

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 2007-0004
)	
vs.)	(IEPA No. 139-06-AC)
)	
FRANK WILHELM,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **ENTRY OF APPEARANCE OF CHRISTINE G. ZEMAN** and **PETITION TO CONTEST ADMINISTRATIVE CITATION**, copies of which are herewith served upon you.

Respectfully submitted,

FRANK WILHELM,
Respondent,

Dated: September 1, 2006

By: _____ /s/ Christine G. Zeman

Christine G. Zeman
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

WILH:001/Filings/NOF - EOA & Petition to Contest AC

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

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PROTECTION AGENCY,)	
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)	
FRANK WILHELM,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF CHRISTINE G. ZEMAN

NOW COMES Christine G. Zeman, of the law firm HODGE DWYER ZEMAN,
and hereby enters her appearance in this matter.

Respectfully submitted,

/s/ Christine G. Zeman
Christine G. Zeman

Dated: September 1, 2006

Christine G. Zeman
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

WILH:001/Filings/EOA CGZ

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ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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Complainant,)	AC 2007-0004
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)	
FRANK WILHELM,)	
)	
Respondent.)	

PETITION TO CONTEST ADMINISTRATIVE CITATION

NOW COMES Respondent, FRANK WILHELM, by and through HODGE DWYER ZEMAN, and pursuant to 35 Ill. Admin Code § 108.204, hereby contests the Administrative Citation (“AC”) improperly issued in the above-entitled cause and in support thereof states as follows.

1. On July 28, 2006, Complainant filed an AC with the Illinois Pollution Control Board (“Board”) alleging, *inter alia*, that Frank Wilhelm owns and operates an open dumping facility without an Illinois Environmental Protection Agency Operating Permit. *See* Administrative Citation, *Illinois Environmental Protection Agency v. Frank Wilhelm*, AC 2007-004 at ¶¶ 1-2 (July 28, 2006).

2. The subject facility of the AC is commonly known as Decatur/Wilhelm and, according to Complainant’s AC, is located at the:

Part of the West Half of the Northeast Quarter and the East Half of the East Half of the Northwest Quarter in Section 32, Township 17, North Range 2 East of the Third Principal Meridian, Macon County, Illinois.

Id. at ¶ 1.

3. The Complainant also states that the “Respondent has owned and operated said facility at all times pertinent hereto.” *Id.* at ¶ 3.

4. Section 108.206 of the Board regulations provides, in relevant part, “[a] formal petition to contest must include any reasons why the AC Recipient believes that AC was improperly issued, including: a) The AC Recipient does not own the property” 35 Ill. Admin. Code § 108.206.

5. Frank Wilhelm, the Respondent and recipient of the Complainant’s AC, does not own the property described in the Complaint. *See* Chicago Title Insurance Policy, attached hereto as Exhibit A, issued for the real estate described in the AC, but not issued to or naming Frank Wilhelm as owner.

6. Therefore, the AC was improperly issued to Frank Wilhelm.

7. Further, on information and belief, the Respondent did not cause or allow the alleged open dumping, which, if such occurred as alleged, was the result of uncontrollable circumstances pursuant to 35 Ill. Admin. Code §§ 108.206(b) and (d).

WHEREFORE, Respondent, FRANK WILHELM, requests that the Illinois Pollution Control Board enter an Order dismissing the Administrative Citation as improperly issued pursuant to Section 108.206(a) of its administrative regulations, and denying the civil penalties and any other relief sought therein.

Respectfully submitted,

FRANK WILHELM,
Respondent,

By: /s/ Christine G. Zeman
Christine G. Zeman

Dated: September 1, 2006

Christine G. Zeman
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

WILH:001/Filings/Petition to Contest AC

AMERICAN LAND TITLE ASSOCIATION
OWNER'S POLICY FORM B-1970
(Amended 10-17-70)

14 0122 04 023670

CHICAGO TITLE INSURANCE COMPANY

42.5 acres

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land; or
4. Unmarketability of such title.

In Witness Whereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of the date of policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

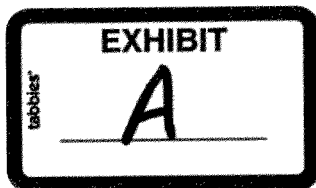
Issued by:
GARY K. ANDERSON
145 S. Water St.
Decatur, Illinois 62523
(217) 428-6675

CHICAGO TITLE INSURANCE COMPANY
By:

Richard L. Pella
President.

ATTEST:

Thomas J. Adams
Secretary.



IMPORTANT

This policy necessarily relates solely to the title as of the date of the policy. In order that a purchaser of the real estate described herein may be insured against defects, liens or encumbrances, this policy should be reissued in the name of such purchaser.

OFFICE FILE NUMBER	POLICY NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE
Macon #45794	14-0122-04-023670	December 8, 1986	\$70,000.00

1. Name of Insured:

FERDINAND W. WILHELM

2. The estate or interest in the land described herein and which is covered by this policy is:

Fee simple

3. The estate or interest referred to herein is at Date of Policy vested in the insured.

4. The land herein described is encumbered by the following mortgage or trust deed, and assignments:

NONE

and the mortgages or trust deeds, if any, shown in Schedule B hereof.

5. The land referred to in this policy is described as follows:

Part of the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ and the East $\frac{1}{2}$ of the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section Thirty-two (32), Township Seventeen (17) North, Range Two (2) East of the 3rd P.M., Macon County, Illinois, said tract being more particularly described as follows: Beginning at the Northwest corner of the Northeast $\frac{1}{4}$ of said Section 32, running thence S $88^{\circ}41'54''$ West for 653.60 feet; thence S $0^{\circ}16'40''$ West for 2643.05 feet; thence North $89^{\circ}20'00''$ East for 235.50 feet; thence North $0^{\circ}08'49''$ East for 670.00 feet; thence North $89^{\circ}20'00''$ East for 424.00 feet; thence S $0^{\circ}08'49''$ West for 290.00 feet; thence North $88^{\circ}28'30''$ East for 189.40 feet; thence S $0^{\circ}08'49''$ West for 150.00 feet; thence N $88^{\circ}28'30''$ East for 284.10 feet; thence S $0^{\circ}08'49''$ West for 230.00 feet; thence N $88^{\circ}28'30''$ East for 444.84 feet; thence North $0^{\circ}03'00''$ East for 638.2 feet; thence North $88^{\circ}28'30''$ East for 145.50 feet; thence North $0^{\circ}03'00''$ West for 438.08 feet; thence North $89^{\circ}59'23''$ East for 250.42 feet; thence North $0^{\circ}03'00''$ West for 30.00 feet; thence South $89^{\circ}58'51''$ West for 396.00 feet; thence North $0^{\circ}03'00''$ West for 275.00 feet; thence North $89^{\circ}58'51''$ East for 12.00 feet; thence North $7^{\circ}51'02''$ East for 546.40 feet; thence North $25^{\circ}52'54''$ East for 62.44 feet; thence N $50^{\circ}09'36''$ West for 291.00 feet; thence S $25^{\circ}20'24''$ West for 343.55 feet; thence North $89^{\circ}55'37''$ West for 445.43 feet; thence North $0^{\circ}27'59''$ East for 235.00 feet; thence North $89^{\circ}39'47''$ West for 215.15 feet; thence North $0^{\circ}08'49''$ East for 530.25 feet to the point of beginning, except the South 1099.95 feet thereof. Situated in Macon County, Illinois.

This policy valid only if Schedule B is attached.

Policy Number 14-0122-04-023670
 Owners
 Policy Number None
 Loan

This policy does not insure against loss or damage by reason of the following exceptions:

General Exceptions:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
- (3) Easements or claims of easements not shown by the public records.
- (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) Taxes or special assessments which are not shown as existing liens by the public records.

Special Exceptions: The mortgage, if any, referred to in Item 4 of Schedule A.

- (1) Taxes for 1986, which as of the date of this policy are not yet due or payable.
- (2) Rights of the Public, the State of Illinois, the County, the Township and the municipality in and to that part of the premises in question taken, used, or dedicated for roads or highways.
- (3) Rights of way for drainage ditches, drain tiles, feeders, laterals, and underground pipes, if any.
- (4) Rights of Illinois Iowa Power Company, an Illinois Corporation, its successors and assigns, under and by virtue of Easement dated March 9, 1940 and recorded July 26, 1940 in Book 797, Page 188 as Document No. 326723. (Affects "Generally adjacent to and parallel with the Southwestern right of way line of the Illinois Central Railroad Company, all poles to be set within 20 feet of the right of way of said railroad company)
- (5) Rights of Illinois Power Company, an Illinois Corporation, under and by virtue of Easement dated December 12, 1974 and recorded January 24, 1975 in Book 1823, Page 118 as Document No. 968309. (Affects the West 10 feet & the North 10 feet of that part of the West 377.95 feet of the West $\frac{1}{2}$ Northeast $\frac{1}{4}$ of Section 32-17-2 E of the 3rd P.M., lying South and West of the Illinois Central Railroad right of way, except the South 230 feet thereof and except the North 530.25 feet thereof)
- (6) Rights of Illana Company, under and by virtue of Right of Way Contract dated March 4, 1939 and recorded May 9, 1939 in Book 779, Page 521 as Document No. 309930, to lay, maintain, inspect, alter, repair, operate, replace, remove and re-lay a pipeline for the transportation of oil, gas, etc. (Affects East $\frac{1}{2}$ East $\frac{1}{2}$ Northwest $\frac{1}{4}$ of Section 32-17-2E. NOTE: Amended by instrument recorded October 21, 1981 in Book 2080, Page 825 as Document No. 1125236.

NOTE: Assigned to Phillips Petroleum Company.

Countersigned

 Authorized Signatory

Schedule B of this Policy consists of 2 pages.

Macon #45794

(Schedule B continued)

Policy Number 14-0122-04-023670
Owners

Policy Number None
Loan

- (7) Rights of Phillips Petroleum Company, under and by virtue of Right of Way Contract dated July 14, 1951 and recorded August 31, 1951 in Book 1077, Page 415 as Document No. 509867.
- (8) Rights of Weldon H. Owens and Dorothy, M. Owens, husband and wife, for an easement of ingress and egress as created in Trustee's Deed dated December 13, 1974 and recorded December 18, 1974 in Book 1820, Page 671 as Document No. 966937.
- (9) NOTE: Access over the Illinois Central Gulf right-of-way is by license.

1. Definition of Terms

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company may have had against the named insured, those who succeed to the interest of such insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage hereunder.

(c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

(d) "land": the land described, specifically or by reference in Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": those records which by law impart constructive notice of matters relating to said land.

2. Continuation of Insurance after Conveyance of Title

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured so long as such insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such estate or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

3. Defense and Prosecution of Actions—Notice of Claim to be given by an Insured Claimant

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or a defense interposed against an insured in an action to enforce a contract for a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

(b) The insured shall notify the Company promptly in writing (i) in case any action or proceeding is begun or defense is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice.

(c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy.

(d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this

policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred.

4. Notice of Loss—Limitation of Action

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

5. Options to Pay or Otherwise Settle Claims

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment, by the insured claimant and authorized by the Company.

6. Determination and Payment of Loss

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

7. Limitation of Liability

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

8. Reduction of Liability

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

9. Liability Noncumulative

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under

CONDITIONS AND STIPULATIONS (Continued)

any policy insuring either (a) a mortgage shown or referred to in Schedule B hereof which is a lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. The Company shall have the option to apply to the payment of any such mortgages any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed a payment under this policy to said insured owner.

10. Apportionment

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of said parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each such parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement herein or by an endorsement attached hereto.

11. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights

and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

12. Liability Limited to this Policy

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

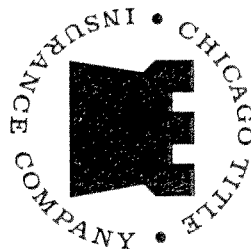
No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. Notices, Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to its principal office at 111 West Washington Street, Chicago, Illinois 60602, or at any branch office of the Company.

*American Land Title Association
Owner's Policy Form B-1970
(Amended 10-17-70)*

POLICY
OF
TITLE
INSURANCE



CHICAGO
TITLE INSURANCE
COMPANY
111 WEST WASHINGTON STREET
CHICAGO, ILLINOIS 60602