathryn A. Pamentor, an Assistant Attorney General, do certify that I caused to be served this 27th day of February, 2013, the attached Amended Notice of Electronic Filing upon the persons listed below by placing a true and correct copy in an envelope, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co.

c/o Mr. Branko Vardijan
221 N. Washtenaw Avenue
Chicago, IL 60612
(Via Certified Mail)

c/o Kenneth Anspach, Esq.
Anspach Law Office
111 West Washington Street, Suite 1625
Chicago, Illinois 60602
(Via Regular Mail)

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
(Via Regular Mail)


KATHRYN A. PAMENTER

CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 27th day of February, 2013, the attached Notice of Filing and Complainant's Response to Respondents' Motion to Strike and Dismiss upon the parties listed on the Notice of Filing by placing a true and correct copy in an envelope addressed as set forth on said Notice of Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


KATHRYN A. PAMENTER