

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 25 2011

11-54  
STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
v. )  
)  
STEWART SPREADING, INC., an )  
Illinois Corporation, )  
)  
Respondent. )

PCB-2001-053

(Enforcement-Air/Water)

ORIGINAL

NOTICE OF FILING

Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Krystyna Bednarczyk  
Assistant Attorney General  
Environmental Bureau  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on April 25, 2011, Respondent, STEWART SPREADING, INC., filed with the Clerk of the Illinois Pollution Control Board, the attached APPEARANCE and ANSWER, a copy which is served upon you.

STEWART SPREADING, INC.

By: \_\_\_\_\_

One of Its Attorneys

Mark Steger, Esq.  
Holland & Knight LLP  
131 South Dearborn Street  
30th Floor  
Chicago, IL 60603  
(312) 263-3600

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STATE OF ILLINOIS  
Pollution Control Board

CERTIFICATE OF SERVICE

Mark J. Steger, one of the attorneys for STEWART SPREADING, INC., states that he caused a copy of the foregoing Appearance and Answer, served via U.S. Mail, before the hour of 5:00 p.m. on April 25, 2011 to:

Krystyna Bednarczyk  
Assistant Attorney General  
Environmental Bureau  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

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Mark J. Steger

Mark Steger, Esq.  
Holland & Knight LLP  
131 South Dearborn Street  
30th Floor  
Chicago, IL 60603  
(312) 263-3600

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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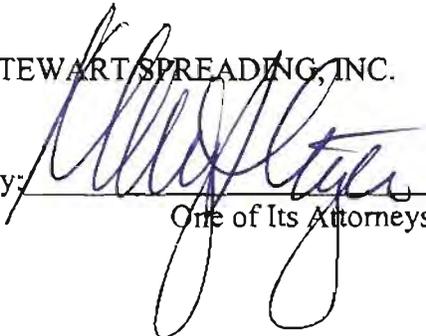
ORIGINAL

APPEARANCE

The undersigned, as attorney, enters the Appearance of the Respondent, STEWART SPREADING, INC.

STEWART SPREADING, INC.

By:

  
\_\_\_\_\_  
One of Its Attorneys

Mark Steger, Esq.  
Holland & Knight LLP  
131 South Dearborn Street  
30th Floor  
Chicago, IL 60603  
(312) 263-3600

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ORIGINAL

ANSWER

STEWART SPREADING, INC. ("SSI"), by and through its attorneys Holland & Knight LLP, hereby answers the Complaint as follows:

COUNT I

AIR POLLUTION

1. This Count is brought 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 at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

ANSWER: Respondent admits the allegations contained in Paragraph 1.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: Respondent admits the allegations contained in Paragraph 2.

3. At all times relevant to this Complaint, Respondent Stewart Spreading, Inc. ("SSI") was and is an Illinois corporation in good standing registered with the Illinois Secretary of State.

ANSWER: Respondent admits the allegations contained in Paragraph 3.

4. SSI is located at 3870 North State, Route 71 in Sheridan, Kendall County, Illinois.

**ANSWER:** Respondent admits the allegations contained in Paragraph 4.

5. At all times relevant to this Complaint, SSI, a full service residuals management company, performed the application of bulk sewage sludge generated by wastewater treatment plants ("WWTP") to farm fields, also known as a process of biosolid recycling and beneficial reuse.

**ANSWER:** Respondent admits the allegations contained in Paragraph 5.

6. At all times relevant to this Complaint, SSI spread bulk sewage sludge it had acquired from the Springbrook WWTP in Naperville, Illinois, and deposited it at a farm field.

**ANSWER:** Respondent admits that it was contacted by the Springbrook WWTP to pick up its bulk sewage sludge and stockpile it at a farm field located at the west half of the west half of the northwest quarter of Section 26 in Oswego Township, Kendall County, Illinois ("Site"). Respondent denies the remaining the allegations contained in Paragraph 6.

7. The Site is located east of Douglas Road on Collins Road in Oswego, Kendall County, Illinois. Occupied homes are located adjacent to the east and west property lines of the Site. A pond is located on an adjacent parcel of land, directly west of the Site. That pond is fed by intermittent streams flowing in a westerly direction across the Site and past the pond toward Morgan Creek. In addition, drainage ditches are located along Collins Road, which forms the southern border of the Site. These ditches divert water to the farm field. Aided by gravity, water flows from the drainage ditches across the farm field in a northerly direction to the intermittent streams before exiting the Site along its west property line and feeding into Morgan Creek.

**ANSWER:** Respondent admits that the Site is located east of Douglas Road on Collins Road in Oswego, Kendall County, Illinois and that occupied homes are located adjacent to the east and west property lines of the Site. Respondent is without sufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 7 and therefore denies same.

8. On December 23, 2009, Illinois EPA received a citizen complaint of excessive odors emanating from bulk sewage sludge deposits at the Site. The complaint also alleged that the bulk sewage sludge deposits were located in the vicinity of a drainage ditch located between the Site and an occupied home.

**ANSWER:** Respondent admits that on December 23, 2009, Illinois EPA received a citizen complaint of odors emanating from bulk sewage sludge stockpiled at the Site. Respondent denies the remaining allegations contained in Paragraph 8.

9. On December 23, 2009, the Kendall County Health Department inspected the Site and noted the presence of human waste odors. At the time of the Kendall County inspection, sludge residue was strewn along Collins Road from trucks entering and exiting the farm field.

**ANSWER:** Respondent admits that on December 23, 2009, the Kendall County Health Department inspected the Site. Respondent denies the remaining allegation contained in Paragraph 9.

10. On December 24, 2009, Illinois EPA inspected the Site and noted the manurelike smell at the Site, which increased when it began to rain. At the time of the December 24, 2009 inspection, the odor was also present inside the citizen complainant's home, located approximately 30 feet from the Site's west property line. At that time, no run-off was observed as the site was covered in snow and ice.

**ANSWER:** Respondent admits that on December 24, 2009, Illinois EPA inspected the Site and noted a "moderate" manure smell at the Site, which increased when it began to rain, that at the time of the December 24, 2009 inspection, the IEPA inspector noted an odor was also present inside the citizen complainant's home and that no run-off was observed from the Site. Respondent denies the remaining allegation contained in Paragraph 10.

11. On December 29, 2009, Illinois EPA again inspected the Site. At that time, the bulk sewage sludge deposits had not been hauled away nor land applied. The stockpiled bulk sewage sludge deposits were still present at the Site, and odors were emanating from them.

**ANSWER:** Respondent admits that on December 29, 2009, Illinois EPA inspected the Site, and that at that time, the bulk sewage sludge stockpiles had not been hauled away nor land applied, and that the stockpiled bulk sewage sludge was still present at the Site, but that the odor was not as strong as it was on December 24<sup>th</sup>. Respondent denies the remaining allegations contained in Paragraph 11.

12. At all times relevant to this Complaint, the Site was not permitted by Illinois EPA for applications of bulk sewage sludge deposits during periods of ice and snow cover.

**ANSWER:** Respondent is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 12 and therefore denies same.

13. Beginning on or about January 11, 2010, the bulk sewage sludge deposits were hauled from the Site back to the Springbrook WWTP, in Naperville, Illinois, which had generated the sludge. All sludge had been transported from the Site by January 13, 2010.

**ANSWER:** Respondent admits the allegations contained in Paragraph 13.

14. Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or

tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

**ANSWER:** Respondent admits that Paragraph 14 quotes 415 ILCS 5/9(a) (2010) in part.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides as follows:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint-stock company, trust, estate, political subdivision, state agency or any other legal entity, or their legal representative, agent or assigns.

**ANSWER:** Respondent admits that Paragraph 15 quotes 415 ILCS 5/3.315 (2010) in part.

16. Respondent SSI is a "person," as that term is defined in Section 3.315 of the Act, 415 ILCS 3.315 (2010).

**ANSWER:** Respondent admits the allegations contained in Paragraph 16.

17. Section 3.165 of the Act, 415 ILCS 3.165 (2010), provides as follows:

"CONTAMINANT" is any solid, liquid or gaseous matter, any odor or any form of energy, from whatever source.

**ANSWER:** Respondent admits that Paragraph 17 quotes 415 ILCS 5/3.315 (2010) in part.

18. Bulk sewage sludge composed of domestic waste, and odors, are each a "contaminant," as that term is defined in Section 3.165 of the Act, 415 ILCS 3.165 (2010).

**ANSWER:** Respondent admits that odors are included in the definition of contaminant under Section 3.165 of the Act. Responding denies the remaining allegations contained in Paragraph 18.

19. Section 3.115 of the Act, 415 ILCS 5/3.115 (2010), provides as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health or to property, or to unreasonably interfere with the enjoyment of life or property.

**ANSWER:** Respondent admits that Paragraph 19 quotes 415 ILCS 5/3.115 (2010) in

part.

20. By failing to properly land apply and incorporate bulk sewage sludge at the Site, foul odors of domestic waste were created and released into the environment, causing, threatening or allowing air pollution.

**ANSWER:** Respondent denies the allegations contained in Paragraph 20.

21. By causing, threatening or allowing air pollution, Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010).

**ANSWER:** Respondent denies the allegations contained in Paragraph 21.

## COUNT II

### WATER POLLUTION

1-17. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 18 of Count I as paragraphs 1 through 17 of this Count II.

**ANSWER:** Respondent realleges and incorporates by references its answers to paragraphs 1 through 13 and 15 through 18 of Count I as is fully set forth herein.

18. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board.

**ANSWER:** Respondent admits that Paragraph 18 quotes 415 ILCS 5/12(a) (2010) in part.

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), provides as follows:

"WATERS" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through or border upon this state.

**ANSWER:** Respondent admits that Paragraph 19 quotes 415 ILCS 5/3.550 (2010) in part.

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), provides as follows:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life.

**ANSWER:** Respondent admits that Paragraph 20 quotes 415 ILCS 5/3.545 (2010) in part.

21. The pond, ditches, intermittent streams, and Morgan Creek are each a "water" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

**ANSWER:** Respondent is without sufficient knowledge to either admit or deny the allegations in Paragraph 21 and therefore denies same.

22. By failing to properly land apply and incorporate bulk sewage sludge at the Site during ice and snow conditions, SSI threatened the discharge of contaminants from the Site into drainage ditches, on-site intermittent streams, the adjacent pond and nearby Morgan Creek, each of which is a water of the State, so as to render such waters harmful or injurious to public health.

**ANSWER:** Respondent denies the allegations contained in Paragraph 22.

23. By causing, threatening, or allowing the discharge of contaminants into waters of the State, Respondent SSI caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

**ANSWER:** Respondent denies the allegations contained in Paragraph 23.

### COUNT III

#### **STOCKPILE OF SEWAGE SLUDGE WITHOUT A LAND APPLICATION PERMIT**

1-20. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 18 of Count I and paragraphs 19 through 21 of Count II as paragraphs 1 through 20 of this Count III.

**ANSWER:** Respondent realleges and incorporates by reference herein its answers to paragraphs 1 through 13 and 15 through 18 of Count I and paragraphs 19 through 21 of Count II as if fully set forth herein.

21. Section 12(b) of the Act, 415 ILCS 5/120) (2010), provides as follows:

No person shall:

- (b) Construct, install, or operate any equipment, site, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

**ANSWER:** Respondent admits that Paragraph 21 quotes 415 ILCS 5/120) (2010) in part.

22. At all times relevant to this Complaint, Respondent's activities at the Site were and are regulated under Illinois EPA Land Application Permit # 2007-SC-5031. Land application of sludge during ice and snow conditions is not permitted under the Permit.

**ANSWER:** Respondent admits that the Illinois EPA issued Respondent Land Application Permit #2007-SC-5031. Respondent denies the remaining allegations contained in Paragraph 22.

23. At all times relevant to this Complaint, Respondent's activities at the Site constituted the operation of a facility capable of causing or contributing to water pollution.

**ANSWER:** Respondent denies the allegations contained in Paragraph 23.

24. By applying sewage sludge at the Site during a period of ice and snow and failing to properly contain the sludge deposits, SSI maintained operations of the Site that were capable of causing or contributing to water pollution without obtaining a proper permit from Illinois EPA, and in violation of Permit # 2007-SC-5031.

**ANSWER:** Respondent denies the allegations contained in Paragraph 24.

25. By applying sewage sludge to the Site in a manner that was capable of causing or contributing to water pollution without first obtaining a permit from the Illinois EPA and in violation of its existing permit, SSI violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2010).

**ANSWER:** Respondent denies the allegations contained in Paragraph 25.

#### COUNT IV

##### **CREATING A WATER POLLUTION HAZARD**

1-20. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 18 of Count I and paragraphs 19 through 21 of Count II as paragraphs 1 through 20 of this Count IV.

**ANSWER:** Respondent realleges and incorporates by reference herein its answers to paragraphs 1 through 13 and 15 through 18 of Count I and paragraphs 19 through 21 of Count II as if fully set forth herein.

21. Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), provides as follows:

No person shall:

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

**ANSWER:** Respondent admits that Paragraph 21 quotes 415 ILCS 5/12(d) (2010) in part.

22. Beginning on or about December 21, 2009, and continuing through at least January 13, 2010, or during a time period better known to the Respondent, SSI stockpiled bulk sewage sludge from a WWTP on the Site.

**ANSWER:** Respondent admits the allegations contained in Paragraph 22.

23. Beginning on or about December 24, 2009, and continuing through at least January 13, 2010, or during a time period better known to the Respondent, the north side of the Site was left unsecured, threatening the runoff of contaminated stormwater into the drainage ditches, intermittent streams, adjacent pond, and nearby Morgan Creek.

**ANSWER:** Respondent denies the allegations contained in Paragraph 23.

24. By stockpiling bulk sewage sludge on the Site in a place and manner that created a water pollution hazard, Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

**ANSWER:** Respondent denies the allegations contained in Paragraph 24.

## COUNT V

### **FAILURE TO PROPERLY STOCKPILE BULK SEWAGE SLUDGE**

1-21. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 18 of Count I and paragraphs 18 through 21 of Count II as paragraphs 1 through 21 of this Count V.

**ANSWER:** Respondent realleges and incorporates by reference herein its answers to paragraphs 1 through 13 and 15 through 18 of Count I and paragraphs 18 through 21 of Count II as if fully set forth herein.

22. Section 391.305(a) and (d) of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 391.305(a) and (d), provides as follows:

The following items shall be addressed by the applicant [for sludge storage] in the design: (a) the stockpiles are contained and the runoff is controlled . . . (d) sludge storage is isolated from commercial and residential developments.

**ANSWER:** Respondent admits that Paragraph 22 quotes 35 Ill. Adm. Code 391.305(a) and (d) in part.

23. Section 391.403(b) and (d) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 391.403(b) and (d), provides as follows:

b) Sludge application with no immediate incorporation shall not be done closer than 200 feet from any occupied dwelling or 20 feet from the closet edge of traveled portions of a primary and secondary public roads or 10 feet from the closest edge of lesser utilized public roads or outside roadway fence lines.

d) Sludge shall not be applied on land which lies within 150 feet from wells used to supply potable water or other potable water supplies and 200 feet from surface waters or intermittent streams; or within one-fourth of a mile of any potable water supply wells located in consolidated bedrock such as limestone or sinkhole areas unless a 50 foot depth of non-sandy or non-gravelly unconsolidated material exists.

**ANSWER:** Respondent admits that Paragraph 23 quotes 35 Ill. Adm. Code 391.403(b) and (d) in part.

24. Beginning on or about December 24, 2009, and continuing to at least January 13, 2010, or on dates better known to the Respondent, SSI stockpiled and attempted to contain the stockpiles of sewage sludge on the Site by using straw bales on the south, east and west sides of the stockpile, but left the north side exposed and unsecured.

**ANSWER:** Respondent admits that it stockpiled the sewage sludge on the Site and that the stockpiles of sewage sludge were contained on the Site by using straw bales. Respondent denies the remaining allegations contained in Paragraph 24.

25. At the time of the December 24, 2009, Illinois EPA inspection, sewage sludge debris was strewn across Collins Road as trucks entered and exited the Site.

**ANSWER:** Respondent denies the allegations contained in Paragraph 25.

26. At the time of the December 24, 2009, Illinois EPA inspection, sewage sludge from the road had entered the drainage ditches along Collins Road. From there, as temperatures rose and snow and ice melted, the sewage sludge had the potential to flow across the Site into the intermittent streams that could flow across the property of an occupied dwelling to enter the pond and, eventually, Morgan Creek. The occupied dwelling was located within 200 feet of the sewage sludge deposits.

**ANSWER:** Respondent denies the allegations contained in Paragraph 26.

27. By failing to ensure that the stockpiled bulk sewage sludge was properly

contained and runoff controlled, Respondent violated Sections 391.305(a) and (d) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 391.305(a) and (d).

**ANSWER:** Respondent denies the allegations contained in Paragraph 27.

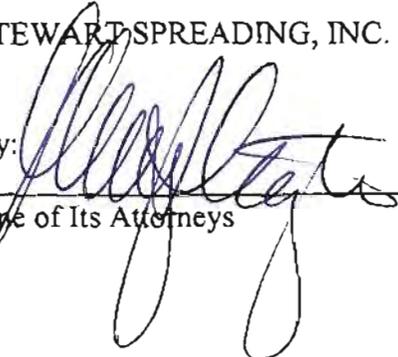
28. By applying sewage sludge to the land and failing to immediately incorporate the sludge at the Site, which is located within 200 feet of surface waters, intermittent streams, and occupied dwellings, Respondent violated Sections 391.403(b) and (d) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 391.403(b) and (d).

**ANSWER:** Respondent denies the allegations contained in Paragraph 28.

29. By violating regulations adopted by the Board, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

**ANSWER:** Respondent denies the allegations contained in Paragraph 29.

STEWART SPREADING, INC.

By: 

\_\_\_\_\_  
One of Its Attorneys

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Holland & Knight LLP  
131 South Dearborn Street  
30th Floor  
Chicago, IL 60603  
(312) 263-3600

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