



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO. 10-08
	)	(Enforcement – Land)
	)	
DON SWINSON, an individual, and	)	
CHAMPION ENVIRONMENTAL	)	
SERVICES, INC., a Wisconsin Corporation,	)	
	)	
Respondents.	)	

**AGREED MOTION TO REQUEST RELIEF  
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. On June 14, 2010, the People of the State of Illinois, filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. On June 17, 2010, the Board issued an order directing the parties to file an amended complaint or an amended stipulation and proposal for settlement to address an inconsistency as it relates to Count III of the Complaint.
3. Count III of the Complaint is alleged against Swinson only, however the Stipulation which is between the People and Champion only includes Count III in Section I.B. Allegation of Non-Compliance.
4. This amendment seeks to correct the mistake and delete the allegation of 35 Ill. Adm. Code 807.201 and 807.202(a) and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2008), from this Amended Stipulation as this allegation does not relate to Champion.
5. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2008) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). . . .

6. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2008).

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
\_\_\_\_\_  
ZEMEHERET BEREKET-AB  
Environmental Bureau  
Assistant Attorney General  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-3816

DATE: June 24, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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Complainant,	)	
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v.	)	PCB NO. 10-08
	)	(Enforcement - Land)
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CHAMPION ENVIRONMENTAL	)	
SERVICES, INC., a Wisconsin corporation,	)	
	)	
Respondents.	)	

**AMENDED STIPULATION AND PROPOSAL FOR SETTLEMENT  
WITH CHAMPION ENVIRONMENTAL SERVICES, INC., ONLY**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA") and Champion Environmental Services, Inc. ("Respondent") ("Parties to the Amended Stipulation"), have agreed to the making of this Amended Stipulation and Proposal for Settlement ("Amended Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Amended Stipulation and issuance of relief. None of the facts stated herein shall be introduced into evidence in any other proceeding regarding the alleged violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Amended Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On July 28, 2009, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA.

2. At all times relevant to this Complaint, Don Swinson, an individual, owned and continues to own a vacant lot located at 2000 Cunningham Road, City of Rockford, Winnebago County, Illinois, where a recycling operation was being conducted ("Swinson Site").

3. At all times relevant to this Complaint, CHAMPION ENVIRONMENTAL SERVICES, Inc., ("Champion") was and is a Wisconsin corporation authorized to transact business in the State of Illinois.

4. The City of Rockford contracted with Champion to demolish a portion of a factory located on a property owned by the City of Rockford, previously used as a garage and storage for the Public Works Department commonly known as "City Yards."

5. The demolition project was located at 500 S. Independence Avenue, Rockford, Winnebago County, Illinois.

6. On March 26, 2008, the Illinois EPA inspected the Site in response to a citizen complaint.

7. Demolition debris from the project, after asbestos abatement, was trucked from the demolition site to the Swinson Site for recycling.

8. Champion hauled debris containing bricks, wood timbers, and small pieces of metal from the demolition site to the Swinson Site where workers would hand pick bricks, metal

and wood timbers, out of the debris and repackage the bricks, metal and wood timbers for sale or recycling purposes.

9. After removing the bricks, metal and wood for recycling, the remaining waste that was too small to recover (“fines”) was left on the Swinson Site, and subsequently removed.

10. The Swinson Site did not have a permit to accept general construction or demolition debris.

11. On May 1, 2008, the Illinois EPA issued a Violation Notice to Respondent pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1) (2008).

12. On June 13, 2008, Respondent responded to the Section 31 Violation Notice and submitted a proposed compliance commitment agreement (“CCA”).

13. On July 1, 2008, the Illinois EPA rejected the proposed CCA.

14. On July 17, 2008, the Illinois EPA conducted a follow up inspection and observed that the construction and demolition debris had been removed from the Swinson Site.

15. On August 28, 2008, the Illinois EPA sent a Notice of Intent to Pursue Legal Action (“NITPLA”) to Champion.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Open Dumping in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2008);

Count II: Conducting a Waste Storage or Waste Disposal Operation Without a Permit in violation of Section 21(d) of the Act, 415 ILCS 5/21(d) (2008);

Count III: Disposal of Waste at an Unpermitted Facility in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2008);

Count IV: Causing or Allowing Litter in violation of Section 21(p) (1) of the Act, 415 ILCS 5/21(p) (1) (2008);

**C. Non -Admission of Violations**

The Respondent represents that it has entered into this Amended Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Amended Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Amended Stipulation shall not be interpreted as including such admission.

**II. APPLICABILITY**

This Amended Stipulation shall apply to and be binding upon the Parties to the Amended Stipulation, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Amended Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Amended Stipulation. This Amended Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Amended Stipulation state the following:

1. Complainant does not allege injury to the health and general welfare of the public.
2. Complainant does not have adequate data to determine the social and economic value of the operation.
3. Operation of an unpermitted solid waste management site was not suitable for the area.
4. Obtaining a permit prior to conducting a waste disposal operation was both technically practicable and economically reasonable.
5. Respondent has subsequently come into compliance.

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

Section 42(h) of the Act, 415 ILCS 5/42(h)(2008), provides as follows:



In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

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

1. The alleged violations occurred sometime prior to March 26, 2008 and they were addressed sometime prior to July 17, 2008.
2. The violations were addressed within a reasonable time of having been discovered.

3. Economic benefits accrued by Respondent are believed to be minimal and are accounted for in the \$2,500.00 penalty agreed herein.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Two Thousand Five Hundred Dollars (\$2,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Champion has previously adjudicated violations of the Act. A five-count amended complaint was filed against Champion on February 8, 2000, PCB 97-135 (enforcement-air). Champion denied the allegations contained in Counts I, IV and V, concerning air pollution, improper emission control, and improper disposal. Champion admitted the allegations contained in Counts II and III for failing to provide timely notice prior to demolition or renovation and failing to provide complete notice of demolition or renovation.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Two Thousand Five Dollars (\$2,500.00) within thirty (30) days from the date the Board adopts and accepts this Amended Stipulation.

**B. Payment Procedures**

All payments required by this Amended Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Zemeheret Bereket-Ab  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**C. Future Compliance**

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

2. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**D. Release from Liability**

In consideration of the Respondent's payment of the \$2,500.00 penalty, its commitment to cease and desist as contained in Section V.C. above, completion of all activities required

hereunder, and upon the Board's approval of this Amended Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on April 30, 2009. The Complainant reserves, and this Amended Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Amended Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), or entity other than the Respondent.

**E. Execution of Amended Stipulation**

The undersigned representatives for the Parties to the Amended Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Amended Stipulation and to legally bind them to it.

PEOPLE OF THE STATE OF ILLINOIS

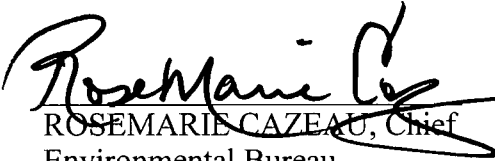
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY:

  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:

  
JOHN J. KIM  
Chief Legal Counsel

DATE:

5/24/10

DATE:

5/20/10

CHAMPION ENVIRONMENTAL  
SERVICES, INC.,

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

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

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

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

PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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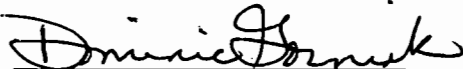
\_\_\_\_\_  
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Chief Legal Counsel

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

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

CHAMPION ENVIRONMENTAL  
SERVICES, INC.,

BY:



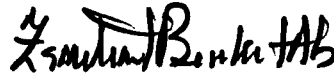
DATE: May 25, 2010

Name: Dominic Gorniak

Title: President

**CERTIFICATE OF SERVICE**

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 24<sup>th</sup> day of June 2010, the foregoing Notice of Filing, an Amended Stipulation and Proposal for Settlement with Champion Environmental Services, Inc., only, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



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ZEMEHERET BEREKET-AB