





WHEREFORE, Complainant and one of the Respondents Don Swinson, an individual, request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

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) 814-3094

DATE: August 16, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**STIPULATION AND PROPOSAL FOR SETTLEMENT**  
**WITH DON SWINSON 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 Don Swinson ("Respondent") ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("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 Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the 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 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 conducted ("Swinson Site").

3. The City of Rockford had contracted with Champion Environmental Services, Inc. ("Champion") to demolish a large portion of a large 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" ("Demolition Site").

4. The Demolition Site was located at 500 S. Independence Avenue, Rockford, Winnebago County, Illinois.

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

6. Most of the demolition debris from the Demolition Site, after asbestos abatement, was trucked to the Swinson Site.

7. Champion hauled debris containing bricks and metal to the Swinson Site and Don Swinson accepted the waste where workers would hand pick bricks, metal, and other discarded materials out of the debris for sale or recycling purposes.

8. Don Swinson did not have a permit to handle general construction or demolition debris at the Swinson Site.

9. Don Swinson did not obtain a permit from the Illinois EPA to conduct a waste-transfer operation at the Swinson Site. Swinson did not have local siting pursuant to Section 39.2 of the Act, 415 ILCS 5/39.2 (2008), so as to be able to accept general construction and demolition debris ("C&D").

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

11. On July 17, 2008, the Illinois EPA conducted a follow up inspection at the Swinson Site and observed that most of the C&D was removed from the Swinson Site.

12. On August 28, 2008, the Illinois EPA sent a Notice of Intent to Pursue Legal Action ("NITPLA") to Mr. Swinson.

13. On September 16, 2008, pursuant to the NIPTLA, Mr. Swinson attended a meeting with Illinois EPA representatives to discuss the violations.

**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) (1) (2008);

Count III: Development and Operation of a Solid Waste Management Site in violation 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).

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

Count V: 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**

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

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. This 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 Stipulation state the following:

1. Operating an illegal dumpsite threatens the general welfare of the people and can be an attractive nuisance and can negatively affect surrounding property values.
2. Complainant does not have adequate data to determine the social and economic value of the operation.
3. Operation of a dump 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 violations occurred sometime prior to March 26, 2008, and were addressed sometime prior to July 17, 2008.
2. The violations were addressed within a reasonable time of being identified by the Illinois EPA.
3. Economic benefits accrued by Respondent are believed to be minimal and are accounted for in the \$5,000.00 penalty agreed herein.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Five Thousand Dollars (\$5,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. There are no previously adjudicated violations of the Act by Respondent.
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 Don Swinson shall pay a civil penalty in the sum of Five Thousand Dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Payment Procedures**

All payments required by this 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 and case number of the Respondent 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. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's Site which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This 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.

3. 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 \$5,000.00 penalty, his commitment to cease and desist as contained in Section V.C. above, and upon the Board's approval of this 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 July 28, 2009. The Complainant reserves, and this 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 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 Stipulation**

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

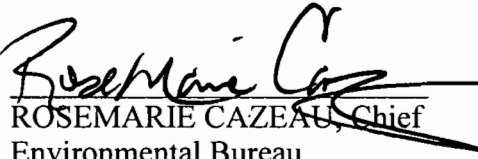
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS, THE 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

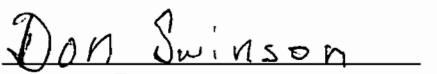
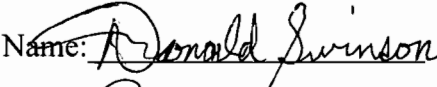
BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 8/11/10

DATE: 8/5/10

DON SWINSON

BY:   
Name:   
Title: President

DATE: July 21, 2010

**CERTIFICATE OF SERVICE**

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 16<sup>th</sup> day of August 2010, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement with Don Swinson 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