

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 SHERIDAN-JOLIET LAND )  
 DEVELOPMENT, LLC, an Illinois )  
 limited liability company, and )  
 SHERIDAN SAND & GRAVEL CO., )  
 an Illinois corporation, )  
 )  
 Respondents. )

PCB No. 13-19  
 (Enforcement-Land)

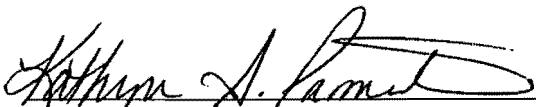
**NOTICE OF FILING**

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PLEASE TAKE NOTICE that on the 27th day of February, 2013, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Response to Respondents' Motion to Strike and Dismiss, a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney General  
 of the State of Illinois

By:   
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DATE: February 27, 2013

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**COMPLAINANT’S RESPONSE TO  
 RESPONDENTS’ MOTION TO STRIKE AND DISMISS**

NOW COMES, Complainant, People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois (“People” or “Complainant”), and responds to Sheridan-Joliet Land Development, LLC’s (“Sheridan-Joliet”) and Sheridan Sand & Gravel Co.’s (“Sheridan Sand” and together with Sheridan-Joliet, the “Respondents”) Motion to Strike and Dismiss the People’s Complaint. In support of this response, the People state as follows:

**BACKGROUND**

Sheridan-Joliet owns a clean construction or demolition debris (“CCDD”) facility located at 2679 N. 4201 Road, Sheridan, LaSalle County, Illinois (the “Site”), and Sheridan Sand operates the Site. (Complaint at p. 2, ¶¶ 3-4.) On June 30, 2008, the Illinois Environmental Protection Agency (the “Illinois EPA”) issued Permit No. CCDD2007-040-DE/OP (the “Permit”) to the Respondents to develop a new CCDD fill operation at the Site. (*Id.* at p. 2, ¶ 5.)

On September 15, 2010, the Respondents accepted ten loads of soil at the Site. (*Id.* at p. 8, ¶ 15.) On September 15, 2010 and June 1, 2011, the Illinois EPA conducted inspections of

the Site to determine regulatory status and compliance with the Illinois Environmental Protection Act (the "Act"), the Illinois Pollution Control Board's (the "Board") regulations and Respondents' Permit. (*Id.* at p. 6, ¶ 16.) Separately, on April 5, 2011, April 22, 2011 and June 1, 2011, the Illinois EPA conducted site visits to review documents and physically inspect the Site. (*Id.* at p. 19, ¶ 16.) During the inspections and site visits, the Illinois EPA found that:

- The Respondents had not implemented and documented a load checking program at the Site. (*Id.* at p. 6, ¶ 17.)
- The documentation for the loads of soil accepted at the Site on September 15, 2010 did not (a) include the name of the hauler, the address of the site of origin or the name of the owner and operator of the site of origin from which the soil was removed; (b) set forth either (i) a certification from the owner or operator of the site of origin from which the soil was removed that the site had never been used for commercial or industrial purposes and is presumed to be uncontaminated or (ii) a certification from a licensed professional engineer that the soil is uncontaminated soil (the "Soil Certification"); and (c) confirm that the soil had not been removed from a site as part of a cleanup or removal of contaminants. (*Id.* at pp. 8-9, ¶ 16; p. 11, ¶ 17; p. 13 at ¶ 17.)
- The Respondents failed to conduct, and document the results of, a random daily discharge inspection for September 2, 2010. (*Id.* at p. 15, ¶¶ 16-17.)
- The Respondents failed to maintain and calibrate their photoionization device. (*Id.* at p. 17, ¶ 16.)
- The Respondents failed to timely submit monthly fill records for the months of July through December 2010 and January through March 2011. (*Id.* at p. 19, ¶ 17.)
- The Respondents failed to timely submit quarterly fill summaries for the quarters ending September 30, 2010, December 31, 2010 and March 31, 2011. (*Id.* at p. 21, ¶ 17.)
- The Respondents failed to timely submit quarterly fee payments for the quarters ending September 30, 2010, December 31, 2010 and March 31, 2011. (*Id.* at p. 24, ¶ 19.)

On October 31, 2012, the Complainant filed a nine-count Complaint against the Respondents, alleging that the Respondents failed to:

- (a) implement and document a load checking program in violation of Sections 22.51(a), (b)(3)(i) and (b)(3)(ii) of the Act, 415 ILCS 5/22.51(a), (b)(3)(i) and (b)(3)(ii) (2010), 35 Ill. Adm. Code 1100.201(a), 1100.205(a), (b) and (c) and Permit condition I.I.;
- (b) properly document site of origin information in violation of Sections 22.51(a) and (f)(2)(A) of the Act, 415 ILCS 5/22.51(a), (f)(2)(A) (2010), and 35 Ill. Adm. Code 1100.201(a);
- (c) obtain the Soil Certification in violation of Sections 22.51(a) and (f)(2)(B) of the Act, 415 ILCS 5/22.51(a), (f)(2)(B) (2010), and 35 Ill. Adm. Code 1100.201(a);
- (d) confirm that accepted soil was not removed from a site as part of a cleanup and removal of contaminants in violation of Sections 22.51(a) and (f)(2)(C) of the Act, 415 ILCS 5/22.51(a), (f)(2)(C) (2010), and 35 Ill. Adm. Code 1100.201(a);
- (e) conduct and document a random daily discharge inspection for September 2, 2010 in violation of Sections 22.51(a) and (b)(3)(ii) of the Act, 415 ILCS 5/22.51(a), (b)(3)(ii) (2010), and 35 Ill. Adm. Code 1100.201(a), 1100.205(b)(1) and 1100.205(c)(3);
- (f) calibrate the photoionization device in violation of Sections 22.51(a) and (b)(3)(ii) of the Act, 415 ILCS 5/22.51(a), (b)(3)(ii) (2010), and 35 Ill. Adm. Code 1100.201(a) and 1100.205(h);
- (g) comply with monthly and quarterly recordkeeping requirements in violation of Sections 22.51(a) and (b)(3)(ii) of the Act, 415 ILCS 5/22.51(a), (b)(3)(ii) (2010), and 35 Ill. Adm. Code 1100.201(a), 1150.210 and 1150.215; and
- (h) submit quarterly fees in violation of Sections 21(k), 22.51(a) and (b)(3)(ii) of the Act, 415 ILCS 5/21(k), 22.51(a) and (b)(3)(ii) (2010), and 35 Ill. Adm. Code 1100.201(a) and 1150.300(a).

On November 30, 2012, the Respondents filed their Motion.<sup>1</sup>

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<sup>1</sup> Though seeking the dismissal of the entire Complaint, the Motion contains no argument regarding (a) the contention in Count I that the Respondents violated Permit Operating Condition I.I., which independently required the implementation of a load checking program, and thereby violated Section 22.51(b)(3)(i) of the Act, 415 ILCS 22.51(b)(3)(i) (2010), or (b) the allegations in Count V that the Respondents violated 35 Ill. Adm. Code 1100.205(c)(3), which required documentation of inspection results, and thereby violated Sections 22.51(a) and (b)(3)(ii) of the Act, 415 ILCS 5/22.51(a), (b)(3)(ii) (2010), and 35 Ill. Adm. Code 1100.201(a). As a result, each of those alleged violations in Counts I and V of the Complaint remains.

**ARGUMENT**

**I. Legal Standard for a Motion To Strike or Dismiss Pleadings**

In *People v. Inverse Investments, L.L.C.*, PCB 11-79, 2012 WL 586821, slip op. (Feb. 16, 2012), the Board set forth its standard for ruling on a motion to strike or dismiss. “[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief.” *Inverse Investments*, 2012 WL 586821 at \*8 (quoting *Smith v. Central Illinois Regional Airport*, 207 Ill.2d 578, 584-85 (2003)). In making this determination, “the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant.” *Id.* (citing *Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *In re Chicago Flood Litigation*, 176 Ill.2d 179, 184 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill.2d 428, 438 (1989)); *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 47 (Oct. 18, 2012) (“we construe the allegations of the complaint in the light most favorable to the plaintiff”). Moreover, “all inferences from those facts must be considered in the light most favorable to the non-movant.” *Id.* (citing *People v. Stein Steel Mills Svcs.*, PCB 02-1 (Nov. 15, 2001); *Nash v. Jimenez*, PCB 7-97 (Aug. 19, 2010); *Chicago Coke v. IEPA*, PCB 10-75 (Sept. 2, 2010)).

**II. Section 31 of the Act Does Not Bar the Attorney General From Bringing Complaints on Her Own Motion, and the Illinois EPA complied with Section 31 of the Act in Providing Notice of the Respondents’ Violations.**

Paragraph 1 of the Complaint provides that the Attorney General filed the cause of action against the Respondents “on her own motion.” (Complaint at p. 1, ¶ 1.) “[T]he Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State.” *People v. NL Indus.*, 152 Ill.2d 82, 103 (1992) (citation omitted); see also *Pioneer Processing, Inc. v. E.P.A.*, 102 Ill.2d 119, 138 (1984) (“[the Attorney

General] has the duty and authority to represent the interests of the People of the State to insure a healthful environment.”) In addition, the cause of action against the Respondents was brought at the request of the Illinois EPA. (Complaint at p. 1, ¶ 1.)

The Respondents contend that Counts VII, VIII and IX of the Complaint must be dismissed because the Illinois EPA allegedly failed to comply with Section 31 of the Act, 415 ILCS 5/31 (2010). (Motion at pp. 11-15.) Specifically, the Respondents assert that the Illinois EPA did not send them a notice of violation concerning their failure to comply with monthly and quarterly fill record requirements and to pay quarterly fees. (*Id.*) This argument ignores the Board’s decision in *People v. Sheridan Sand & Gravel Co.*, PCB 06-177, 2007 WL 1816057, slip op. (June 7, 2007), in which the Board stated:

“The Board has extensively addressed the requirements of Section 31 of the Act. In considering the legislative history of the 1996 amendments to Section 31 the Board has repeatedly found that they were not intended to bar the Attorney General from prosecuting an environmental violation. *See People v. Eagle-Picher-Boge*, PCB 99-152 (July 22, 1999); *People v. Geon*, PCB 97-62 (Oct. 2, 1997); and *People v. Heuermann*, PCB 97-92 (Sept. 18, 1997).”

\* \* \*

Further, the Board finds that because the Attorney General brought the complaint on her own motion, whether or not the Agency complied with Section 31 of the Act (415 ILCS 5/31 (2004)) has no bearing on the allegations in the complaint.

2007 WL 1816057, at \*13-\*14 (quoting *People v. Chiquita Processed Foods, L.L.C.*, PCB 02-156, slip op. 4-5 (Nov. 21, 2002)). Notwithstanding this established precedent in a prior case against one of the Respondents, the Respondents cite *Skillet Fork River Outlet Union Drainage District v. Fogle*, 382 Ill. 77 (1943). (Motion at p. 13.) *Skillet Fork* is inapposite, as it does not address the argument raised in *Sheridan Sand* or this case. Specifically, *Skillet Fork* considered neither the Attorney General’s constitutional authority to bring environmental enforcement actions, nor violations of the Act.

Even if their Section 31 argument were correct, the Respondents misstate the record. The Illinois EPA sent the Respondents a notice of violation on October 5, 2010 and on May 11, 2011, the latter of which concerned their failure to comply with monthly and quarterly fill record requirements and to pay quarterly fees. (See Violation Notice #L-2010-01314 dated October 5, 2010, a true and correct copy of which is attached hereto as Exhibit A, and Violation Notice #L-2011-01188 dated May 11, 2011 (the "May 11 Notice"), a true and correct copy of which is attached hereto as Exhibit B). Paragraphs 1, 2 and 3 of the May 11 Notice provided notice to the Respondents of their violations of 35 Ill. Adm. Code 1150.210 (monthly fill record requirements), 35 Ill. Adm. Code 1150.215 (quarterly fill record requirements) and 35 Ill. Adm. Code 1150.300(a)<sup>2</sup> (quarterly fee payment requirement). (May 11 Notice at pp. 3-4, ¶¶ 1-3.)

The Respondents' Section 31 argument is both legally and factually incorrect. Applying *Sheridan Sand* and considering the May 11 Notice provisions, the Respondents' Motion as to Counts VII, VIII and IX of the Complaint should be denied.

**III. The Complaint Properly Cites Section 22.51(f)(2) of the Act and "Old" 35 Ill. Adm. Code 1100.205(a), (b), (c) and (h).**

**A. Section 22.51(f)(2) of the Act has not been Repealed and does not Contain a Statute of Limitations Provision.**

Section 22.51 of the Act sets forth requirements for owners and operators of CCDD fill operations, 415 ILCS 5/22.51 (2010), including to (a) document detailed information for each load of CCDD or uncontaminated soil received, (b) obtain a Soil Certification, (c) confirm that the CCDD or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants and (d) document the foregoing activities, 415 ILCS 5/22.51(f)(2)(A)-(D) (2010).

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<sup>2</sup> Although the Illinois EPA inadvertently referenced Section 22.15b for Section 22.51b in Paragraph 3(b) of the May 11 Notice, the Illinois EPA properly referenced Section 22.51b in Paragraph 3(a) of the May 11 Notice and the Respondents properly received notice of the violation of 35 Ill. Adm. Code 1150.300(a), which is the violation sought to be enforced in the Complaint. (Complaint at pp. 24-25.)

Compliance with Sections 22.51(f)(2)(A)-(D) of the Act was required “[u]ntil the effective date of the Board rules adopted under subdivision (f)(1) of this Section. . . .” 415 ILCS 5/22.51(f)(2) (2010). On August 23, 2012, the Board adopted the final rule for CCDD fill operations, which became effective on August 27, 2012. *See In the Matter of: Proposed Amendments to Clean Construction or Demolition Debris Fill Operations (CCDD): Proposed Amendments to 35 Ill. Adm. Code 1100 (R12-9; Aug. 23, 2012) (the “CCDD Amendments”); 36 Ill. Reg. 13892.* After August 27, 2012, instead of satisfying Sections 22.51(f)(2)(A)-(D) of the Act, 415 ILCS 5/22.51(f)(2)(A)-(D) (2010), owners and operators were required to comply with the requirements of “new” 35 Ill. Adm. Code 1100.205. (*Id.*) The requirements of “new” 35 Ill. Adm. Code 1100.205 are more stringent than those in Section 22.51(f)(2) of the Act. *Compare* 415 ILCS 5/22.51(f)(2) (2010) and “new” 35 Ill. Adm. Code 1100.205.

As alleged in Counts II-IV of the Complaint, the Respondents failed to (a) properly document site of origin information, (b) obtain a Soil Certification, (c) confirm that accepted soil was not removed from a cleanup site, (d) conduct and document a random daily discharge inspection and (e) calibrate a photoionization device, corresponding to the ten loads of soil accepted at the Site, and observed by the Illinois EPA, on September 15, 2010. (Complaint at pp. 8-17.) As such, the Respondents violated, among other provisions, Sections 22.51(f)(2)(A)-(C) of the Act, 415 ILCS 22.51(f)(2)(A)-(C) (2010), as “new” 35 Ill. Adm. Code 1100.205 did not yet exist. (*Id.*)

The Complaint properly cites Section 22.51(f)(2)(A)-(C) of the Act, as opposed to retroactively applying “new” 35 Ill. Adm. Code 1100.205. In *Commonwealth Edison Co. v. Will County Collector*, 196 Ill.2d 27 (2001), the Illinois Supreme Court analyzed whether newly enacted legislation applied retroactively to violations committed prior to its enactment.



Adopting the retroactivity analysis set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), the *Commonwealth Edison* court stated that the primary consideration was whether the General Assembly expressly indicated the “temporal reach” of the amendments. *Commonwealth Edison*, 196 Ill.2d at 39; *see also Caveney v. Bower*, 207 Ill.2d 82, 91 (2003). Here, the legislature expressly provided that Section 22.51(f)(2)(A)-(C) of the Act applied to violations committed before the effective date of the CCDD Amendments, August 27, 2012. 415 ILCS 5/22.51(f)(2)(A)-(C) (2010) (the statute applies “[u]ntil the effective date of the Board rules adopted under subdivision (f)(1) of this Section. . . .”). In addition, the CCDD Amendments unambiguously state that their effective date was August 27, 2012. 36 Ill. Reg. 13892. Because Section 1100.205 of the CCDD Amendments may not be applied retroactively, Section 22.51(f)(2)(A)-(C) of the Act governs with respect to the Respondents’ violations.

Even if this express indication of temporal reach did not exist, Section 4 of the Statute on Statutes, 5 ILCS 70/4 (2010),<sup>3</sup> constitutes “a general saving clause in which ‘the legislature has clearly indicated the ‘temporal reach’ of every amended statute. . . . This court has interpreted section 4 to mean that procedural changes to statutes may be applied retroactively, while substantive changes may not.” *People v. Atkins*, 217 Ill.2d 66, 71 (2005) (quoting *Caveney*, 207 Ill.2d at 92 (emphasis in original)). “New” 35 Ill. Adm. Code 1100.205 imposes requirements that are more stringent than Section 22.51(f)(2) of the Act, thereby constituting substantive changes which may not be applied retroactively. *See, e.g., Atkins*, 217 Ill.2d at 72 (substantive amendment which altered the scope of the statute could not be applied retroactively).

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<sup>3</sup> Section 4 of the Statute on Statutes provides, “[n]o new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law. . . . save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. . . .” 5 ILCS 70/4 (2010). *Caveney* held that Section 4 of the Statute on Statutes applies to both civil and criminal cases. *Caveney*, 207 Ill.2d at 92-93.

Accordingly, pursuant to *Commonwealth Edison and Caveney*, though filed after the effective date of the CCDD Amendments, the Complaint properly cites Sections 22.51(f)(2)(A)-(C) of the Act, as opposed to “new” 35 Ill. Adm. Code 1100.205.

In their Motion, the Respondents do not contest that they violated Sections 22.51(f)(2)(A)-(C) of the Act, 415 ILCS 5/22.51(f)(2)(A)-(C) (2010). Rather, the Respondents contend that their violations were only enforceable until August 27, 2012, the effective date of the CCDD Amendments. (Motion at p. 7.) The Respondents first argue that Section 22.51(f)(2) “expired as if it had been repealed.” (*Id.* at p. 8.) The General Assembly knows how to expressly repeal a statute. *See, e.g.*, 230 ILCS 5/54.5 (repealed on May 26, 2008). By its terms, Section 22.51(f)(2) of the Act has not been expressly repealed. *See* 415 ILCS 5/22.51(f)(2) (2010). Rather, consistent with the General Assembly’s express intent, the Board established amendments to 35 Ill. Adm. Code Part 1100 which, among other things, continued to require owners and operators of CCDD fill operations to obtain specific documentation, certifications and confirmations, though pursuant to more stringent requirements than those in Sections 22.51(f)(2)(A)-(C) of the Act. *See* “new” 35 Ill. Adm. Code 1100.205.

Moreover, Section 22.51(f)(2) of the Act has not been impliedly repealed or preempted. *Lily Lake Road Defenders v. County of McHenry*, 156 Ill.2d 1, 8 (1993) (discussing doctrines of repeal by implication versus preemption). The doctrine of repeal by implication “is applied when two enactments of the *same* legislative body are irreconcilable. . . .” *Id.* (emphasis in original). In this case, the General Assembly enacted Section 22.51(f)(2) of the Act, whereas the Board enacted the CCDD Amendments. *See* 415 ILCS 22.51(f)(2) (2010); 35 Ill. Adm. Code Part 1100. In addition, the CCDD Amendments are consistent, not irreconcilable, with Section 22.51(f)(2) of the Act. *Compare* 415 ILCS 5/22.51(f)(2)(A)-(C) (2010) and “new” 35 Ill. Adm.

Code 1100.205. Similarly, the doctrine of preemption exists where “enactments of two unequal legislative bodies (e.g., Federal and State) are inconsistent.” *Lily Lake*, 156 Ill.2d at 8. The requirements of Section 22.51(f)(2) are incorporated into Section 1100.205 of the CCDD Amendments (though more stringently) and, as such, are consistent. Further, preemption is not applicable here because the Board cannot preempt or repeal an act of the legislature. *See, e.g., Village of LaGrange et al. v. McCook Cogeneration Station, L.L.C. et al.*, PCB 96-41, slip op. at \*3 (Dec. 7, 1995) (“The Board, as an agency of the executive branch of the state government, has no authority to affect repeal of a law enacted by the state legislature.”). Accordingly, the doctrines of repeal by implication and preemption are inapplicable.

In arguing that Section 22.51(f)(2) of the Act expired or was repealed, Respondents rely on *Wall v. Chesapeake & O. Ry. Co.*, 290 Ill. 227 (1919). (Motion at pp. 8-9.) *Wall* considered whether a statute, repealed by the legislature while an appeal was pending, applied when the court rendered its decision. *Wall*, 290 Ill.2d at 232. Unlike the statute at issue in *Wall*, Section 22.51(f)(2) of the Act was never repealed. In addition, the *Wall* court stated that “[i]t is well settled that, if a statute giving a special remedy is repealed without a saving clause in favor of pending suits, all suits must stop where the repeal finds them.” *Id.* Yet, Section 22.51(f)(2) of the Act does not afford any special remedy. *See* 415 ILCS 5/22.51(f)(2) (2010). Section 42 of the Act, 415 ILCS 5/42 (2010), sets forth the only remedy for a violation of Section 22.51 of the Act. Based on the foregoing, Section 22.51(f)(2) has not been repealed, expressly or impliedly, and may be enforced against the Respondents who violated that section of the Act prior to August 27, 2012.

Second, the Respondents argue that Section 22.51(f)(2) of the Act contains a “sunset provision.” (Motion at p. 7.) As an example, the Respondents cite *In the Matter of:*

*Radionuclide Restricted Status, Amendments to 35 Ill. Adm. Code 602.105, 602.106, 602.108 and 602.115* (R03-21; Nov. 6, 2003) (the “Radionuclide Amendments”). (*Id.* at n.10.) The Radionuclide Amendments, though, expressly added a “‘sunset’ provision under which the exemption [at issue] expires on December 8, 2009.” (R03-21 at p. 1.) Unlike the Radionuclide Amendments, neither Section 22.51(f)(2) of the Act, nor Section 1100.205 of the CCDD Amendments expressly includes a sunset provision. As a result, Respondents’ “sunset provision” argument requires reading a statute of limitations into Section 22.51(f)(2) of the Act where none exists. Had the legislature intended for there to be a time limit for the enforcement of Section 22.51(f)(2) of the Act, 415 ILCS 5/22.51(f)(2) (2010), they could have included a provision establishing a statute of limitations. The General Assembly chose not to do so. Even if Section 22.51(f)(2) of the Act contained such a statute of limitations provision, it would not apply to the State in environmental enforcement cases:

Unless the terms of a statute of limitations expressly include the State, county, municipality or other governmental agencies, the statute, so far as public rights are concerned, as distinguished from private and local rights, is inapplicable to them. The question is whether the State (or its agency or subdivision) is asserting public rights on behalf of all the people of the State or private rights on behalf of a limited group. Here, the Agency argues, and we agree, that what the Agency seeks is to protect the public’s right to a clean environment.

*Pielet Bros. Trading, Inc. v. Pollution Control Bd.*, 110 Ill. App. 3d 752, 758 (5th Dist. 1982) (internal citations omitted.)

The Respondents contend that neither Sections 22.51(f)(2)(A)-(C) of the Act, nor Section 1100.205(a) of the CCDD Amendments apply to their violations. This argument is contrary to the legislature’s intent evidenced in the language of those provisions and produces an absurd result. *Stewart v. Industrial Comm’n*, 115 Ill.2d 337, 341 (1987) (stating that it is a cardinal rule of statutory interpretation that absurd results must be avoided). Because Sections 22.51(f)(2)(A)-

(C) of the Act have not been repealed, expressly or impliedly, and do not contain a statute of limitations provision, Counts II-IV of the Complaint properly allege that the Respondents violated those statutes.

**B. “Old” 35 Ill. Adm. Code 1100.205(a), (b), (c) and (h) Remains Enforceable Against the Respondents.**

Originally enacted on August 24, 2006, Part 1100 of Title 35 of the Illinois Administrative Code sets forth rules for CCDD fill operations. 35 Ill. Adm. Code 1100 *et seq*; 30 Ill. Reg. 14534. On August 27, 2012, the Board’s amendments to the rules for CCDD fill and uncontaminated soil operations became effective. 36 Ill. Reg. 13892. As a result, owners and operators of CCDD fill operations were required to comply with the old rules until August 27, 2012, and thereafter the new rules governed. *Id.* At issue in this case are the Board rules regarding the implementation of a load checking program, random inspections of loads, documentation of such inspections, and the calibration of a photoionization device. (Complaint at pp. 1-8, 17-18.) The Board made no substantive changes in the amendments to these respective rules. *Compare* “old” 35 Ill. Adm. Code 1100.205(a), (b), (c) and (h) with “new” 35 Ill. Adm. Code 1100.205(b)(1), (2), (3) and (8) (*See* CCDD Amendments at pp. 18-24.)

The Respondents contend that “there is no” Section 1100.205(a), (b), (c) and (h) of Title 35 of the Illinois Administrative Code. (Motion at pp. 2-3, 10.) This argument ignores the express language of the CCDD Amendments which unambiguously provides an effective date of August 27, 2012. 36 Ill. Reg. 13892. Therefore, Counts I, V and VI of the Complaint properly cite “old” 35 Ill. Adm. Code 1100.205(a), (b), (c) and (h) with respect to the Respondents’ September 15, 2010 violations. *See Commonwealth Edison*, 196 Ill.2d at 39; *see also Caveney*, 207 Ill.2d at 91.

**IV. Count I Of The Complaint Sets Forth Sufficient Factual Allegations of Respondents' Violation of "Old" 35 Ill. Adm. Code 1100.205(a), (b) and (c).**

In determining the adequacy of the allegations of a complaint, the Board considers whether the pleader alleged specific ultimate facts supporting the cause of action, as opposed to legal conclusions. *Inverse Investments*, 2012 WL 586821, at \*9.

A complaint's allegations are "sufficiently specific if they reasonably inform the defendants by factually setting forth the elements necessary to state a cause of action." *People v. College Hills Co.*, 91 Ill.2d 138, 145, 435 N.E.2d 463, 467 (March 16, 1982). Fact-pleading does not require a complainant to set out its evidence: "[t]o the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts." *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill.2d 300, 308, 430 N.E.2d 1005, 1008-09 (1981) (quoting *Board of Education v. Kankakee Federation of Teachers Local No. 886*, 46 Ill.2d 439, 446-47 (1970)).

*Id.* Count I of the Complaint alleges that the Respondents failed to implement and document a load checking program at the Site based on the Illinois EPA's September 15, 2010 and June 1, 2011 inspections of the Site. (Complaint at pp. 6-7, ¶¶ 17-18.) These factual allegations support the legal conclusion that the Respondents violated Sections 22.51(a) and 22.51(b)(3)(i), (ii) of the Act, 415 ILCS 5/22.51(a) and 22.51(b)(3)(i), (ii) (2010), and 35 Ill. Adm. Code 1100.201(a) and 1100.205(a), (b) and (c). (*Id.* at p. 7, ¶ 18.)

The Respondents contend that Count I of the People's Complaint is insufficient, because it does not include any specific allegations regarding the use of an elevated structure, visual inspection, photo ionization detector utilizing a lamp of 10.6 eV or greater, a flame ionization detector, a discharge inspection and cameras or other devices; the date and time of the inspection; the name of the hauling firm; the vehicle identification number or license plate number; and the source of the CCDD. (Motion at pp. 3-4.) However, by alleging that Respondents failed to implement any load checking program at the Site, the People have alleged that the Respondents failed to implement each required component of a load checking program.

Applying the *Inverse Investments* standard, Count I of the Complaint is sufficiently specific as to the fact that no load checking program existed at the Site on September 15, 2010 and June 1, 2011.<sup>4</sup>

**V. Dismissal of the Complaint Pursuant to Section 31(c)(1) of the Act is Unwarranted.**

Section 31(c)(1) of the Act requires the Office of the Illinois Attorney General to serve a complaint on the person alleged to have violated the Act, specifying “the provision of the Act, rule, regulation, permit, or term or condition thereof under which such person is said to be in violation. . . .” 415 ILCS 5/31(c)(1) (2010). In addition, “[s]uch complaint shall be accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act, to correct such violation.” *Id.* The Illinois Environmental Facilities Financing Act (the “Financing Act”) does not provide financing for the payment of a civil penalty:

(a) The General Assembly finds:

\* \* \*

- (iv) that it is desirable to provide additional and alternative methods of financing the costs of the acquisition and installation of the devices, equipment and facilities required to comply with the quality and land reclamation standards;
- (v) that the alternative method of financing provided in this Act is therefore in the public interest and serves a public purpose in protecting and promoting the health and welfare of the citizens of

---

<sup>4</sup> The Respondents incorrectly contend that the Complaint alleges observations of the Illinois EPA as opposed to violations that occurred. (Motion at p. 5.) For example, Paragraph 17 of Count I references Illinois EPA’s observation of a violation: “[d]uring the September 15, 2010 and June 1, 2011 inspections, the Illinois EPA observed that Respondents did not implement and document a load checking program at the 4201 Road Site.” Paragraph 18 of Count I then asserts that a violation occurred: “[b]y failing to implement and document a load checking program. . . .” See also Count II, ¶¶ 16-17; Count III, ¶¶ 17-18; Count IV, ¶¶ 17-18; Count V, ¶¶ 16-18; Count VI, ¶¶ 16-17; Count VII, ¶¶ 17-18; Count VIII, ¶¶ 17-18; Count IX, ¶¶ 19-20. Accordingly, the Complaint is “sufficiently specific” to “factually [set] forth the elements necessary to state a cause of action.” *Inverse Investments*, 2012 WL 586821, at \*9.

this state by reducing, controlling and preventing environmental damage;

\* \* \*

- (vii) that it is desirable to promote the use of alternative methods for managing hazardous wastes and to provide additional and alternative methods of financing the costs of establishing the recycling, incineration, physical, chemical and biological treatment, and other facilities necessary to meet the requirements of the Environmental Protection Act.

20 ILCS 3515/2 (2010). The Financing Act, and the corresponding Section 31(c)(1) notification, address financing to correct “violations.” In this case, the Complaint seeks only the payment of a civil penalty for the Respondents’ violations of the Act, the Board regulations and the Permit, as the violations were corrected prior to the filing of the Complaint. Accordingly, the Respondents’ Motion based on Section 31(c)(1) of the Act should be denied.<sup>5</sup>

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<sup>5</sup> Although the Respondents had notice of the financing provision in Section 31(c)(1) of the Act as evidenced by the argument in their Motion, on February 27, 2013, an Amended Notice of Electronic Filing was filed with the Board and served on the Respondents, which includes the financing notification and thereby cures any deficiency. *See Exhibit C* attached hereto.



**CONCLUSION**

Based on the foregoing, the Respondents have not established that there is “no set of facts that could be proved which would entitle the plaintiff to relief.” *Inverse Investments*, 2012 WL 586821 at \*8. Taking all well-pled allegations of the Complaint as true and drawing all reasonable inferences from them in favor of the Complainant, *id.*, the Respondents’ Motion should be denied.<sup>6</sup>

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:



KATHRYN A. PAMENTER  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington, 18<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 814-0608

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<sup>6</sup> To the extent the Board determines that the CCDD Amendments apply retroactively, Complainant will seek leave to amend the Complaint to cite the new regulations. Regardless of that decision, Complainant will seek leave to file an amended complaint to delete Paragraph 15 of Count III, as the Board has adopted the rules prescribed under Section 22.51(f)(1) of the Act, 415 ILCS 5/22.51(f)(1) (2010), as of the date of the filing of the Complaint.

**EXHIBIT A**



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829  
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

815/987-7760  
FAX #815/987-7760

October 5, 2010

Mr. Branko Vardijan  
Sheridan-Joliet Land Development LLC  
221 N. Washtenaw Ave.  
Chicago, IL 60612

7008 0500 0000 3757 5478  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Re: **Violation Notice, L-2010-01314**  
BOL #0998215024—LaSalle County  
Sheridan / Sheridan Sand and Gravel N 4201 Road  
Compliance File

**RECEIVED**  
OCT 06 2010  
**IEPA/BOL**

Dear Mr. Vardijan:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on an inspection completed on September 15, 2010 by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of alleged violations of environmental statutes, regulations, or permits as set forth in the attachment to this notice. The attachment includes an explanation of the activities that the Illinois EPA believes may resolve the specified alleged violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the alleged violations, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this notice. The response must address each alleged violation specified in the attachment and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. If a meeting is requested, it shall be held within 60 days of receipt of this notice. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject it within 30 days of receipt.

**RELEASABLE**  
OCT 19 2010

**Violation Notice, L-2010-01314**

BOL #0998215024—LaSalle County  
Sheridan / Sheridan Sand and Gravel N 4201 Road  
October 5, 2010  
Page 2

If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet provided by Section 31(a) of the Act, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

Written communications should be directed to:

Illinois EPA – Bureau of Land  
Attn: Kathy Geyer  
4302 N. Main Street  
Rockford, IL 61103

All communications must include reference to your **Violation Notice L-2010-01314**.

The complete requirements of the Illinois Environmental Protection Act and any Illinois Pollution Control Board regulations cited herein or in the inspection report can be viewed at:

<http://www.ipcb.state.il.us/SLR/TheEnvironmentalProtectionAct.asp>

and

<http://www.ipcb.state.il.us/SLR/PCBandIEPAEnvironmentalRegulations-Title35.asp>

If you have questions regarding this matter, please contact Kathy Geyer at 815/987-7760

Sincerely,



David S. Retzlaff  
Manager, Bureau of Land  
Rockford Regional Office

DSR:KG:tl

Attachment

Enclosure

cc: Mike Harsted, LaSalle County Environmental Services

BOL #0998215024 - LaSalle County  
Sheridan Sand and Gravel N 4201 Road  
VN L-2010-01314  
Attachment - Page 1 of 5

RECEIVED  
OCT 06 2010  
IEPA/BOL

ATTACHMENT

1. Pursuant to Section 22.51(a) of the Act, No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

A violation of Section 22.51(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/22.51(a)) is alleged for the following reason: **You are operating a clean construction or demolition debris fill operation in violation of the Act and 35 Illinois Administrative Code [The Regulations].**

2. Pursuant to Section 22.51(b)(3)(i) of the Act, On or after July 1, 2008, no person shall use CCDD as fill material in a current or former quarry, mine, or other excavation without a permit granted by the Agency or in Violation of any Condition imposed by such permit.

A violation of Section 22.51(b)(3)(i) is alleged for the following reason: **You are using CCDD as fill material in a former quarry in violation of Permit Condition I.1 of permit #CCDD2007-040-DE/OP.**

3. Pursuant to Section 22.51(b)(3)(ii) of the Act; On or after July 1, 2008, no person shall use CCDD as fill material in a current or former quarry, mine, or other excavation in violation of any regulations or standards adopted by the Board under the Act.

A violation of Section 22.51(b)(3)(ii) is alleged for the following reason: **You are using CCDD as fill material in a former quarry in violation of 35 Illinois Administrative Code and the Act.**

4. Pursuant to Section 22.51(f)(2)(A)(i)\* of the Act; For each load of CCDD or uncontaminated soil received, until the effective date of the board rules, owners and operators of CCDD Fill operations must document the hauler name, site of origin address, and the owner or operator of the site of origin of the uncontaminated soil.

A violation of Section 22.51(f)(2)(A)(i) of the Act is alleged for the following reason: **The site of origin address (listed as the "source") on the documents at your facility are listed as "CCDD." Also, the owner is listed as Ravenswood Disposal. The site of origin, along with the owner/operator of the site of origin should be identified as the site from which the soil was removed.**

5. Pursuant to Section 22.51(f)(2)(B) of the Act; For all soil, until the effective date of the Board rules, owners and operators of CCDD Fill operations must (i) obtain certification that the site of origin (the site from which the soil was removed) has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil, OR, (ii)

\* Certain portions of Section 22.51 of the Act are found in Public Act 096-1416, <http://www.ilga.gov>.

BOL #0998215024 - LaSalle County  
Sheridan Sand and Gravel N 4201 Road  
VN L-2010-01314  
Attachment - Page 2 of 5

obtain Certification from a Licensed Professional Engineer that the soil is uncontaminated soil.

A violation of Section 22.51(f)(2)(B) of the Act is alleged for the following reason: **The only Certification submitted to the Agency lists Ravenswood Disposal Service, Inc. as the owner and operator of the site of origin. The Certification(s) must cover each separate site of origin (the site from which the soil was removed), and must have a Licensed Professional Engineer's Certification for commercial/industrial sites of origin.**

6. Pursuant to Section 22.51(f)(2)(C) of the Act; Until the effective date of the board rules, owners and operators of CCDD fill operations must confirm that the CCDD or uncontaminated soil was not removed from a site as part of a cleanup or removal contaminants.

A violation of Section 22.51(f)(2)(C) is alleged for the following reason: **There was no confirmation that the CCDD or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants.**

7. Pursuant to Section 22.51(f)(2)(D) of the Act; Until the effective date of the board rules, owners and operators of CCDD fill operations must document all activities required under Section 22.51(f)(2). Documentation of any chemical analysis must include, but is not limited to (i) copy of the lab analysis (ii) laboratory accreditation status, and (iii) laboratory authorized agent certification.

A violation of Section 22.51(f)(2)(D) is alleged for the following reason: **The documentation required under Section 22.51(f)(2) is not complete, as stated in numbers 4, 5 and 6 above.**

8. Pursuant to Section 1100.201(a) of 35 Illinois Adm. Code; No person shall conduct any CCDD fill operation in violation of the Act or any Regulations or Standards adopted by the Board [415 ILCS 5/22.51(a)].

A violation of Section 1100.201(a) of 35 Illinois Adm. Code is alleged for the following reason: **You have conducted a CCDD fill operation in violation of the Act and Regulations, as adopted by the Board.**

9. Pursuant to Section 1100.205(b)(1) of 35 Illinois Adm. Code; The owner or operator of any CCDD fill operation must institute a load checking program designed to detect attempts to dispose of waste at the facility, which includes a random daily discharge inspection.

A violation of Section 1100.205(b)(1) of 35 Illinois Adm. Code is alleged for the following reason: **There is no documentation that a random daily discharge inspection took place on September 2, 2010.**

BOL #0998215024 - LaSalle County  
Sheridan Sand and Gravel N 4201 Road  
VN L-2010-01314  
Attachment - Page 3 of 5

10. Pursuant to Section 1100.205(c)(3) of 35 Illinois Adm. Code; The owner or operator of any CCDD fill operation must document the results of a daily random load inspection.

A violation of Section 1100.205(c)(3) is alleged for the following reason: **There is no documentation of the results of a random daily discharge inspection for September 2, 2010.**

11. Pursuant to Section 1100.205(h) of 35 Illinois Adm. Code; All field measurement activities relative to equipment and instrument operation, calibration and maintenance and data handling shall be conducted in accordance with the following:

- 1) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods "(SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 1100.104 of this Part;
- 2) The equipment or instrument manufacturer's or vendor's published standard operation procedures; or
- 3) Other operating procedures specified in the Agency permit.

A violation of Section 1100.205(h) is alleged for the following reason(s): **Your Photoionization detector, a "MiniRAE 2000" model has not been calibrated in accordance with SW-846 or the published standard operating procedures, as the employees did not have physical access to the calibration gas canister on the date of the inspection.**

12. Pursuant to Permit Condition I.1 of permit #CCDD2007-040-DE/OP; the operator must implement the load checking program proposed in the application for Permit No. CCDD2007-040-DE/OP (Log No. CCDD2007-040). If materials other than CCDD are discovered the load checker must prepare a report describing the results of each inspection. Documentation of the records for the facility must be kept for minimum of three years at the facility or in some alternative location specified in the Illinois EPA permit. The documentation must be available for inspection and copying by the Illinois EPA upon request during normal business hours. Also, before the end of the operating day the operator must, by facsimile to 217-524-1991, or another method approved by the Illinois EPA, notify the Manager of the BOL Field Operations Section and provide the information described in condition I.2.c.

A violation of Permit Condition I.1 of permit no. CCDD2007-040-DE/OP is alleged for the following reason: **The load checking program proposed in the application for Permit No. CCDD2007-040-DE/OP was not implemented on September 2, 2010.**

#### SUGGESTED RESOLUTIONS

1. To resolve alleged violations of Sections 22.51(a), and 22.51(b)(3)(ii) of the Environmental Protection Act [415 ILCS 5/] (the "Act"), and Section 1100.201(a) of 35 Illinois Administrative Code (the "Regulations"), IMMEDIATELY implement steps to be in compliance with the Act and the Regulations.

BOL #0998215024 - LaSalle County  
Sheridan Sand and Gravel N 4201 Road  
VN L-2010-01314  
Attachment - Page 4 of 5

2. To resolve the violation of Section 22.51(b)(3)(i) of the Act, **IMMEDIATELY** implement steps to be in compliance with Bureau of Land Permit No. CCDD2007-040-DE/OP.
3. To resolve violations of Sections 22.51(f)(2)(A)(i), 22.51(f)(2)(B), 22.51(f)(2)(C), and 22.51(f)(2)(D), **IMMEDIATELY** begin documenting the following for all CCDD and uncontaminated soil received at your fill operation:
  - a) The name of the hauler,
  - b) The address of the site of origin,
  - c) The owner and operator of the site of origin.

For all uncontaminated soil received, you must also obtain either a certification from the owner or operator of the site from which the soil was removed that the site has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil, OR, a certification from a licensed Professional Engineer that the soil is uncontaminated soil. Certifications must be on forms and in a format prescribed by the Agency (LPC-662 and LPC-663 forms)

4. To resolve the violation of Section 1100.205(b)(1) of the Regulations and Permit Condition I.1 of permit no. CCDD2007-040-DE/OP, **IMMEDIATELY** implement the load checking program proposed in the application for Permit No. CCDD2007-040-DE/OP.
5. To resolve the violation of Section 1100.205(c)(3) of the Regulations, **IMMEDIATELY** being documenting results of daily random load inspections.
6. To resolve the violation of Section 1100.205(h) of the Regulations, **IMMEDIATELY** begin calibrating the photoionization detector located at the CCDD fill operation according to requirements and guidelines found in SW-846 and the published manufacturer's Standard Operating Procedures.

A written response to this Violation Notice L-2010-01314 should be submitted to:

Illinois EPA  
Bureau of Land  
Attn: Kathy Geyer  
4302 North Main Street  
Rockford, IL 61103



BOL #0998215024 - LaSalle County  
Sheridan Sand and Gravel N 4201 Road  
VN L-2010-01314  
Attachment - Page 5 of 5

**The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and must be submitted to the Illinois EPA by certified mail, within 45 days of receipt of this Violation Notice. The written response must also include a proposed Compliance Commitment Agreement that commits to specific remedial actions, includes specified times for achieving each commitment, and may include a statement that compliance has been achieved.**

DATE: 10-14-10  
TO: BOL DIVISION FILE  
FROM: ROCKFORD REGION  
SUBJECT: CERTIFIED MAIL GREEN CARD RECEIPT FOR

WV

LPC # 0998215024 -- LaSalle County  
Sheridan / Sheridan Sand & Gravel N 4201 Road  
Compliance File

For VN dated 10 / 5 / 10

RECEIVED  
RELEASABLE OCT 18 2010  
OCT 29 2010 IEPA/BOL  
REVIEWED MD

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

**OFFICIAL USE**

Postage	\$ 156
Certified Fee	280
Return Receipt Fee (Endorsement Required)	230
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 666

Postmark Here  
ROSCOE, IL 61073-9595

Sent To: Mr. Branko Vardijan  
Sheridan-Joliet Land Development  
Street, Apt. No., or PO Box No. 221 N. Washtenaw Avenue LLC  
City, State, ZIP+4 Chicago, IL 60612

PS Form 3800, August 2006 See Reverse for Instructions

7008 0500 0000 3757 5478

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Branko Vardijan  
Sheridan-Joliet Land Development, LLC  
221 N. Washtenaw Ave  
Chicago, IL 60612

VN #L-2010-01314  
0998215024 - LaSalle County

2. Article Number (Transfer from service label)

7008 0500 0000 3757 5478

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent  Addressee  
 [Signature]  
 B. Received by (Printed Name) C. Date of Delivery  
 Dan Vardijan

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below.

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

UNITED STATES POSTAL SERVICE

CHICAGO ILL 60680



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

12 OCT 2010 5:41 PM

• Sender: Please print your name, address, and ZIP+4 in this box •

State of Illinois  
Environmental Protection Agency  
Rockford Regional Office  
#302 North Main Street  
Rockford, Illinois 61103

KG/TL

**EXHIBIT B**



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829  
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

815/987-7760  
FAX #815/987-7005

May 11, 2011

7008 0500 0000 3757 7465  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Sheridan-Joliet Land Development  
Attn: Branko Vardijan  
221 N. Washtenaw Avenue  
Chicago, IL 60612

Re: **Violation Notice, #L-2011-01188**  
BOL # 0998215024 - LaSalle County  
Sheridan / Sheridan Sand and Gravel - N 4201 Road  
Compliance File

**RECEIVED**  
MAY 12 2011  
**RELEASED**  
MAY 27 2011

Dear Mr. Vardijan:

**REVIEWER ML**

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based upon a file review completed on April 5 and April 22, 2011 by a representative of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of alleged violations of environmental statutes, regulations, or permits as set forth in the attachment to this notice. The attachment includes an explanation of the activities that the Illinois EPA believes may resolve the specified alleged violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the alleged violations, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this notice. The response must address each alleged violation specified in the attachment and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. If a meeting is requested, it shall be held within 60 days of receipt of this notice. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject it within 30 days of receipt.

0998215024—Lasalle County  
Sheridan Sand and Gravel – Wienstand  
VN #L-2011-01188  
Page 2

If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet provided by Section 31(a) of the Act, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

The complete requirements of the Illinois Environmental Protection Act and any Illinois Pollution Control Board regulations cited herein or in the inspection report can be viewed at:

<http://www.ipcb.state.il.us/SLR/TheEnvironmentalProtectionAct.asp>

and

<http://www.ipcb.state.il.us/SLR/PCBandIEPAEnvironmentalRegulations-Title35.asp>

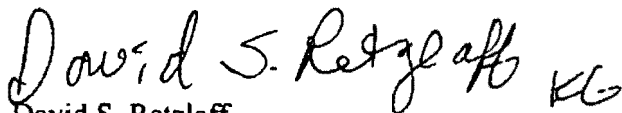
Written communications should be directed to:

Illinois EPA – Bureau of Land  
Attn: Kathy Geyer  
4302 N. Main Street  
Rockford, IL 61103

**Please be aware this Violation Notice in no way resolves alleged violations cited in Violation Notice L-2010-01314, dated October 5, 2010.**

All communications must include reference to your Violation Notice L-2011-01188. If you have questions regarding this matter, please contact Kathy Geyer at 815/987-7760.

Sincerely,



David S. Retzlaff  
Manager-Bureau of Land  
Field Operations Section  
Rockford Regional Office

DSR:KG

Attachment

Enclosure

Division File  
Rockford File

0998215024—Lasalle County  
Sheridan Sand and Gravel—N 4201 Road  
L-2011-01188— Attachment  
Compliance File

**ATTACHMENT**

1. Pursuant to 35 Ill. Adm. Code Section 1150.210,
  - a) Monthly Fill Records must be maintained at the site of the CCDD fill operation and must include the following information:
    - 1) The Agency designated site number, the site name, and the calendar month for which the record applies.
    - 2) The total quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured, for each day of the calendar month.
  - b) On or before April 15, July 15, October 15 and January 15, the owner or operator of the CCDD fill operation shall submit to the Agency the Monthly Fill Records for the preceding three calendar months. The Monthly Fill Records must be submitted to the Address in Section 1150.305.
  - c) Upon issuance of a valid CCDD fill operation permit pursuant to 35 Ill. Adm. Code 1100, and until termination of such permit, the owner or operator of the CCDD fill operation shall submit Monthly Fill Records to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.

A violation of Section 1150.210 of the Regulations is alleged for the following reason: **The required Monthly Fill Record was not submitted to the Agency on or before October 15, 2010, January 15, 2011 and April 15, 2011; and the Monthly Fill Record was not submitted in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.**

2. Pursuant to 35 Ill. Adm. Code Section 1150.215 of the Regulations,
  - a) The Quarterly Fill Summary must be maintained at the site of the CCDD fill operation and must include the following information:
    - 1) The Agency designated site number, the site name, and the calendar quarter for which the summary applies.
    - 2) The total quantity of CCDD and uncontaminated soil accepted for use as fill material in tons weighed or cubic yards measured:
      - A) for each month of the calendar quarter;
      - B) for the entire calendar quarter; and
      - C) for the calendar year-to-date.
    - 3) The fee rate applicable under Section 22.51b of the Act.
  - b) The Quarterly Fill Summary must be received by the by the Agency on or before April 15, July 15, October 15 and January 15 of each year and must cover the preceding three calendar months. The Quarterly Fill Summary must be submitted to the address in Section 1150.305.

0998215024—Lasalle County  
Sheridan Sand and Gravel - N 4201 Road  
L-2011-0J188- Attachment  
Compliance File

- c) Upon issuance of a valid CCDD fill operation permit pursuant to 35 Ill. Adm. Code 1100, and until termination of such permit, the owner or operator of the CCDD fill operation shall submit a Quarterly Fill Summary to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.

A violation of Section 1150.215 of the Regulations is alleged for the following reason: **The Quarterly Fill Summary was not received by the Agency on or before October 15, 2010, January 15, 2011 and April 15, 2011 and the Quarterly Fill Summary was not submitted to the Agency regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.**

3. Pursuant to Section 1150.300 of the Regulations,
  - a) Payment of the fee due under Section 22.51b of the Act must be made on a quarterly basis with the submission of the Quarterly Fill Summary. Such payment must be received by the Agency on or before April 15, July 15, October 15 and January 15 of each year and must cover the preceding three calendar months.
  - b) The fee payment due must be calculated by multiplying the quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured, as reported on the Quarterly Fill Summary, times the applicable rate in Section 22.15b of the Act.

A violation of Section 1150.300 (a) of the Regulations is alleged for the following reason: **The payment of the fee due under Section 22.15b of the Act was not made on or before October 15, 2010, January 15, 2011, or April 15, 2011, calculated by tons weighed or cubic yards measured times the rate found in Section 22.15b of the Environmental Protection Act [415 ILCS 5/22.15b]**

#### SUGGESTED RESOLUTIONS

1. To be in compliance with Section 1150.210 of 35 Illinois Administrative Code, within 30 days of receipt of this Violation Notice:
  - a) **Begin maintaining AT THE SITE: Monthly Fill Records, which must include the Agency designated site number, the site name, and the calendar month from which the record applies; along with the total quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured for each day of the calendar month.**
  - c) **Begin submitting on or before April 15, July 15, October 15, and January 15 the Monthly Fill Records for the preceding three calendar months to the address in Section 1150.305.**



0998215024—Lasalle County  
Sheridan Sand and Gravel - N 4201 Road  
L-2011-01188— Attachment  
Compliance File

- d) **Until termination of the valid CCDD fill operation permit, submit Monthly Fill Records to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material.**
2. **To be in compliance with Section 1150.215 of 35 Illinois Administrative Code, within 30 days of receipt of this Violation Notice:**
  - a) **Begin maintaining AT THE SITE Quarterly Fill Summaries, which must include the Agency designated site number, the site name, the calendar quarter for which the summary applies, the total quantity of CCDD and uncontaminated soil accepted for use as fill material in tons weighed or cubic yards measured, and the fee rate applicable under Section 22.51b of the Act.**
  - b) **Begin submitting the Quarterly Fill Summaries to the Agency on or before April 15, July 15, October 15, and January 15, covering the preceding three calendar months. The Quarterly Fill Summary must be submitted to the address in Section 1150.305.**
  - c) **Until termination of the valid CCDD fill operation permit, submit Quarterly Fill Summaries to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material.**
3. **To be in compliance with 35 Ill. Adm. Code Section 1150.300; within 30 days of receipt of this Violation Notice, submit Quarterly Fill Summaries, along with any fees due to the Agency for the time period from July 30, 2010 through March 30, 2011. The fee payment must be calculated by multiplying the quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured times the applicable rate in Section 22.51b of the Act (14 cents per ton or 20 cents per cubic yard). DO NOT mail payments or required forms to the Rockford Regional Office. Payment and forms must be mailed to the Agency at the following address:**

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

**A written response to this Violation Notice #L-2011- 01188 should be submitted to:**

**Illinois EPA-Bureau of Land  
Attn: Kathy Geyer  
4302 N. Main Street  
Rockford, IL 61103**

0998215024—Lasalle County  
Sheridan Sand and Gravel – N 4201 Road  
L-2011-01188– Attachment  
Compliance File

**The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and must be submitted to the Illinois EPA by certified mail, within 45 days of receipt of this Violation Notice. The written response must also include a proposed Compliance Commitment Agreement that commits to specific remedial actions, includes specified times for achieving each commitment, and may include a statement that compliance has been achieved.**

DATE: 5-19-11  
TO: BOL DIVISION FILE  
FROM: ROCKFORD REGION  
SUBJECT: CERTIFIED MAIL GREEN CARD RECEIPT FOR

VJ

LPC # 0998215024 - LaSalle County  
Sheridan / Sheridan Sand & Gravel - N 4201 Road

Compliance File

For VN dated 5 / 11 / 11

RELEASABLE

JUN 24 2011

REVIEWER MD

Do not have  
White/Green  
Sheet

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Sheridan-Joliet Land Development  
Attn: Branko Vardijan  
221 N. Washtenaw Avenue  
Chicago, IL 60612

VN #L-2011-01188  
0998215024 - LaSalle County

2. Article Number  
(Transfer from service label)

7008 0500 0000 3757 7465

COMPLETE THIS SECTION ON DELIVERY

A. Signature *Branko Vardijan*  Agent  Addressee

B. Received by (Printed Name) *Branko Vardijan* C. Date of Delivery *5/15/11*

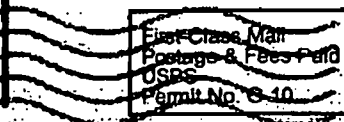
D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below.

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

UNITED STATES POSTAL SERVICE  
CHICAGO IL 606

17 MAY 2011 PM 6



• Sender: Please print your name, address, and ZIP+4 in this box •

State of Illinois  
Environmental Protection Agency  
Rockford Regional Office  
4302 North Main Street  
Rockford, Illinois 61103

KG/TL



# **EXHIBIT C**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 SHERIDAN-JOLIET LAND )  
 DEVELOPMENT, LLC, an Illinois )  
 limited liability company, and )  
 SHERIDAN SAND & GRAVEL CO., )  
 an Illinois corporation, )  
 )  
 Respondents. )

PCB No. 13-19  
(Enforcement-Land)

**AMENDED NOTICE OF ELECTRONIC FILING**

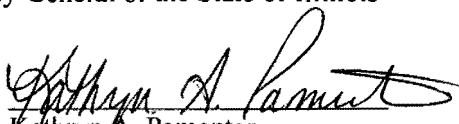
TO: Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co.  
 c/o Mr. Branko Vardijan c/o Kenneth Anspach, Esq.  
 221 N. Washtenaw Avenue Anspach Law Office  
 Chicago, IL 60612 111 West Washington Street, Suite 1625  
 (Via Certified Mail) Chicago, Illinois 60602  
 (Via Regular Mail)

PLEASE TAKE NOTICE that on October 31, 2012, we filed the initial Complaint in this matter with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A true and accurate copy of the Complaint was previously served upon you. Financing may be available, through the Illinois Environmental Facilities Financing Act, to correct the violations alleged in the Complaint.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

RESPECTUFLLY SUBMITTED,

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN  
Attorney General of the State of Illinois

BY:   
 Kathryn A. Pamenter  
 Environmental Bureau  
 Assistant Attorney General  
 69 W. Washington Street, #1800  
 Chicago, Illinois 60602  
 (312) 814-0608

**CERTIFICATE OF SERVICE**

I, Kathryn A. Pamenter, an Assistant Attorney General, do certify that I caused to be served this 27th day of February, 2013, the attached Amended Notice of Electronic Filing upon the persons listed below by placing a true and correct copy in an envelope, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co.

c/o Mr. Branko Vardijan  
221 N. Washtenaw Avenue  
Chicago, IL 60612  
*(Via Certified Mail)*

c/o Kenneth Anspach, Esq.  
Anspach Law Office  
111 West Washington Street, Suite 1625  
Chicago, Illinois 60602  
*(Via Regular Mail)*

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
*(Via Regular Mail)*

  
KATHRYN A. PAMENTER

**CERTIFICATE OF SERVICE**

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 27th day of February, 2013, the attached Notice of Filing and Complainant's Response to Respondents' Motion to Strike and Dismiss upon the parties listed on the Notice of Filing by placing a true and correct copy in an envelope addressed as set forth on said Notice of Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
KATHRYN A. PAMENTER