

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 14-14</b>
	)	<b>(Enforcement - Land, Water)</b>
	)	
<b>DONLEY TRUCKING, INC.,</b>	)	
<b>an Illinois Corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that on August 12, 2014, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601 a STIPULATION AND PROPOSAL FOR SETTLEMENT, and MOTION FOR RELIEF FROM HEARING REQUIREMENT copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: s/Raymond J. Callery  
RAYMOND J. CALLERY  
Assistant Attorney General  
Environmental Bureau

Raymond J. Callery #6193579  
500 South Second Street  
Springfield, Illinois 62706  
217-782-9031



2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2012), and charged *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. Donley Trucking, Inc. ("Donley") is an active Illinois corporation which operates a trucking business at 8998 W. Outer Rd., Williamsville, Sangamon County, Illinois ("site"). The registered agent for Donley is Gail F. Newingham, P.O. Box 13, 1 55 Frontage Road S, Williamsville, Illinois 62693. Todd Donley is the Vice President of Donley.

4. Donley operates approximately 30 semi-trucks in its trucking business, which hauls soil, rock, asphalt, recycled material, fertilizer, and coal.

5. The site includes a repair shop ("repair shop") which services and maintains the semi-trucks.

6. The site also has a concrete wash pad ("wash pad") south of the repair shop and office. The wash pad is bisected with a metal grate which covers a concrete trench. The concrete trench is approximately 30 feet long, four feet wide, and four feet deep. The concrete trench collects water, dirt and gravel from truck washing.

7. Donley washes its semi-truck cabs and trailers at the wash pad with a solution of water and ZEP powdered car wash detergent utilizing a power spray unit.

8. Approximately 1 yard east of the wash pad is a roadside ditch along the frontage road.

9. On December 30, 2010, the Illinois EPA conducted an inspection of the site. On that date, soil between the wash pad and the adjacent roadside ditch was stained indicating that waste water from truck washing is allowed to overflow the wash pad into the roadside ditch. The concrete trench had approximately one foot of freeboard.

10. On September 13, 2012, the Illinois EPA conducted an inspection of the site. On that date, a six-inch PVC pipe which permits overflow from the concrete trench to discharge to the adjacent roadside ditch was located adjacent to the wash pad.

11. Floor drains in the site's repair shop discharge to an oil/water separator.
12. On February 14, 2010, Donley allowed Illini Septic & Sewer, 1012 Lenhart Road, Springfield, IL to collect the oil/water separator waste which had accumulated in the oil/water separator for disposal without providing a manifest to Illini Septic & Sewer for the waste.
13. On December 30, 2010, Illinois EPA inspected the site. On that date, Illinois EPA inspector spoke with Todd Donley. Mr. Donley stated that he purchases approximately 24 fluorescent light bulbs per year and disposes of them with the general refuse.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

**Count I: Unpermitted Point Source**

By causing, threatening or allowing the discharge of any contaminant from a six-inch PVC pipe without an NPDES permit for point source discharges, DONLEY has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).

**Count II: Failure to Characterize Waste**

The Respondent has failed to determine whether any of the spent fluorescent bulbs or oil/water separator waste generated at the site is a hazardous waste or a special waste in violation of Sections 722.111 and 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121.

By failing to make the waste determinations required by Sections 722.111 and 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121, DONLEY has violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2012).

**Count III: Failure to Prepare/Provide a Manifest**

The oil/water separator waste is an industrial process waste and therefore a special waste as defined under Section 808.110 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 808.110.

By failing to prepare a manifest prior to shipment of the oil/water separator waste, DONLEY violated Section 808.122 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 808.122.

By delivering the oil/water separator waste to Illini Septic & Sewer, an unpermitted special waste hauler, without a manifest, DONLEY violated Sections 808.121(b) and 809.301 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(b) and 809.301.

By delivering the oil/water separator waste to Illini Septic & Sewer for disposal without a manifest, in violation of Sections 808.121(b), 808.122, and 809.301 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(b), 808.122, and 809.301, DONLEY violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2012).

#### **Count IV: Waste Disposal Violation**

By disposing of oil/water separator waste with Illini Septic & Sewer, Donley violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2012).

By disposing of fluorescent bulbs in the general refuse at the site, Donley violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2012).

#### **C. Non-Admission of Violations**

Not with standing anything herein to the contrary, the Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

#### **D. Compliance Activities to Date**

The Respondent has capped the six-inch PVC pipe to prevent any further discharge to the adjacent roadside ditch.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its 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 Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), 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 Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Management of the truck wash wastewater and oil/separator waste from this site in accordance with the Act and related regulations is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

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

Section 42(h) of the Act, 415 ILCS 5/42(h) (2012), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
  2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
  3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
  4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- 
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
  6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
  7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
  8. whether the respondent 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 Respondent failed to properly characterize the oil/water separator waste and provided the waste for shipment on February 14, 2010 without a manifest. In addition, the Respondent failed to obtain a permit for an NPDES permit for the six-inch PVC pipe which served as a point source for wastewater from the truck washing operation. The violations began on or around February 14, 2010, and were individually resolved at various times prior to the execution of this Stipulation.

2. The Respondent failed to acknowledge the notices issued by the Illinois EPA pursuant to Section 31 of the Act. The Respondent has been diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, following the initial enforcement meeting with the Illinois Attorney General's Office.

3. The Respondent enjoyed a nominal economic benefit from noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eight Thousand Five Hundred (\$8,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has 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 completed in this matter.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Eight Thousand Five Hundred Dollars (\$8,500.00). Payments shall be made in installments according to the following schedule: \$2,000.00 within thirty (30) days from the date the Board adopts and accepts this Stipulation and a further payment of \$1,300.00 each month for the five months thereafter.

### **B. Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent 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 Respondent 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**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

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

Raymond J. Callery  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. The Respondent may wash trucks outdoors at the site provided that 1) no detergent is used in the truck wash water; and 2) only the exteriors of the trucks are washed. If the Respondent intends to use detergent in the truck wash water, the Respondent must first obtain either 1) an Illinois state construction and operating permit for a waste water storage

structure, if the Respondent intends to collect and remove the waste wash water from the site for treatment; or, 2) a state construction permit for a waste water treatment works and an NPDES permit, if the Respondent intends to treat and discharge the waste wash water onsite.

2. The Respondent shall establish and implement procedures for the identification, management and proper disposal of oil/water separator waste in accordance with the Act and related regulations.

3. The Respondent shall properly store and recycle spent fluorescent light bulbs containing mercury.

4. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility 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.

5. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

6. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$8,500.00 penalty, its commitment to cease and desist and perform future compliance activities as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further

liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed concurrently with this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

**F. Enforcement and Modification 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.

**G. 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

LISA BONNETT  
Director

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

BY: 

JOHN J. KIM  
Chief Legal Counsel

BY: Matthew J. Dunn  
~~THOMAS DAVIS, Chief~~  
Environmental Bureau  
Assistant Attorney General

DATE: 8/5/14

DATE: 8/8/14

DONLEY TRUCKING, INC.

BY: Todd Donley

DATE: JUNE 30, 2014

(print) TODD DONLEY

(title) VICE-PRESIDENT



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) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY: s/Raymond J. Callery  
RAYMOND J. CALLERY  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031

**CERTIFICATE OF SERVICE**

I hereby certify that I did on August 12, 2014, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT upon the following:

Gail F. Newingham  
Registered Agent for Donley Trucking, Inc.  
P.O. Box 13  
I-55 Frontage Road South  
Williamsville, IL 62693

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

Todd Donley  
Vice President  
Donley Trucking, Inc.  
8998 W. Outer Road  
Williamsville, IL 62693

s/ Raymond J. Callery  
RAYMOND J. CALLERY  
Assistant Attorney General