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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 13-
)	(Enforcement - Land)
)	
DONALD J. SHERMAN and JAMES)	
A. SHERMAN, as Trustees of the First)	
Restatement of the Suzann M. Jennings)	
Trust Agreement, dated December 19, 1997,)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, DONALD J. SHERMAN and JAMES A. SHERMAN, as Trustees of the First Restatement of the Suzann M. Jennings Trust Agreement, dated December 19, 1997, as follows:

COUNT I
OPEN DUMPING OF WASTE

1. This Complaint 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).

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2010), and is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondents, DONALD J. SHERMAN (“D. Sherman”) and JAMES A. SHERMAN (“J. Sherman”), are Trustees of the First Restatement of the Suzann M. Jennings Trust Agreement, dated December 19, 1997 (“Trust”).

4. The site, located at 42W502 Jericho Road, Sugar Grove, Kane County, Illinois, with Property Index Number 14-33-100-003, is held in the Trust (“Site”).

5. The Site is part of a more than 200 acre, active farm.

6. On March 29, 2011, the Sugar Grove Fire Department (“SGFD”) responded to a complaint of smoke in the vicinity of the Site.

7. Upon arrival, a SGFD officer observed various waste materials being burned in a pit at the Site.

8. On March 30, 2011, a representative of Kane County directed a complaint regarding the conditions at the Site to the Illinois EPA.

9. On April 20, 2011, two (2) Illinois EPA inspectors conducted an inspection of the Site.

10. On April 20, 2011, the Illinois EPA inspectors observed an area estimated to be 50 feet by 50 feet by twelve (12) feet (“pit”) filled with wood, landscape waste, plastic, metal, clothing, mattresses, televisions, and doors (collectively “pit wastes”) at the Site.

11. On August 31, 2012, the Respondents submitted to the Illinois EPA waste removal invoices, receipts, landfill load tickets, and sampling results demonstrating that the pit wastes had been properly disposed of and no contaminants were found above applicable levels.

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

Prohibited acts. No person shall:

(a) Cause or allow the open dumping of any waste.

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), provides the following definition:

“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.

14. D. Sherman and J. Sherman, as Trustees of the Trust, are each a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

15. Section 3.305 of the Act, 415 ILCS 5/3.305 (2008), provides the following definition:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

16. Section 3.535 of the Act, 415 ILCS 5/3.535 (2008), provides the following definition:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95 87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

17. Section 3.385 of the Act, 415 ILCS 5/3.385 (2008), provides the following definition:

“Refuse” means waste.

18. The pit wastes located at the Site are “waste” and “refuse” as those terms are defined in Sections 3.535 and 3.385 of the Act, 415 ILCS 5/3.535 and 5/3.385 (2010).

19. Section 3.185 of the Act, 415 ILCS 5/3.185 (2008), provides the following definition:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

20. The pit where the pit wastes were deposited, dumped, placed and/or abandoned is a “disposal” site as that term is defined by Section 3.185 of the Act, 415 ILCS 5/3.185 (2010).

21. Section 3.445 of the Act, 415 ILCS 5/3.445 (2008), provides the following definition:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94 580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

22. The pit at the Site has never been permitted by the Illinois EPA for the disposal of waste thereon, and therefore does not fulfill the requirements of a sanitary landfill.

23. From at least March 29, 2011, when the pit wastes were discovered at the Site, to August 31, 2012, when the Illinois EPA confirmed that all remedial actions were completed, the Respondents have caused or allowed the pit wastes to remain at the Site, a site that does not fulfill the requirements of a sanitary landfill, thereby causing or allowing the open dumping of waste.

24. By causing or allowing the open dumping of waste, the Respondents have thereby

violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).


WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against the Respondents, DONALD J. SHERMAN and JAMES A. SHERMAN, as Trustees of the First Restatement of the Suzann M. Jennings Trust Agreement, dated December 19, 1997, with respect to Count I:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations contained herein;
2. Finding that Respondents have violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010);
3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of Section 21(a) of the Act, 415 ILCS 5/12(a) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
4. Taxing all costs of this action to the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

5. Granting such other relief as the Board deems appropriate and just.

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

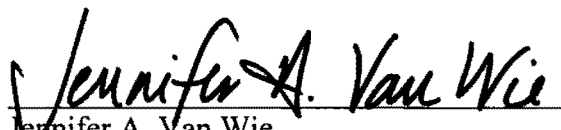
By: 
ELIZABETH WALLACE, Chief
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OF COUNSEL:

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CERTIFICATE OF SERVICE

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 28th day of September 2012, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Complaint and Notice of Filing to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



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