

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

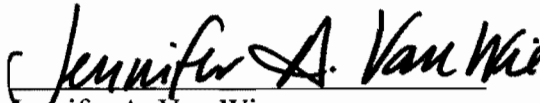
PEOPLE OF THE STATE OF ILLINOIS,	)	
by LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-14
	)	(Enforcement - Land)
	)	
DONALD J. SHERMAN and JAMES	)	
A. SHERMAN, as Trustees of the First	)	
Restatement of the Suzann M. Jennings	)	
Trust Agreement, dated December 19, 1997,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

To: See attached service list  
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing the following Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement, copies of which are attached and hereby served upon you.

LISA MADIGAN  
Attorney General  
State of Illinois

  
Jennifer A. Van Wie

Dated: November 16, 2012

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**Service List**

**For the Respondents**

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Aurora, Illinois 60506

Donald Sherman  
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Sugar Grove, Illinois 60554

**Illinois Environmental Protection Agency**

Mark Gurnik  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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Complainant,	)	
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v.	)	PCB No. 13-14
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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.	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), moves that the Illinois Pollution Control Board ("Board") grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010). In support of this motion, the Complainant states as follows:


1. On September 28, 2012, the Complainant filed a complaint with the Board alleging Respondent violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:   
JENNIFER A. VAN WIE  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609

DATE: November 16, 2012

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 Complainant, )  
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 A. SHERMAN, as Trustees of the First )  
 Restatement of the Suzann M. Jennings )  
 Trust Agreement, dated December 19, 1997, )  
 )  
 Respondents. )

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

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 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"), (collectively "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. (2010), 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 and Site Description**

1. On September 28, 2012, 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, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against the Respondents.

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).

3. At all times relevant to the Complaint, the Respondents, DONALD J. SHERMAN ("D. Sherman") and JAMES A. SHERMAN ("J. Sherman"), were and 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 ("Site"), 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 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 .

**B. Allegations of Non-Compliance**

Complainant contends that the Respondents have violated the following provision of the Act:

Count I: Open Dumping of Waste, in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).

**C. Admission of Violations**

The Respondents admit to the violation alleged in the Complaint filed in this matter and referenced within Section I.B herein.

**D. Compliance Activities to Date**

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.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their trustees, officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act 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 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.
2. There is social and economic benefit to the Site, but not to the pit.
3. Operation of the Site is suitable for the area in which it is located, but the pit is unsuitable.
4. Properly disposing of the pit wastes is both technically practicable and economically reasonable.
5. The Respondents have subsequently complied with the Act.

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

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010, *effective as of August 23, 2011*), 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 Respondents 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 Respondents 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 Respondents and to otherwise aid in enhancing voluntary



compliance with this Act by the Respondents 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 Respondents;
6. whether the Respondents voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the Respondents has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a Respondents agrees to undertake in settlement of an enforcement action brought under this Act, but which the Respondents is not otherwise legally required to perform; and
8. whether the Respondents has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

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

1. The Respondents failed to properly dispose of the pit wastes at the Site. The violation began on or around March 29, 2011 and was resolved by August 31, 2012.
2. Respondents were diligent in attempting to come back into compliance with the Act.
3. Any economic benefit derived by the Respondents from not properly disposing of the pit wastes will be recouped in the civil penalty.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eight Thousand Five Hundred Dollars (\$8,500) will serve to deter further violations and aid in future voluntary compliance with the Act.
5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.
6. Self-disclosure is not at issue in this matter.

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

8. A Compliance Commitment Agreement was not at issue in this matter.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

1. The Respondents shall pay a civil penalty in the sum of Eight Thousand Five Hundred Dollars (\$8,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Interest and Default on Penalty**

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

1. 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, Illinois 62794-9276

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

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. The Respondents shall cease and desist from future violations of the Act that were the subject matter of the Complaint.
2. 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 Respondents' 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.
3. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the

Act and the Board Regulations.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$8,500.00 penalty and any specified costs and accrued interest, their commitment to cease and desist as contained in Section V.D.1 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violation of the Act that was 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 September 28, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' 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, or entity other than the Respondents.

**G. Enforcement of Stipulation**

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all

available means.

**I. 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      ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY:   
JOHN J. KIM, Interim Director

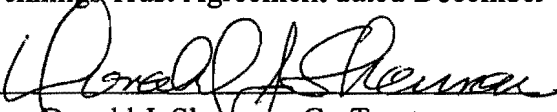
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DATE: 11/7/12

RESPONDENTS

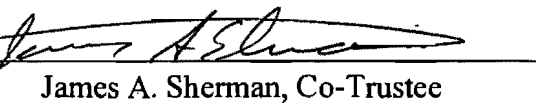
DONALD J. SHERMAN and JAMES A. SHERMAN,  
Trustees of the First Restatement of the Suzann  
M. Jennings Trust Agreement dated December 19, 1997

By:

  
Donald J. Sherman, Co-Trustee

Dated: 23 October, 2012

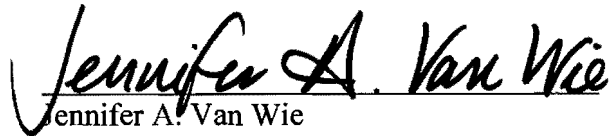
By:

  
James A. Sherman, Co-Trustee

Dated: October 23, 2012

**CERTIFICATE OF SERVICE**

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 16<sup>th</sup> day of November 2012, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement 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.



Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609