

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS)	
)	
Complainant,)	
)	
vs.)	PCB 20-32
)	(Enforcement-Water)
LANDFILL 33 LTD, an Illinois)	
corporation, and WENDT FAMILY)	
TRUST, an Illinois Trust,)	
)	
Respondents.)	

HEARING

BE IT REMEMBERED AND CERTIFIED that on the 19th day of August 2020, the following proceedings were held in the above entitled cause by the Illinois Pollution Control Board, taken by Isaiah Roberts, CSR, RPR, via WebEx videoconference commencing at 10:00 A.M.

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APPEARANCES:

ILLINOIS POLLUTION CONTROL BOARD
By: Carol Webb (Hearing officer)
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
Phone: 217.524.8509
Email: Carol.webb@illinois.gov

ILLINOIS ATTORNEY GENERAL
By: Daniel Robertson
Mark Gurnik
Dustin Burger
100 West Randolph Street
#13
Chicago, ILlinois 60601
Phone: 312.814.3000
Appearing on behalf of the
People of the State of Illinois,

HINSHAW & CULBERTSON LLP
By: Charles F. Helsten
100 Park Avenue
Rockford, Illinois 61101
Phone: 815.490.4906
Email: Chelsten@hinshawlaw.com
Appearing on behalf of
Landfill 33 LTD,
Wendt Family Trust.

1 MS. WEBB: Good morning. My name is Carol
2 Webb, and this is the hearing for PCB 20-32, People of
3 the State of Illinois vs. Landfill 33 LTD and Wendt
4 Family Trust.

5 It is Wednesday, August 19th, 2020, and we are
6 beginning at 10 a.m. This hearing was noticed and will
7 be conducted pursuant to the Environmental Protection
8 Act and the Board's procedural rules. I would like to
9 welcome members of the public to this hearing, as well
10 as parties, board members, and board staff.

11 In the interest of public safety, the Board
12 will allow participation via WebEx. This hearing is
13 being recorded and transcribed by a court reporter.
14 The transcript will be available on the board's website
15 by August 27th.

16 Okay. The subject of this hearing is the
17 party's proposed stipulation and settlement agreement.
18 Upon consideration of the proposed agreement, the
19 hearing record, and any written public comment, the
20 board may either accept the settlement, it may suggest
21 provisions, or it may reject the settlement. We will
22 begin with a summary of the proposed settlement. We
23 will then take questions or comments. If you have a
24 question, they parties may answer the questions today

1 or they may defer their answer to their post-hearing
2 brief.

3 At this time, I'd like the parties to please
4 make their appearances on the record beginning with the
5 People.

6 MR. ROBERTSON: Good morning, Madam Hearing
7 Officer. My name is Daniel Robertson,
8 R-o-b-e-r-t-s-o-n. I am an Assistant Attorney General
9 with the Illinois Attorney General's Office, and I'm
10 here on behalf of the People of the State of Illinois.

11 MS. WEBB: Thank you.

12 And Mr. Helsten. We need to unmute him.
13 Mr. Helsten.

14 MR. HELSTEN: Yes. This is Chuck Helsten,
15 H-e-l-s-t-e-n, with Hinshaw and Culbertson LLP
16 appearing for the respondents in this matter, Madam
17 Hearing Officer.

18 MS. WEBB: Okay. If we are ready for the
19 People to please summarize the post settlement
20 agreement.

21 MR. ROBERTSON: Thank you. And I just want to
22 note that I'm also joined today by Mark Gurnik from the
23 Illinois EPA's division of legal counsel and also
24 Dustin Burger, an environmental specialist also with

1 the EPA.

2 I just want to open by first saying thank you
3 to Hearing Officer Webb and the Board as well for your
4 flexibility in light of the current pandemic in
5 allowing this proceeding to move forward remotely,
6 allowing people to participate from elsewhere and not
7 have to come in person.

8 I'd also like to just take a moment to thank
9 the members of the public that are here today and also
10 those who are participating. We, again, likewise
11 appreciate you taking the time to speak with us today
12 and voice your concerns. So thank you, everyone.

13 Just as brief background, we -- there was -- on
14 November 27th, 2019, there was a nine-count complaint
15 filed against Landfill 33 and Wendt Family Trust
16 relating to a leachate release that occurred on or
17 about May 29th, 2017. Landfill 33 is the operator of a
18 municipal solid waste landfill in Effingham County.
19 Wendt Family Trust is the owner of the facility, and
20 that is the location where the leachate release had
21 occurred.

22 The complaint and the settlement agreements are
23 both available on the Board's website if anyone would
24 like to access them. Also for the people in

1 attendance, we have some copies of each for when you
2 come up here if you would like to review anything while
3 you give your comments.

4 On February 24th, 2020, the parties filed a
5 settlement agreement. In terms of a brief summary,
6 page four of the agreement does include compliance
7 activities that the respondents have taken to date.
8 These compliance activities include cleaning up of the
9 leachate release, installation of a lock-out system
10 designed to prevent future leachate releases, placing
11 control equipment inside of a locked shed on the
12 facility grounds, and also upgrading the
13 facility's -- upgrading all pipeline for the facility's
14 leachate control system from single to double-walled
15 pipe as an added preventative measure and at a cost of
16 \$255,135.50.

17 Section 42H of the Illinois Environmental
18 Protection Act sets forth conditions for determining a
19 civil penalty. Those conditions are discussed on pages
20 five to seven of the settlement agreement. Based on an
21 analysis of those factors, the State determined that a
22 civil penalty of \$18,000 will serve to deter future
23 violations and add future voluntary compliance with the
24 Act and Board regulations. The settlement also

1 includes future compliance language on page 9. That
2 essentially summarizes the settlement. I will -- I'll
3 go to the next person.

4 MS. WEBB: Mr. Helsten, do you have anything
5 that you would like to add to that?

6 MR. HELSTEN: No. No. I think the stipulation
7 and the findings of facts speak for themselves. I
8 would simply say that I think what the State has framed
9 in the stipulation and proposal for settlement meets
10 all criteria four square. Nothing more at this time
11 than that, Madam Hearing Officer.

12 MS. WEBB: Okay. Before we begin taking public
13 comments, I just want to announce that anyone may
14 submit written public comments to the Board regardless
15 of whether they speak today. Written public comments
16 are due by September 2nd and must be filed with the
17 clerk of the Board in our Chicago office. We are now
18 ready to hear from members of the public.

19 Mr. Robertson, would you mind if we put that
20 here by the microphone.

21 All right. I'm going to call -- first I'm
22 going to okay Mr. Dan Borries, the gentleman who called
23 the hearing today -- or requested the hearing, I should
24 say.

1 Mr. Borries, would you please spell your name
2 for the court reporter.

3 MR. BORRIES: Yeah. My name is Dan Borries,
4 B-o-r-r-i-e-s.

5 MS. WEBB: Okay. Go ahead. You may give us
6 your comments.

7 MR. BORRIES: Okay.

8 My family and I live half a mile east of
9 Landfill 33. We built and moved there in 1987. I
10 believe the landfill started in the early '80s, so it
11 was there when we moved, toured the place.

12 We never thought we would be affected by the
13 landfill. I was wrong about that because we are deeply
14 affected by it. We've never opposed or complained
15 about anything to do with the landfill until May 29th
16 of 2017 when I went down on my property, which
17 is -- borders the tributary stream where the fish kill
18 occurred and witnessed firsthand the toxic,
19 contaminated water running down that stream.
20 Everything in that stream was dead. It smelled
21 horrible. I decided then that I wasn't going to turn
22 the cheek anymore. I was going to try to protect my
23 property and my family and the environment around us.

24 What has fueled me the most to try to stay

1 informed and involved with this is the landfill's
2 excuse as to why this happened. With this proposed
3 settlement, I find this excuse of theirs is not
4 acceptable whatsoever, and that is someone trespassed
5 on the property and sabotaged the equipment by turning
6 off the switch. It's my understanding that all of
7 their equipment is supposed to be protected from this
8 to begin with, so that should have never -- never
9 happened.

10 I'm going to get my stipulation and proposal
11 out here. One of the first things I see on page four,
12 compliance activities to date, "The respondents
13 immediately took action to stop release of the leachate
14 from the facility after being informed by the EPA of
15 its occurrence," which I find odd. They don't watch
16 their own operation? They have to wait for the EPA to
17 tell them that they have a problem?

18 They took -- they say they look immediate
19 action to clean up leachate from the facility.
20 Immediate action? The EPA inspector told me that he
21 got down there at 11 a.m. the 30th -- I think it would
22 be -- and said that there was still leachate pooled up
23 in the stream or in the ditch before it got to the
24 stream. So if they took immediate action to clean it

1 up, why wasn't it cleaned up already?

2 They installed a lock out designed to prevent
3 the release and placed the control equipment for this
4 system inside a locked shed. That was supposed to be
5 locked anyway before any of this happened. It should
6 have been locked. They shouldn't -- their excuse for
7 somebody doing it is -- it's just not true. Nobody
8 should be able to walk onto that facility and do this
9 anyway. It should have been protected, locked.

10 Okay. The next thing I'm seeing is the impact
11 on the public resulting from the alleged noncompliance
12 on page four. The character and degree of injury to
13 the interference and the protection of the health and
14 general welfare and physical property of people. And
15 on page five, they go on to answer this. "The release
16 from the facility resulted in some harm to the
17 environment." That's an understatement. It done great
18 harm to the environment.

19 "It resulted in some harm to the environment as
20 evidenced by the fish kill that occurred in the unnamed
21 tributary." It killed everything that was in that
22 stream. For over a quarter mile, there was nothing
23 living in there, no fish. There was dead crawdads,
24 dead worms, dead frogs. When I walked up that

1 tributary stream with the CPO officer and a couple
2 hours later with the fish biologist -- he documented
3 it -- there was nothing alive in there. So to say that
4 there was "some harm done to the environment" is an
5 understatement.

6 The landfill did not even bother to notify any
7 of the neighboring land owners, no phone calls, no
8 warnings, no nothing. They should have warned people
9 because this wasn't just any old liquid running down
10 that crick. It was toxic, contaminated, harmful
11 substance.

12 On page six, number one, "The respondents
13 immediately took action to stop the release upon
14 receipt of notice and took action to clean up the
15 contamination." Okay. I don't know if I agree with
16 that.

17 On page seven, "Respondents then removed
18 released leachate that had collected in the unnamed
19 tributary." That's totally not true. They did not at
20 any time clean up the leachate out of the unnamed
21 tributary. I know for a fact they did not do that
22 south of their boundary line where the tributary runs
23 across private property, and I have a written
24 testimonial statement that I've signed myself and also

1 the other neighboring landowners that own the property
2 that the tributary runs across.

3 We all went down there several days after the
4 fish kill, and we all observed the pooled up, black
5 contaminated water setting in all of the low spots of
6 this tributary. The stream had quit running. There
7 was no freshwater, no nothing running down it, but the
8 blackened leachate water was pooled up in all of the
9 low holes of that crick. No one cleaned it up ever.
10 It stayed there until it evaporated, soaked into the
11 stream bed. Finally, two or three weeks after the fish
12 kill, it rained enough that freshwater came down and
13 washed it on down into salt crick.

14 Down to their \$18,000 fine for this, to me,
15 it's a slap on the wrist for the seriousness of what
16 they allowed to happen. I don't -- from what I have
17 researched, they have nine counts against them. Each
18 counts calls for a \$50,000 fine, plus I think \$10,000 a
19 day for the occurrence. That adds up to a lot more
20 than \$18,000. The fish biologist told me that those
21 fish had been dead for at least a couple of days. So
22 nobody knows for sure how many days this leachate ran
23 down the stream, and I never heard of any kind of
24 estimated amount that was allowed to run out of that

1 landfill.

2 When I was there with the CPO officers and the
3 fish biologists, it was pouring out of the retention
4 dish from the landfill into the unnamed tributary. I
5 would say easily five gallons a minute. That's a lot
6 of gallons of waste that ran down that tributary
7 stream, and no one even mentions salt crick, which it
8 all ran into also. So that stream, which is much
9 large, was also contaminated. No one even mentions it.

10 I know for a fact that a lot of these
11 statements are not true, and I don't see how they can
12 get by with this. That's why we came here today, to
13 make sure that they're held accountable for what they
14 did. This settlement isn't acceptable to us.

15 I have pictures of the contaminated stream bed.
16 I called John Richardson with the IEPA multiple times
17 about this. "Why isn't this being cleaned up?" Nobody
18 ever done anything. At one point, he guaranteed me
19 that if they cleaned up the tributary stream, it would
20 do more harm to the ecosystem than it would help it,
21 which I don't understand that because everything was
22 dead in the tributary.

23 The landfill shows pictures and documentation
24 of them cleaning up the areas. They have pictures of

1 where they cleaned up, what they cleaned up, but no
2 pictures of anything with the tributary stream,
3 although they say they cleaned it up. No pictures of
4 that area.

5 I think it was two weeks after the fish kill,
6 after I complained to the EPA about it not being
7 cleaned up -- I would go down there every day after the
8 fish kill, every afternoon after work I would go down,
9 look at it. On weekends, I would go down in the
10 mornings. The second weekend after the fish kill, I
11 went down on a Saturday morning, same thing, you know,
12 no evidence, nobody doing anything.

13 The next morning, on Sunday morning, I went
14 down -- and I have pictures of this -- where someone
15 walked down the stream bed of this unnamed tributary
16 where the fish kill occurred. They started at the
17 boundary line, the boundary line between the landfill
18 property and our private property. Someone walked down
19 the stream bed -- and you can see it clearly in the
20 pictures -- and they used their feet to shuffle the
21 blackened residue that was settled on the sand and
22 gravel of the stream bed. They shuffled that back and
23 forth, I guess, as to make it look better. They did
24 this for probably 100 feet on the private property. I

1 don't know who did it or really why, except to try to
2 erase evidence. And I would like some answers to some
3 of this.

4 MS. WEBB: Do you want to submit those pictures
5 as part of your public comment?

6 MR. BORRIES: Yes.

7 MS. WEBB: Now, are those -- now, if you file
8 those with the Board, you won't get those back; is that
9 okay?

10 MR. BORRIES: No. I would need --

11 MS. WEBB: Well, why don't you make copies and
12 then mail in copies. We'll take it as a public
13 comment, as part of your public comment.

14 MR. BORRIES: Okay. So mail them in -- mail in
15 copies?

16 MS. WEBB: Yes. Send them to, you know, the
17 clerk of the Board, like you did your petition or
18 request.

19 MR. BORRIES: Okay. All right.

20 MS. WEBB: So that will be part of your public
21 comments.

22 MR. BORRIES: And then should I do the same
23 with this signed, written paper regarding the
24 observations of the pooled --

1 MS. WEBB: Yeah. You can either give it to me
2 today or send it with the photos, but we'll count that
3 as part of your public comment.

4 MR. BORRIES: Okay. Can you take a copy of
5 this? I only have this one.

6 MS. WEBB: Well, if you only have the one, why
7 don't you just send it with the photos. Okay?

8 MR. BORRIES: All right. Thank you for your
9 time.

10 MS. WEBB: Thank you.

11 Okay. I would next like to call on anyone else
12 in the Springfield group who would like to speak. Is
13 there anyone else here who would like to make a public
14 comment? No. Okay. Is there anybody in the Chicago
15 office who would like to make a public comment? Is
16 there anybody in the Chicago office at all?

17 UNIDENTIFIED SPEAKER: Counsel is here. There
18 is nobody here who wishes to.

19 MS. WEBB: Okay. Thank you.

20 Okay. If there is anybody on the app or the
21 phone who would like to make a public comment? Would
22 you please unmute yourself and state your name.

23 Nobody? Are you still looking for the mute button?

24 Okay. I'll just give it another second. All right.

1 Nobody has unmuted themselves.

2 Oh, I didn't announce that. If you're calling
3 from a landline, press star 6 to unmute yourself.

4 Okay. And if you're on the computer, it's the
5 microphone icon. So anyone on the phone, star six.

6 Okay. I guess not.

7 Well, then I will ask -- I'll ask the parties
8 if they would like to make any closing statements.

9 Mr. Robertson, do you want to make any closing
10 statement or defer to your post-hearing brief?

11 MR. ROBERTSON: We would like to take a brief,
12 couple minute break just so I can compose.

13 MS. WEBB: Okay. Let's take a five-minute
14 break.

15 (Off the record.)

16 (On the record.)

17 MS. WEBB: Let's go back on the record.

18 Mr. Robertson, do you have any closing remarks you
19 would like to make?

20 MR. ROBERTSON: Nothing specific, Madam Hearing
21 Officer. Just generally, again, we want to thank
22 everyone for attending. We want to thank Mr. Borries
23 for taking time to express his concerns. We can
24 appreciate the frustrations that he is expressing.

1 We would like to reserve any specific responses
2 for our post-hearing brief so that we have an
3 opportunity to review the information that he has
4 provided today as well as the additional information
5 that he will be submitting in the future.

6 So thank you, again, to the Board and
7 Mr. Borries and the rest of the public for attending
8 today.

9 MS. WEBB: Thank you. Mr. Helsten, do you have
10 anything you would like to say?

11 MR. HELSTEN: Well, Madam Hearing Officer, I
12 will likewise, after looking at everything that
13 Mr. Borries has submitted and that anyone else has
14 submitted in the written post hearing public comment
15 period, address it in our brief.

16 Just several thoughts, parting thoughts. The
17 first parting thought is this -- there is no conspiracy
18 here between the respondents and the State of Illinois.
19 I've been doing this close to 40 years, and Mr. Borries
20 mentioned Mr. John Richardson. I can tell you, having
21 dealt with Mr. Richardson, Mr. Jennings, Mr. Child,
22 Mr. Kim, every one of them for decades, that nobody
23 goes easy on the regulated public. They do their best
24 job. They do what they think is fair and what they

1 think is right. Okay?

2 Mr. Borries made it sound like well, landfill
3 33 just was notified and then the State said, "Well,
4 you go clean it up and you just let us know when you're
5 done because we're not going to do any oversight here
6 or come back and look to see what you did." As we all
7 know, that's not what happens.

8 They -- as the stipulations said -- and these
9 are the findings of fact of the State and the facts
10 that the State uncovered in their
11 investigation -- immediately upon being noticed of the
12 problem, immediately upon being noticed by IEPA, they
13 immediately contacted Andrews Engineering, which is the
14 records, is a top shelf environmental consulting firm
15 who was there within several hours to start the
16 cleanup. The cleanup up was completed within 24 hours,
17 okay, at considerable expense.

18 EPA, of course, as the record shows in this
19 matter, followed up. They monitored this. They just
20 don't go away. EPA had to be satisfied. The State had
21 to be satisfied here that the cleanup was appropriate
22 and was complete. The cleanup was a considerable
23 expense. The lock out system was another quarter of a
24 million dollars. All told, you're looking at probably

1 over \$300,000 that this company devoted in a very, very
2 short amount of time.

3 The system that was there was designed by
4 Andrews Engineering -- the original system was designed
5 by Andrews Engineering. Again, Andrews is a top shelf
6 environmental consulting firm. This company doesn't do
7 things on the cheap or do them on their own. They hire
8 top shelf consults to help them, as witnessed by what
9 they expended here after this problem occurred. Okay?

10 So this had never occurred before in 30 years.
11 This type of incident and the stipulation and
12 settlement, the findings of fact note that this
13 company, even as Mr. Borries said -- Mr. Borries is a
14 good and horrible man, and I appreciate his concerns.
15 This company had been operating for 30 years prior to
16 this -- to this instance with no violation prior to
17 this, adjudicated violation prior to this. That speaks
18 volume about what the corporate culture here is.

19 The other things that speaks volumes of the
20 corporate culture here is the immediate response, the
21 cleanup within 24 hours. The damage was -- and the
22 IDNR was there. They did a fish count. 184 small
23 fish, bait fish, and minnows with a value of less than
24 \$20. Now, I'm an environmentalist. I'm a sportsman,

1 I'm an outdoorsman. So I don't minimize that. But the
2 damage that was done was contained to the greatest
3 extent possible and addressed immediately.

4 This settlement is appropriate in all respects
5 because -- and, again, I've been doing this for
6 40 -- close to 40 years. This is the type of case that
7 should be voluntarily settled. The PCB encourages
8 voluntary settlements where appropriate. It's
9 appropriate here.

10 Otherwise, the parties go to unnecessary
11 litigation, which ties up IEPA. They ever better
12 things to do. People that don't respond to them.
13 People that don't do what the EPA requests. The PCB
14 has better things to do too. There are people out
15 there that are resistant. This isn't one of them.

16 That's why the settlement here is more than
17 appropriate. That's all I have to say, Madam Hearing
18 Officer.

19 MS. WEBB: Before we mute you, did we talk
20 about September 21st for a post hearing brief date or
21 am I misremembering?

22 MR. HELSTEN: No. I think we did, Madam
23 Hearing Officer. Yeah. I would be able to file the
24 brief very shortly after the public comment period

1 ends. I can't speak for Mr. Robertson. I'll defer to
2 him and whatever he wants to do is fine. Whatever the
3 State wants to do is fine with me.

4 MR. ROBERTSON: I believe we did discuss
5 September 21st, Hearing Officer Webb, and with the
6 understanding that if we are able to file it sooner
7 than that, we would.

8 MS. WEBB: All right. And I'll just make some
9 concluding remarks here. The transcript of this
10 hearing should be able by August 26th and will be
11 posted on the Board's website. The deadline for filing
12 written public comment with the Board is September 2nd,
13 2020. Public comment must be postmarked by that date
14 and sent to the Clerk of the Board in our Chicago
15 office. The party's post hearing brief are due by
16 September 21st. I thank all of you for your
17 participation. We are now adjourned.

18 (End of proceedings.)

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REPORTER'S CERTIFICATE

I, ISAAH P. ROBERTS, CSR, RPR, a Registered Professional Reporter and Certified Shorthand Reporter in the State of Illinois, do hereby certify that I reported in shorthand the foregoing proceedings and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid.

Isaiah P. Roberts, CSR

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