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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOV 27 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
SHERIDAN SAND & GRAVEL CO.,)
)
Respondent.)

PCB No. 06-177

MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER
AND AFFIRMATIVE DEFENSES

Respondent, SHERIDAN SAND & GRAVEL CO. ("SHERIDAN"), by its attorney, Kenneth Anspach, pursuant to 735 ILCS 5/2-616(a) and 35 Ill. Adm. Code 101.100(b) hereby moves the Pollution Control Board for leave to file to its First Amended Answer and Affirmative Defenses, a copy of which is attached hereto, and in support thereof states as follows:

1. SHERIDAN filed its Answer and Affirmative Defenses on October 13, 2006.
2. 735 ILCS 5/2-616(a) provides, in pertinent part, as follows:

At any time before final judgment amendments may be allowed on just and reasonable terms...changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable...the defendant to make a defense or assert a cross claim.

3. Obviously, final judgment has not been entered, so filing an amended answer and affirmative defenses must be allowed.

WHEREFORE, upon the above and foregoing, SHERIDAN moves for leave to file to its First Amended Answer and Affirmative Defenses, a copy of which is attached hereto.

Respectfully submitted,

Respondent, SHERIDAN SAND & GRAVEL CO.

A handwritten signature in black ink, appearing to read 'K. Anspach', is written over a horizontal line.

Kenneth Anspach, Esq.
ANSPACH & ASSOCIATES
8 South Michigan Avenue
Suite 3400
Chicago, IL 60603
(312) 407-7888

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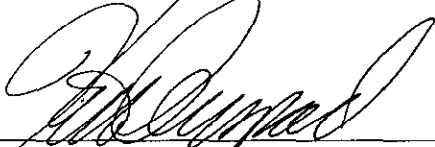
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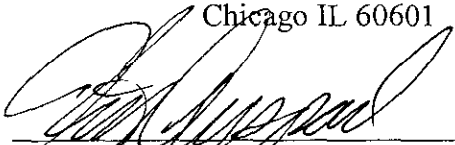


Kenneth Anspach, Esq.
ANSPACH & ASSOCIATES
8 South Michigan Avenue
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served the attached Motion for Leave to File First Amended Answer and Affirmative Defenses by X personal delivery, placement in the U. S. Mail, with first class postage prepaid, sending it via facsimile and directed to all parties of record at the address(es) set forth below on or before 5:00 p.m. on the 27th day of November, 2006.

Vanessa Vail
Assistant Attorney General
Environmental Bureau
188 West Randolph Street
20th Floor
Chicago IL 60601



KENNETH ANSPACH, ESQ.
ANSPACH & ASSOCIATES
8 South Michigan Avenue
Suite 3400
Chicago, IL 60603
(312) 407-7888

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD NOV 27 2006

PEOPLE OF THE STATE OF ILLINOIS,)
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SHERIDAN SAND & GRAVEL CO.,)
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STATE OF ILLINOIS
Pollution Control Board

PCB No. 06-177

FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Respondent, SHERIDAN SAND & GRAVEL CO. ("SHERIDAN" or "Sheridan S & G"), by its attorney, KENNETH ANSPACH, pursuant to 35 Ill. Adm. Code 103.204(d), for its First Amended Answer and Affirmative Defenses to the Complaint ("Complaint") of complainant, PEOPLE OF THE STATE OF ILLINOIS (the "STATE" or "State"), alleges and avers as follows:

COUNT I

ALLEGED FAILURE TO REGISTER

1. This complaint is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), against SHERIDAN SAND & GRAVEL CO., pursuant to the terms and conditions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

ANSWER: SHERIDAN ADMITS that this complaint is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"),

and DENIES that this complaint is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion.

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2004), and is charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: SHERIDAN ADMITS that the Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2004), and DENIES the remaining allegations of paragraph 2.

3. Respondent SHERIDAN SAND & GRAVEL CO. ("Sheridan S & G"), is an Illinois corporation duly authorized to transact business in Illinois. Sheridan S & G owns and operates a sand and gravel mine located at 2679 North 4201 Road, Sheridan, LaSalle County, Illinois ("Site"). The Site consists of approximately 291.56 acres.

ANSWER: SHERIDAN ADMITS the allegations of paragraph 3.

4. On April 19, 2005, the Illinois EPA and the LaSalle County Environmental Services & Land Use Department ("LaSalle County Environmental Department") conducted an inspection of the Site. During the inspection, the Illinois EPA inspectors observed approximately 500 used and waste tires at the Site.

ANSWER: SHERIDAN has no knowledge sufficient to form a belief regarding the allegations that on April 19, 2005, the Illinois EPA and the LaSalle County Environmental Department conducted an inspection of the Site. SHERIDAN DENIES the remaining allegations of paragraph 4.

5. The tires were stored inside (7) uncovered roll-off boxes and two (2) uncovered semi-trailers.

ANSWER: SHERIDAN DENIES the allegations of paragraph 5.

6. The tires that were off the rims were stored inside the roll-off boxes and semi-trailers and contained water.

ANSWER: SHERIDAN DENIES the allegations of paragraph 6.

7. Tires located outdoors can fill with water from precipitation events and provide breeding habitat for mosquitoes.

ANSWER: SHERIDAN has no knowledge sufficient to form a belief regarding the allegations that tires located outdoors can fill with water from precipitation events and provide breeding habitat for mosquitoes.

8. On May 4, 2005, Illinois EPA sent a Violation Notice (“VN”) to Sheridan S & G, advising Respondent that the accumulation of tires at the Site constituted violations of the Act and Board regulations.

ANSWER: SHERIDAN ADMITS the allegations of paragraph 8.

9. On June 6, 2005, the LaSalle County Environmental Department visited the Site and observed that the used and waste tires had been removed.

ANSWER: SHERIDAN ADMITS the allegations that on June 6, 2005, the LaSalle County Environmental Department visited the Site and observed no tires on the Site and, further, determined that no violations existed on the Site and DENIES the remaining allegations of paragraph 9.

10. Illinois EPA received a response to the VN from Sheridan S & G on June 15, 2005, summarizing the actions Sheridan S & G had performed since May 4, 2005.

ANSWER: SHERIDAN ADMITS the allegations that Illinois EPA received a response to the VN from Sheridan S & G on June 15, 2005, avers that the response speaks for itself, and DENIES the remaining allegations of paragraph 10.

11. On August 26, 2005, Illinois EPA sent a Notice of Intent to Pursue Legal Action ("NIPLA") to Respondent.

ANSWER: SHERIDAN ADMITS the allegations of paragraph 11.

12. Section 55(d) of the Act, 415 ILCS 5/55(d) (2004), provides, in pertinent part, as follows:

- (d) Beginning January 1, 1992, no person shall cause or allow the operation of:
- (1) a tire storage site which contains more than 50 used tires, unless the owner or operator, by January 1, 1992 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, (i) registers the site with the Agency, (ii) certifies to the Agency that the site complies with any applicable standards adopted by the Board pursuant to Section 55.2, (iii) reports to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle and process the tires, and (iv) pays the fee required under subsection (b) of Section 55.6;

ANSWER: SHERIDAN avers that Section 55(d) of the Act, 415 ILCS 5/55(d) (2004) speaks for itself and DENIES the remaining allegations of paragraph 12.

13. Section 54.13 of the Act, 415 ILCS 5/54.13 (2004), provides as follows:

"Used tire" means a worn, damaged, or defective tire that is not mounted on a vehicle.

ANSWER: SHERIDAN avers that Section 54.13 of the Act, 415 ILCS 5/54.13 (2004) speaks for itself and DENIES the remaining allegations of paragraph 13.

14. During the inspection at the Site, the Illinois EPA observed unmounted tires that were worn, damaged or defective and that, therefore, constituted used tires as defined in Section 54.13 of the Act, 415 ILCS 5/54.13 (2004).

ANSWER: SHERIDAN has no knowledge sufficient to form a belief regarding the allegations that during the inspection at the Site, the Illinois EPA observed unmounted tires that were worn, damaged or defective and DENIES the remaining allegations of paragraph 14.

15. Section 54.12 of the Act, 415 ILCS 5/54.12 (2004), provides as follows:

“Tire storage site” means a site where used tires are stored or processed, other than (1) the site at which the tires were separated from the vehicle wheel rim, (2) the site where the used tires were accepted in trade as part of a sale of new tires, or (3) a site at which tires are sold at retail in the regular course of business, and at which not more than 250 used tires are kept at any time or (4) a facility at which tires are sold at retail provided that the facility maintains less than 1300 recyclable tires, 1300 tire carcasses, and 1300 used tires on site and those tires are stored inside a building or so that the are prevented from accumulating water.

ANSWER: SHERIDAN avers that Section 54.12 of the Act, 415 ILCS 5/54.12 (2004) speaks for itself and DENIES the remaining allegations of paragraph 15.

16. The Site constitutes a tire storage site as that term is defined in Section 54.12 of the Act, 415 ILCS 5/54.12 (2004), because used tires were stored or processed at the Site.

ANSWER: SHERIDAN DENIES the allegations of paragraph 16.

17. Respondent failed to register the Site with the Illinois EPA, certify that the Site with applicable Board standards, report to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle and process the

tires, and failed to pay the fee required under subsection (b) of Section 55.6, in violation of Section 55(d)(1) of the Act, ILCS 5/55(d)(1) (2004).

ANSWER: SHERIDAN DENIES the allegations of paragraph 17.

18. Respondent operated a tire storage site in violation of Section 55(d)(1) of the Act, 415 ILCS 5/55(d)(1) (2004).

ANSWER: SHERIDAN DENIES the allegations of paragraph 18.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, SHERIDAN SAND AND GRAVEL CO., on this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent violated Section 55(d)(1) of the Act, 415 ILCS 5/55(d)(1) (2004);

3. Ordering the Respondent to cease and desist from any future violations of Section 55(d)(1) of the Act;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

OBJECTION: Pursuant to 735 ILCS 5/2-604, SHERIDAN objects to the prayer for relief under Count I for the reason that the prayer for relief is not sustained by the allegations of Count I.

COUNT II

ALLEGED IMPROPER STORAGE OF USED OR WASTE TIRES

1-16. Complainant hereby realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

ANSWER: SHERIDAN repeats and realleges its answers to paragraphs 1 through 16 of Count I as and for its answers to paragraph 1 through 16 of this Count II.

17. Section 55(e) of the Act, 415 ILCS 5/55(e) (2004), provides in pertinent part, as follows:

- (e) No person shall cause or allow the storage, disposal, treatment or processing of any used or waste tire in violation of any regulation or standard adopted by the Board.

ANSWER: SHERIDAN avers that Section 55(e) of the Act, 415 ILCS 5/55(e) (2004) speaks for itself and DENIES the remaining allegations of paragraph 17.

18. Section 54.16 of the Act, 415 ILCS 5/54.16 (2004), provides as follows:

“Waste tire” means a used tire that has been disposed of.

ANSWER: SHERIDAN avers that Section 54.16 of the Act, 415 ILCS 5/54.16 (2004) speaks for itself and DENIES the remaining allegations of paragraph 18.

19. Section 54.04 of the Act, 415 ILCS 5/54.04 (2004), provides as follows:

“Disposal” means the placement of used tires into or on any land or water except as an integral part of systematic reuse or conversion in the regular course of business.

ANSWER: SHERIDAN avers that Section 54.04 of the Act, 415 ILCS 5/54.04 (2004) speaks for itself and DENIES the remaining allegations of paragraph 19.

20. During the April 19, 2005 inspection, the Illinois EPA observed waste tires at the Site that were placed in uncovered receptacles on the land and were not part of a systematic reuse or conversion in the regular course of business and, therefore, constituted disposal of waste tires as those terms are defined at Sections 54.04 and 54.16 of the Act, 415 ILCS 5/54.04 and 54.16 (2004).

ANSWER: SHERIDAN has no knowledge sufficient to form a belief regarding the allegations that on April 19, 2005, the Illinois EPA observed waste tires at the Site that were placed in uncovered receptacles on the land and were not part of a systematic reuse or conversion in the regular course of business. SHERIDAN DENIES the remaining allegations of paragraph 20.

21. Section 848.020(b) of the Board regulations, 35 Ill. Adm. Code 848.202(b), provides, in pertinent part, as follows:

- (b) At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirements:

* * *

- 4) Used or waste tires shall be drained of water on the day of generation or receipt.

* * *

- 5) Used or waste tires received at the site shall not be stored unless within 14 days after the receipt of any used tire the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. All used and waste tires received at the site before June 1, 1989, shall be altered,

reprocessed, converted, covered or
otherwise prevented from accumulating
water by January 1, 1992.

ANSWER: SHERIDAN avers that Section 848.020(b)(4) and (5) of the Board regulations, 35 Ill. Adm. Code 848.202(b)(4) and (5) and speaks for itself and DENIES the remaining allegations of paragraph 21.

22. Respondent stored or disposed of used and/or waste tires at the Site in violation of Section 55(e) of the Act, 415 ILCS 5/55(e) (2004), and 35 Ill. Adm. Code 848.202(b)(4) and (5).

ANSWER: SHERIDAN DENIES the allegations of paragraph 22.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, SHERIDAN SAND AND GRAVEL CO., on this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent violated Section 55(e) of the Act, 415 ILCS 5/55(e) (2004) and 35 Ill. Adm. Code 848.202(b)(4) and (5);

3. Ordering the Respondent to cease and desist from any future violations of Section 55(e) of the Act, and 35 Ill. Adm. Code 848.202(b)(4) and (5);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

OBJECTION: Pursuant to 735 ILCS 5/2-604, SHERIDAN objects to the prayer for relief under Count II for the reason that the prayer for relief is not sustained by the allegations of Count II.

COUNT III

ALLEGED FAILURE TO COMPLY WITH TIRE STORAGE NOTIFICATION AND RECORDKEEPING REQUIREMENTS

1-20. Complainant hereby realleges and incorporates by reference herein paragraphs 1 through 20 of Count II as paragraphs 1 through 20 of this Count III.

ANSWER: SHERIDAN repeats and realleges its answers to paragraphs 1 through 20 of Count II as and for its answers to paragraph 1 through 20 of this Count III.

21. Section 848.304 of the Board regulations, 35 Ill. Adm. Code 848.304, provides, in pertinent part, as follows:

- a) The owner or operator shall maintain an Annual Tire Summary at the site; such record shall include the agency designated site number, the site name and address and the calendar year for which the summary applies.

* * *

- c) The Annual Tire Summary shall be received by the Agency on or before January 31 of each year and shall cover the preceding calendar year.

ANSWER: SHERIDAN avers that Section 848.304 of the Board regulations, 35 Ill. Adm. Code 848.304, speaks for itself and DENIES the remaining allegations of paragraph 21.

22. Section 848.305 of the Board regulations, 35 Ill. Adm. Code 848.305, provides as follows:

Copies of all records required to be kept under this Subpart shall be retained by the owner and operator for three years and shall be made available at the site during the normal business hours of the operator for inspection and photocopying by the Agency.

ANSWER: SHERIDAN avers that Section 848.305 of the Board regulations, 35 Ill. Adm. Code 848.305, speaks for itself and DENIES the remaining allegations of paragraph 22.

23. Respondent failed to maintain and submit an annual tire summary to the Illinois EPA at any time relevant to the Complaint in violation of Section 55(e) of the Act, 415 ILCS 5/55(e) (2004), and 35 Ill. Adm. Code 848.304(a) and (c).

ANSWER: SHERIDAN DENIES the allegations of paragraph 23.

24. Respondent failed to maintain records at the Site at all times relevant to this Complaint, in violation of Section 55(e) of the Act, 415 ILCS 5/55(e) (2004), and 35 Ill. Adm. Code 848.305.

ANSWER: SHERIDAN DENIES the allegations of paragraph 24.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, SHERIDAN SAND AND GRAVEL CO., on this Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent violated Section 55(e) of the Act, 415 ILCS 5/55(e) (2004) and 35 Ill. Adm. Code 848.304(a) and (c) and 848.305;

3. Ordering the Respondent to cease and desist from any future violations of Section 55(e) of the Act, and 35 Ill. Adm. Code 848.304(a) and (c) and 848.305;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

OBJECTION: Pursuant to 735 ILCS 5/2-604, SHERIDAN objects to the prayer for relief under Count III for the reason that the prayer for relief is not sustained by the allegations of Count III.

COUNT IV

ALLEGED FAILURE TO PAY REGISTRATION FEE

1-20. Complainant hereby realleges and incorporates by reference herein paragraphs 1 through 20 of Count II as paragraphs 1 through 20 of this Count IV.

ANSWER: SHERIDAN repeats and realleges its answers to paragraphs 1 through 20 of Count II as and for its answers to paragraph 1 through 20 of this Count IV.

21. Section 21(k) of the Act, 415 ILCS 5/21(k) (2004), provides, in pertinent part, as follows:

No person shall:

k. Fail or refuse to pay any fee imposed under this Act.

ANSWER: SHERIDAN avers that Section 21(k) of the Act, 415 ILCS 5/21(k) (2004), speaks for itself and DENIES the remaining allegations of paragraph 21.

22. Section 55.6(b) of the Act, 415 ILCS 5/55.6(b) (2004), provides, in pertinent part, as follows:

(b) Beginning January 1, 1992, in addition to any other fees required by law, the owner or operator of each site required to be registered under subsection (d) of Section 55 shall pay to the Agency an annual fee of \$100. Fees collected under this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

ANSWER: SHERIDAN avers that Section 55.6(b) of the Act, 415 ILCS 5/55.6(b) (2004), speaks for itself and DENIES the remaining allegations of paragraph 22.

23. At the time of the April 19, 2005 inspection, Respondent operated a tire storage site that contained more than 50 used tires and was required to register with the Illinois EPA as a tire storage site, and therefore, required to pay an annual fee.

ANSWER: SHERIDAN DENIES the allegations of paragraph 23.

24. Respondent failed to pay the annual fee in violation of Sections 55.6(b), 55(d)(1) and 21(k) of the Act, 415 ILCS 5/55.6(b), 55(d)(1) and 21(k) (2004).

ANSWER: SHERIDAN DENIES the allegations of paragraph 24.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, SHERIDAN SAND AND GRAVEL CO., on this Count IV:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Sections 55.6(b), 55(d)(1) and 21(k) of the Act, 415 ILCS 5/55.6(b), 55(d)(1) and 21(k) (2004);
3. Ordering the Respondent to cease and desist from any future violations of Sections 55.6(b), 55(d)(1) and 21(k) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

OBJECTION: Pursuant to 735 ILCS 5/2-604, SHERIDAN objects to the prayer for relief under Count IV for the reason that the prayer for relief is not sustained by the allegations of Count IV.

COUNT V

ALLEGED FAILURE TO COMPLY WITH TIRE TRANSPORTER REQUIREMENTS

1-20. Complainant hereby realleges and incorporates by reference herein paragraphs 1 through 20 of Count II as paragraphs 1 through 20 of this Count V.

ANSWER: SHERIDAN repeats and realleges its answers to paragraphs 1 through 20 of Count II as and for its answers to paragraph 1 through 20 of this Count V.

21. Section 55(g) of the Act, 415 ILCS 5/55(g) (2004), provides as follows:

- (g) No person shall engage in any operation as a used or waste tire transporter except in compliance with Board regulations.

ANSWER: SHERIDAN avers that Section 55(g) of the Act, 415 ILCS 5/55(g) (2004), speaks for itself and DENIES the remaining allegations of paragraph 21.

22. Section 54.12(b) of the Act, 415 ILCS 5/54.12(b) (2004), provides as follows:

- “Tire Transporter” means a person who transports used or waste tires in a vehicle.

ANSWER: SHERIDAN avers that Section 54.12(b) of the Act, 415 ILCS 5/54.12(b) (2004), speaks for itself and DENIES the remaining allegations of paragraph 22.

23. Respondent transported used or waste tires to the Site, and is therefore a tire transporter as defined in Section 54.12(b) of the Act, 415 ILCS 5/54.12(b) (2004).

ANSWER: SHERIDAN DENIES the allegations of paragraph 23.

24. Section 848.601 of the Board regulations, 35 Ill. Adm. Code 848.601, provides, in pertinent part, as follows:

- (a) Except as provided in Subsection (c), no person shall transport more than 20 used or waste tires in a vehicle unless the following requirements are met.
 - 1) The owner or operator has registered the vehicle with the Agency in accordance with this Subpart, received approval of such registration from the Agency, and such registration is current, valid and in effect.

- 2) The owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of this Subpart.

ANSWER: SHERIDAN avers that Section 848.601 of the Board regulations, 35 Ill. Adm. Code 848.601, speaks for itself and DENIES the remaining allegations of paragraph 24.

25. Respondent failed to register vehicles that were used for transporting used or waste tires with the Illinois EPA, in violation of Section 55(g) of the Act, 415 ILCS 5/55(g) (2004), and 35 Ill. Adm. Code 848.601(a)(1).

ANSWER: SHERIDAN DENIES the allegations of paragraph 25.

26. Respondent failed to display a placard on vehicles used for transporting used or waste tires, in violation of Section 55(g) of the Act, 415 ILCS 5/55(g) (2004), and 35 Ill. Adm. Code 848.601(a)(2).

ANSWER: SHERIDAN DENIES the allegations of paragraph 26.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, SHERIDAN SAND AND GRAVEL CO., on this Count V:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Sections Section 55(g) of the Act, 415 ILCS 5/55(g) (2004), and 35 Ill. Adm. Code 848.601(a)(1) and (2);
3. Ordering the Respondent to cease and desist from any future violations of Section 55(g) of the Act, and 35 Ill. Adm. Code 848.601(a)(1) and (2);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

OBJECTION: Pursuant to 735 ILCS 5/2-604, SHERIDAN objects to the prayer for relief under Count V for the reason that the prayer for relief is not sustained by the allegations of Count V.

AFFIRMATIVE DEFENSES

Respondent, SHERIDAN SAND & GRAVEL CO. ("SHERIDAN"), by its attorney, Kenneth Anspach, pursuant to 35 Ill. Adm. Code 103.204(e), for its First Amended Affirmative Defenses to the Complaint ("Complaint") of complainant, PEOPLE OF THE STATE OF ILLINOIS (the "STATE"), alleges and avers as follows:

FIRST AFFIRMATIVE DEFENSE

SHERIDAN, for its First Affirmative Defense to the STATE's Complaint, pursuant to Section 103.204(d) of the Board regulations, 35 Ill. Adm. Code 103.204(d) and Section 2-613(d) of the Code of Civil Procedure, 735 ILCS 5/2-613(d), alleges and avers that the Complaint against SHERIDAN cannot be recovered upon by reason of operation of Sections 31(b), 31(c) and Section 55.5(c) of the Act, 415 ILCS 5/31(b), 5/31(c) and 5/55.5(c), is therefore barred, and, accordingly, this Board is without subject matter jurisdiction over the Complaint, as follows:

1. The initiation of an enforcement action pursuant to Title XIV of the Act is governed by Section 55.5 of the Act, 415 ILCS 5/55.5.

2. Section 55.5 provides as follows:

§ 415 ILCS 5/55.5. [Investigation of violations; warning notice]

Sec. 55.5. (a) The Agency shall investigate alleged violations of this Title XIV, or of any regulation promulgated hereunder, or of any approval granted by the Agency, and may cause such other investigations to be made as it may deem advisable.

(b) If an investigation discloses that a violation may exist, the Agency shall take action pursuant to Title VIII of this Act in a timely manner.

(c) Notwithstanding the provisions of subsection (b) of this Section, prior to taking action pursuant to Title VIII for violation of subsection (a), (b) or (c) of Section 55 of this Act, the Agency or unit of local government shall issue and serve upon the person complained against a written warning notice informing such person that the Agency or unit of local government intends to take such action. Such written warning notice shall specify the alleged violation, describe the corrective action which should be taken, and provide a period of 30 days in which one of the following response actions may be taken by such person:

(1) initiation and completion of the corrective action, and notification of the Agency or unit of local government in writing that such action has been taken; or

(2) notification of the Agency or unit of local government in writing that corrective action will be taken and completed within a period of 45 days from the date of issuance of the warning notice.

In the event that the person fails to take a response action, initiates but does not adequately complete a response action, or takes other action in contravention of the described corrective action, the Agency or unit of local government may proceed pursuant to subsection (b) of this Section. If the same person has been issued 2 written

warning notices for similar violations in any calendar year, thereafter the Agency or unit of local government may proceed pursuant to subsection (b) without first following the provisions of this subsection for the remainder of such calendar year with respect to such person. (Emphasis added.)

Thus, pursuant to Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), where the offending party has violated Sections 55(a)-(c) of Title XIV of the Act, 415 ILCS 5/55(a)-(c), Illinois EPA must serve upon the offending party a written warning notice specifying the alleged violation, describing the corrective action which should be taken, and providing a period of 30 or 45 days in which the party may initiate and complete the corrective action. If and only if the party fails to take or complete the corrective action or if there are no violations of Sections 55(a)-(c) of Title XIV of the Act, 415 ILCS 5/55(a)-(c), may Illinois EPA proceed with enforcement under Title VIII pursuant to Section 55(b) of the Act, 415 ILCS 5/55(b) for any violations of Title XIV of the Act.

3. In the instant case, despite there being alleged violations of Sections 55(a)-(c) of Title XIV of the Act, 415 ILCS 5/55(a)-(c), Illinois EPA never sent SHERIDAN a written warning notice pursuant to Section 55.5(c) of the Act, 415 ILCS 5/55.5(c). Instead, on or about May 4, 2005, Illinois EPA sent SHERIDAN a so-called violation notice (“Violation Notice”) purportedly pursuant to Section 31(a)(1) of Title VIII the Act, 415 ILCS 5/31(a)(1). The Violation Notice included allegations of violations under Sections 55(a)-(c) of the Act, 415 ILCS 5/55(a)-(c), as well as those which were alleged under other provisions of Title XIV of the Act. A copy of the Violation Notice is attached hereto as Exhibit “A.”

4. The Violation Notice was illegal and barred for failure to comply with the provisions of Section 55.5(c) of the Act, 415 ILCS 5/55.5(c).

5. Section 31(b) of the Act, 415 ILCS 31(b), states, in pertinent part, as follows:

(b) For alleged violations that remain the subject of disagreement between the Agency and the person complained against *following fulfillment of the requirements of subsection (a) of this Section*, and as a precondition to the Agency's referral or request to the Office of the Illinois Attorney General...for legal representation regarding an alleged violation that may be addressed pursuant to subsection (c)...of this Section..., the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency intends to pursue legal action.

Thus, before Illinois EPA can serve a written notice that it intends to pursue legal action pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b), it must have fulfilled all of the requirements of Section 31(a) of the Act, 415 ILCS 5/31(a).

6. Yet, compliance with the requirements of Section 31(a) of the Act, 415 ILCS 5/31(a) is conditioned by statute upon compliance with Section 55.5 of the Act, 415 ILCS 5/55.5.

7. Accordingly, since the Violation Notice was issued in direct contravention of the requirements of Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), Illinois EPA did not fulfill the requirements of Section 31(a) of the Act, 415 ILCS 5/31(a).

8. Because Illinois EPA did not fulfill the requirements of Section 31(a) of the Act, 415 ILCS 5/31(a), Illinois EPA was barred from sending SHERIDAN a notice of intent to pursue legal action pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b).

9. Despite Illinois EPA's failure to fulfill the requirements of Section 31(a) of the Act, 415 ILCS 5/31(a), Illinois EPA, purportedly pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b), sent SHERIDAN a letter dated August 26, 2005 ("Notice of Intent"), a

copy of which is attached hereto as Exhibit "B", that it intended to pursue legal action against SHERIDAN.

10. Thus, the Notice of Intent was illegal and barred by operation of Sections 31(b) and Section 55.5(c) of the Act, 415 ILCS 5/31(b) and 5/55.5(c).

11. Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), states, in pertinent part, as follows:

(1) For alleged violations which remain the subject of disagreement between the Agency and the person complained against following waiver, pursuant to subdivision (10) of subsection (a) of this Section, or fulfillment of the requirements of subsections (a) and (b) of this Section, the Office of the Illinois Attorney General...shall issue and serve upon the person complained against a written notice together with a formal complaint, which shall specify the provision of the Act or the rule or regulation...which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation...and shall require the person so complained against to answer the charges of such formal complaint at a hearing before the Board...

Thus, before the Attorney General can file a complaint before the Board, there must have either been a waiver by the person complained against of the terms of Section 31(a) of the Act, 415 ILCS 5/31(a), compliance by such person with a Compliance Commitment Agreement accepted by the Illinois EPA pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), or Illinois EPA's fulfillment of the requirements of Sections 31(a) and (b) of the Act, 415 ILCS 5/31(a) and 5/31(b).

12. SHERIDAN has neither waived the provisions of Section 31(a) of the Act, 415 ILCS 5/31(a), nor been informed by Illinois EPA that such a waiver has ever occurred.

13. Illinois EPA never accepted any Compliance Commitment Agreement submitted by SHERIDAN, and, in fact, explicitly rejected same in a letter dated July 12, 2005.

14. Accordingly, since there was no waiver and, no stated acceptance of a Compliance Commitment Agreement, then before the Attorney General could file a complaint with the Board against SHERIDAN pursuant to Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), Illinois EPA was required to have fulfilled the requirements of Sections 31(a) and (b) of the Act, 415 ILCS 31(a) and (b).

15. However, as set forth above, Illinois EPA failed to fulfill the requirements of Section 31(a) of the Act, 415 ILCS 5/31(a), and because of such failure, Illinois EPA failed to fulfill the requirements of Section 31(b) of the Act, 415 ILCS 5/31(b).

16. Because Illinois EPA failed to fulfill the requirements of Sections 31(a) and 31(b) of the Act, 415 ILCS 5/31(a) and 5/31(b), as well Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), the Attorney General was barred from filing a complaint against SHERIDAN with the Board pursuant to Section 31(c)(1) of the Act, 415 ILCS 31(c)(1).

17. Illinois EPA's failure to fulfill the requirements of Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), not only precluded enforcement action by the Illinois EPA or the Attorney General, but also precludes the Board from holding a hearing pursuant to Section 32 of the Act, 415 ILCS 5/32, or from issuing any order pursuant to such hearing under Section 33 of the Act, 415 ILCS 5/33, because the Board is without subject matter jurisdiction in this cause.

18. The Illinois EPA did, in fact, request the representation of the Office of the Attorney General for all violations set forth in the Violation Notice and Notice of Intent,

referring all the said violations to the Office of the Illinois Attorney General for enforcement. The Office of the Illinois Attorney General accepted said referral for enforcement as set forth in the letter dated January 3, 2006 from the Office of the Illinois Attorney General to the undersigned attorney for SHERIDAN ("1/3/06 Attorney General Letter"), a copy of which is attached hereto as Exhibit "D".

19. Despite Illinois EPA's failure to fulfill the requirements of Sections 31(a) and 31(b) of the Act, 415 ILCS 5/31(a) and 5/31(b), as well Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), based solely upon the referral of the Illinois EPA for enforcement, as described in the 1/3/06 Attorney General Letter, filed the within Complaint against SHERIDAN pursuant to Section 31(c)(1) of the Act, 415 ILCS 31(c)(1).

20. The Complaint is illegal and barred by operation of the provisions of Sections 31(b), 31(c) and Section 55.5(c) of the Act, 415 ILCS 5/31(b), 5/31(c) and 5/55.5(c). This Board is thereby without subject matter jurisdiction in this cause.

SECOND AFFIRMATIVE DEFENSE

(In the Alternative)

SHERIDAN, for its Second Affirmative Defense to the STATE's Complaint, pursuant to Section 103.204(d) of the Board regulations, 35 Ill. Adm. Code 103.204(d) and Section 2-613(d) of the Code of Civil Procedure, 735 ILCS 5/2-613(d), alleges and avers that the Complaint against SHERIDAN cannot be recovered upon by reason of operation of Sections 31(b), 31(c) and Section 55.5(c) of the Act, 415 ILCS 5/31(b), 5/31(c) and 5/55.5(c), is therefore barred, and, accordingly, this Board is without subject matter jurisdiction over the Complaint, as follows:

1-11. SHERIDAN hereby realleges and incorporates by reference herein paragraphs 1 through 11 of its First Affirmative Defense as and for paragraphs 1 through 11 of this Second Affirmative Defense.

12. Pursuant to Section 31(a)(1)(C) of the Act, 415 ILCS 31(a)(1)(C), the Violation Notice contained an explanation, styled as “Suggested Resolutions,” of two alternative actions, either one of which Illinois EPA informed SHERIDAN would resolve the alleged violations. One of those two alternative “Suggested Resolutions” (“Suggested Resolution”) was stated to be as follows:

Suggested Resolutions

Immediately complete the attached Notification/Registration form and pay the required tire storage fee for 2005. By June 19, 2005, dispose of all used/waste tires on site using an Illinois registered tire transporter. (Bold and underlining in original).

13. The Suggested Resolution was the same both for SHERIDAN’s alleged violations under Sections 55(a)-(c) of Title XIV of the Act, 415 ILCS 5/55(a)-(c), and for those under the other provisions of Title XIV of the Act.

14. On June 13, 2005, SHERIDAN, by letter of even date, informed Illinois EPA that it had completed the requested Suggested Resolution in its entirety. The Suggested Resolution had actually been completed by June 6, 2005, *i.e.*, prior to the June 19, 2005 deadline set forth in the Violation Notice. SHERIDAN’s June 13, 2005 letter was sent within 45 days of the Violation Notice as required by Section 31(a)(2) of the Act, 415 ILCS 31(a)(2).

15. That the Suggested Resolution had been completed was confirmed by letter dated June 8, 2005 from Michael E. Harsted, Director, LaSalle County Department of

Environmental Services and Development, a copy of which is attached hereto as Exhibit “C.”

16. SHERIDAN thereby satisfied all conditions of the Violation Notice.

17. By operation of law, the Violation Notice constituted a written warning notice and the Suggested Resolution constituted a corrective action under the provisions of Section 55.5(c) of the Act, 415 ILCS 5/55.5(c).

18. SHERIDAN’s completion of the Suggested Resolution constituted a timely completion of corrective action under Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), precluding any enforcement action by the Illinois EPA under Sections 31(a) and (b) of the Act, 415 ILCS 31(a) and (b), or by the Attorney General under Section 31(c)(1) of the Act, 415 ILCS 31(c)(1).

19. SHERIDAN’s completion of corrective action under Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), not only precluded enforcement action by the Illinois EPA or the Attorney General, but also precludes the Board from holding a hearing pursuant to Section 32 of the Act, 415 ILCS 5/32, or from issuing any order pursuant to such hearing under Section 33 of the Act, 415 ILCS 5/33, because the Board is without subject matter jurisdiction in this cause.

20. Despite that Illinois EPA was precluded from taking any enforcement action under Sections 31(a) and 31(b) of the Act, 415 ILCS 5/31(a) and 5/31(b), it purported to send the Violation Notice under Section 31(a) of the Act, 415 ILCS 5/31(a), and the Notice of Intent under Section 31(b) of the Act, 415 ILCS 5/31(b).

21. The Violation Notice and the Notice of Intent were illegal and barred by SHERIDAN's completion of the Suggested Resolution, which constituted a timely completed corrective action under Section 55.5(c) of the Act, 415 ILCS 5/55.5(c).

22. The Illinois EPA did, in fact, request the representation of the Office of the Attorney General for all violations set forth in the Violation Notice and Notice of Intent, referring all the said violations to the Office of the Illinois Attorney General for enforcement. The Office of the Illinois Attorney General accepted said referral for enforcement as set forth in the letter dated January 3, 2006 from the Office of the Illinois Attorney General to the undersigned attorney for SHERIDAN ("1/3/06 Attorney General Letter"), a copy of which is attached hereto as Exhibit "D".

23. Despite SHERIDAN's completion of the Suggested Resolution, constituting a timely completed corrective action under Section 55.5(c) of the Act, 415 ILCS 5/55.5(c), and barring the filing of a complaint by the Attorney General under Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), the Attorney General, based solely upon said referral for enforcement, as described in the 1/3/06 Attorney General Letter, filed the within Complaint against SHERIDAN pursuant to Section 31(c)(1) of the Act, 415 ILCS 31(c)(1).

24. The Complaint is illegal and barred by SHERIDAN's completion of the Suggested Resolution, constituting a timely completed corrective action under Section 55.5(c) of the Act, 415 ILCS 5/55.5(c). This Board is without subject matter jurisdiction in this cause.

THIRD AFFIRMATIVE DEFENSE

(In the Alternative)

SHERIDAN, for its Third Affirmative Defense to the STATE's Complaint, pursuant to Section 103.204(d) of the Board regulations, 35 Ill. Adm. Code 103.204(d) and Section 2-613(d) of the Code of Civil Procedure, 735 ILCS 5/2-613(d), alleges and avers that the Complaint against SHERIDAN cannot be recovered upon by reason of operation of Sections 31(b) and 31(c)(1) of the Act, 415 ILCS 5/31(b) and 5/31(c)(1), is therefore barred, and, accordingly, this Board is without subject matter jurisdiction over the Complaint, as follows:

1. Section 31(a)(1) of the Act states, in pertinent part, as follows:

Within 180 days of becoming aware of an alleged violation of the Act or any rule adopted under the Act...the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation.

2. Ostensibly pursuant to Section 31(a)(1) of the Act, on or about May 4, 2005, Illinois EPA sent SHERIDAN a so-called violation notice ("Violation Notice") purportedly pursuant to Section 31(a)(1) of Title VIII the Act, 415 ILCS 5/31(a). A copy of the Violation Notice is attached hereto as Exhibit "A."

3. Section 31(b) of the Act, 415 ILCS 5/31(b), states, in pertinent part, as follows:

For alleged violations that remain the subject of disagreement between the Agency and the person complained against following fulfillment of the requirements of subsection (a) of this Section, *and as a precondition to the Agency's referral or request to the Office of the Illinois Attorney General...for legal*

representation regarding an alleged violation that may be addressed pursuant to subsection (c)...of this Section...the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency intends to pursue legal Action. Such notice shall notify the person complained against of the violations to be alleged and offer the person an opportunity to meet with appropriate Agency personnel in an effort to resolve any alleged violations that could lead to the filing of a formal complaint...Nothing in this subsection is intended to preclude the Agency from following the provisions of subsection (c)...of this Section or from requesting the legal representation of the Office of the Illinois Attorney General...for alleged violations which remain the subject of disagreement between the Agency and the person complained against after the provisions of this subsection are fulfilled. (Emphasis added.)

4. Thus, in order to comply with Section 31(b) of the Act, 415 ILCS 5/31(b), the Illinois EPA must issue a notice of intent to pursue legal action. Then, where the party complained against requests a meeting with Illinois EPA, Illinois EPA is required to meet with the party complained against and, there, Illinois EPA is required to make an “effort to resolve any alleged violations that could lead to the filing of a formal complaint.” Section 31(b) of the Act, 415 ILCS 5/31(b), thereby imposes upon Illinois EPA thereby a statutory obligation of, alternatively, making an “effort to resolve any alleged violations that could lead to the filing of a formal complaint” or of good faith negotiation, or of both. If and only if Illinois EPA meets that statutory obligation may it request legal representation by the Office of the Illinois Attorney General pursuant to Section 31(c) of the Act, 415 ILCS 5/31(c) or refer alleged violations to the Office of the Illinois Attorney General for enforcement.

5. Ostensibly pursuant to Section 31(b) of the Act, Illinois EPA sent SHERIDAN a letter dated August 26, 2005 (“Notice of Intent”), a copy of which is attached hereto as Exhibit “B”, that it intended to pursue legal action against SHERIDAN.

6. Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), states, in pertinent part, as follows:

(1) For alleged violations which remain the subject of disagreement between the Agency and the person complained against following waiver, pursuant to subdivision (10) of subsection (a) of this Section, or fulfillment of the requirements of subsections (a) and (b) of this Section, the Office of the Illinois Attorney General...shall issue and serve upon the person complained against a written notice together with a formal complaint, which shall specify the provision of the Act or the rule or regulation...which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation...and shall require the person so complained against to answer the charges of such formal complaint at a hearing before the Board...

Thus, before the Attorney General can file a complaint before the Board, there must have either been a waiver by the person complained against of the terms of Section 31(a) of the Act, 415 ILCS 5/31(a), compliance by such person with a Compliance Commitment Agreement accepted by the Illinois EPA pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), or Illinois EPA’s fulfillment of the requirements of Sections 31(a) and (b) of the Act, 415 ILCS 5/31(a) and 5/31(b).

7. Included in the Violation Notice, a copy of which is attached hereto as Exhibit “A”, is an explanation of the violations alleged set forth in a Narrative Inspection Report (“Narrative Inspection Report”) dated April 19, 2005 prepared by Shaun Newell, an inspector for Illinois EPA. The Narrative Inspection Report states, *inter alia*, that on

April 19, 2005, while inspecting the Site, Mr. Newell “discovered approximately 2,000 waste semi, truck, car and tractor tires inside seven roll-off boxes and two open top semi trailers.”

8. Following the receipt of the Notice of Intent (which incorporated the alleged violations set forth in the Violation Notice), SHERIDAN requested a meeting with Illinois EPA pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b). That meeting was scheduled for September 27, 2005 at the offices of Illinois EPA in Des Plaines, Illinois.

9. In September, 2005, prior to the meeting between SHERIDAN and Illinois EPA, an official of Illinois EPA informed SHERIDAN that, notwithstanding that Illinois EPA was required by Section 31(b) of the Act, 415 ILCS 5/31(b), to meet with the offending party to make an effort to resolve the alleged violations that could lead to the filing of a formal complaint, it was the practice of Illinois EPA not to resolve any alleged violations at such a meeting. Rather than meet to resolve such alleged violations, it was the practice of Illinois EPA to hold the meeting as a mere formality prior to a referral to the Office of the Illinois Attorney General.

10. Illinois EPA did hold a purported meeting with SHERIDAN at the offices of Illinois EPA on September 27, 2006. At the meeting SHERIDAN made efforts to resolve such alleged violations by SHERIDAN’s own good faith negotiation, not reciprocated by Illinois EPA, including, but not limited to, SHERIDAN’s presentation of affidavits at the meeting that contradicted the allegations in the Violation Notice, the Narrative Inspection Report and Notice of Intent. Illinois EPA made no effort to investigate or otherwise determine whether or not the matters set forth in those affidavits were, in fact, true, and made no effort to resolve the alleged violations set forth in the Violation Notice, the

Narrative Inspection Report and Notice of Intent. None of the alleged violations set forth in the Violation Notice, Narrative Inspection Report and Notice of Intent was resolved because, in accordance with its practice, Illinois EPA made no effort to resolve any alleged violations that could lead to the filing of a formal complaint.

11. The meeting held between Illinois EPA and SHERIDAN on September 27, 2006 was a mere pretense engaged in by Illinois EPA in which Illinois EPA purposefully, and in direct contravention of the requirements of Section 31(b) of the Act, 415 ILCS 5/31(b), made no effort to resolve, or good faith negotiations to resolve, any of the alleged violations set forth in the Violation Notice, the Narrative Inspection Report and Notice of Intent. Rather than making an effort to resolve such alleged violations, Illinois EPA merely held the meeting as a mere formality prior to a referral to the Illinois Attorney General.

12. Illinois EPA thereby failed to fulfill the provisions of Section 31(b) of the Act, 415 ILCS 5/31(b).

13. Illinois EPA was thereby barred from requesting the legal representation of the Office of the Illinois Attorney General and of referring the alleged violations set forth in the Violation Notice and Notice of Intent to the Office of the Illinois Attorney General for enforcement pursuant to Section 31(c) of the Act, 415 ILCS 5/31(c).

14. Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), states, in pertinent part, as follows:

(1) For alleged violations which remain the subject of disagreement between the Agency and the person complained against following waiver, pursuant to subdivision (10) of subsection (a) of this Section, or fulfillment of the requirements of subsections (a) and (b) of this Section, the Office of the Illinois Attorney

General...shall issue and serve upon the person complained against a written notice together with a formal complaint, which shall specify the provision of the Act or the rule or regulation...which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation...and shall require the person so complained against to answer the charges of such formal complaint at a hearing before the Board...

Thus, before the Office of the Illinois Attorney General can file a complaint before the Board pursuant to Section 31(c)(1) of the Act, 415 ILCS 31(c)(1), Illinois EPA must have, *inter alia*, fulfilled the requirements of Section 31(b) of the Act, 415 ILCS 5/31(b).

15. However, as set forth above, Illinois EPA failed to fulfill the requirements of Section 31(b) of the Act, 415 ILCS 5/31(b) due to its failure to fulfill its statutory obligation of making an “effort to resolve any alleged violations that could lead to the filing of a formal complaint” or of good faith negotiation, or of both.

16. The Illinois EPA did, in fact, request the representation of the Office of the Attorney General for all violations set forth in the Violation Notice and Notice of Intent, referring all the said violations to the Office of the Illinois Attorney General for enforcement. The Office of the Illinois Attorney General accepted said referral for enforcement as set forth in the letter dated January 3, 2006 from the Office of the Illinois Attorney General to the undersigned attorney for SHERIDAN (“1/3/06 Attorney General Letter”), a copy of which is attached hereto as Exhibit “D”.

17. Because Illinois EPA failed to fulfill the requirements of Section 31(b) of the Act, 415 ILCS 5/31(b), the Attorney General was barred from filing a complaint against SHERIDAN with the Board pursuant to Section 31(c)(1) of the Act, 415 ILCS 31(c)(1).

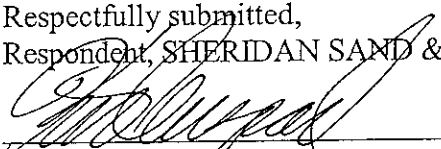
18. Despite Illinois EPA's failure to fulfill the requirements of Section 31(b) of the Act, 415 ILCS 5/31(b), the Attorney General, based solely upon the referral from Illinois EPA as described in the 1/3/06 Attorney General Letter, filed the within Complaint against SHERIDAN pursuant to Section 31(c)(1) of the Act, 415 ILCS 31(c)(1).

19. Illinois EPA's failure to fulfill the requirements of Sections 31(b) and 31(c)(1) of the Act, 415 ILCS 5/31(b) and 5/31(c)(1), not only barred the filing of the Complaint by the Attorney General, but also precludes the Board from holding a hearing pursuant to Section 32 of the Act, 415 ILCS 5/32, or from issuing any order pursuant to such hearing under Section 33 of the Act, 415 ILCS 5/33, because the Board is without subject matter jurisdiction in this cause.

20. The Complaint is illegal and barred by operation of the provisions of Sections 31(b) and 31(c)(1) of the Act, 415 ILCS 5/31(b) and 5/31(c)(1). The Board is thereby without subject matter jurisdiction in this cause.

WHEREFORE, upon the above and foregoing, SHERIDAN requests that an order be entered either dismissing the Complaint, holding the Complaint for naught, or entering findings and judgment thereon for SHERIDAN and against the STATE, and further demands the reasonable expenses of the litigation, including reasonable attorney's fees.

Respectfully submitted,
Respondent, SHERIDAN SAND & GRAVEL CO.



Kenneth Anspach, Esq.
ANSPACH & ASSOCIATES
8 South Michigan Avenue
Suite 3400
Chicago, IL 60603
(312) 407-7888



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

815/987-7760

Fax #815/987-7005

May 4, 2005

CERTIFIED MAIL #7002 2030 0001 8572 1303
RETURN RECEIPT REQUESTED

Sheridan Sand & Gravel
2679 N. 4201 Road
Sheridan, Illinois 60551

Re: **Violation Notice, L-2005-01188**
LPC #0998215024 -- LaSalle County
Sheridan (Mission Twp.)/Sheridan Sand & Gravel
Compliance File

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 **an inspection** completed on **April 19, 2005** 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.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 615 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 -
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 278-5800
MARION - 2309 W. Ma
ampaign, IL 61820 - (217) 278-5800
lle, IL 62234 - (618) 346-5120

EXHIBIT "A"

Violation Notice, L-2005-01188
LPC #0998215024 -- LaSalle County
Sheridan (Mission Twp.)/Sheridan Sand & Gravel
May 4, 2005
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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: Shaun Newell
4302 North Main Street
Rockford, Illinois 61103

All communications must include reference to your Violation Notice L-2005-01188. If you have questions regarding this matter, please contact Shaun Newell at 815/987-7760.

Sincerely,



David S. Retzlaff
Manager -- Region 1
Field Operations Section
Bureau of Land

DSR:SN:tl

Enclosure

Attachment

1. Pursuant to Section 21(k) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(k)), no person shall fail or refuse to pay any fee imposed under this Act.

A violation of Section 21(k) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(k)) is alleged for the following reason: **Failure to pay the required \$100.00 Annual Tire Storage fee for 2005.**

2. Pursuant to Section 55(a)(4) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(a)(4)), no person shall cause or allow the operation of a tire storage site except in compliance with Board regulations.

A violation of Section 55(a)(4) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(a)(4)) is alleged for the following reason: **Waste tires have accumulated on site for longer than a year.**

3. Pursuant to Section 55(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(d)(1)), beginning January 1, 1992, no person shall cause or allow the operation of a tire storage site which contains more than 50 used tires, unless the owner or operator, by January 1, 1992 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, (i) registers the site with the Agency, (ii) certifies to the Agency that the site complies with any applicable standards adopted by the Board pursuant to Section 55.2, (iii) reports to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle and process the tires, and (iv) pays the fee required under subsection (b) of Section 55.6.

A violation of Section 55(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(d)(1)) is alleged for the following reason: **Failure to register as a tire storage site.**

4. Pursuant to Section 55(e) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(e)), no person shall cause or allow the storage, disposal, treatment or processing of any used or waste tire in violation of any regulation or standard adopted by the Board.

A violation of Section 55(e) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(e)) is alleged for the following reason: **Failure to prevent the waste tires from accumulating water.**

5. Pursuant to Section 55(g) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(g)), no person shall engage in any operation as a used or waste tire transporter except in compliance with Board regulations.

A violation of Section 55(g) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(g)) is alleged for the following reason: **Waste tires were transferred to the site and transporter was not permitted to haul tires.**

6. Pursuant to Section 55.6(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.6(b)), beginning January 1, 1992, in addition to any other fees required by law, the owner or operator of each site required to be registered under subsection (d) of Section 55 shall pay to the Agency an annual fee of \$100. Fees collected under this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

A violation of Section 55.6(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.6(b)) is alleged for the following reason: **Failure to pay the required tire storage fee by January 1 of each year.**

7. Pursuant to Section 55.8(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.8(b)), a person who accepts used tires for recycling under subsection (a) shall not allow the tires to accumulate for periods of more than 90 days.

A violation of Section 55.8(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.8(b)) is alleged for the following reason: **Waste tires have accumulated on site longer than 90 days.**

8. Pursuant to 35 Ill. Adm. Code 848.202(b)(4), at sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirement: Used or waste tires shall be drained of water on the day of generation or receipt.

A violation of 35 Ill. Adm. Code 848.202(b)(4) is alleged for the following reason: **Failure to drain the water from used/waste tires stored inside the box trailer.**

9. Pursuant to 35 Ill. Adm. Code 848.202(b)(5), at sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirement: Used or waste tires received at the site shall not be stored unless within 14 days after the receipt of any used tire the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water.

A violation of 35 Ill. Adm. Code 848.202(b)(5) is alleged for the following reason: **Failure to prevent water from accumulating inside waste tires that have been stored on site longer than 14 days.**

10. Pursuant to 35 Ill. Adm. Code 848.202(c)(1), in addition to the requirements set forth in subsection [848.202] (b), the owner or operator shall comply with the following requirement at sites at which more than 500 used or waste tires are located. A contingency plan, which meets the requirements of Section 848.203 shall be maintained.

A violation of 35 Ill. Adm. Code 848.202(c)(1) is alleged for the following reason: **There were more than 500 tires on site and no Contingency Plan on site.**

11. Pursuant to 35 Ill. Adm. Code 848.202(c)(2), in addition to the requirements set forth in subsection [848.202] (b), the owner or operator shall comply with the following requirement at sites at which more than 500 used or waste tires are located. The recordkeeping and reporting requirements of [35 Ill. Adm. Code 848] Subpart C shall be met.

A violation of 35 Ill. Adm. Code 848.202(c)(2) is alleged for the following reason: There are no tire disposal records on site.

12. Pursuant to 35 Ill. Adm. Code 848.302(a)(1), the owner or operator shall keep a record of used and waste tires at the site. The owner and operator shall keep the following records:
 - 1) Daily Tire Record
 - 2) Annual Tire Summary

A violation of 35 Ill. Adm. Code 848.302(a)(1) is alleged for the following reason: **Tire storage sites that maintain more than 500 used/waste tires are required to keep a Daily Tire Record on site. There was no Daily Tire Record on site.**

13. Pursuant to 35 Ill. Adm. Code 848.302(a)(2), the owner or operator shall keep a record of used and waste tires at the site. The owner and operator shall keep the following records:
 - 1) Daily Tire Record
 - 2) Annual Tire Summary

A violation of 35 Ill. Adm. Code 848.302(a)(2) is alleged for the following reason: **Tire storage sites that maintain more than 500 used/waste tires are required to keep an Annual Tire Summary. There is no evidence that an Annual Tire Summary was submitted to Springfield Headquarters.**

14. Pursuant to 35 Ill. Adm. Code 848.304(c), the Annual Tire Summary shall be received by the Agency on or before January 31 of each year and shall cover the preceding calendar year.

A violation of 35 Ill. Adm. Code 848.304(c) is alleged for the following reason: **Failure to submit an Annual Tire Summary by January 31 of each year.**

15. Pursuant to 35 Ill. Adm. Code 848.305, copies of all records required to be kept under this [35 Ill. Adm. Code 848] Subpart [C] shall be retained by the owner and operator for three years and shall be made available at the site during the normal business hours of the operator for inspection and photocopying by the Agency.

A violation of 35 Ill. Adm. Code 848.305 is alleged for the following reason: **No tire records were found on site.**

16. Pursuant to 35 Ill. Adm. Code 848.601(a)(1), except as provided in subsection [848.601] (c), no person shall transport more than 20 used or waste tires in a vehicle unless the following requirements are met.

- 1) The owner or operator has registered the vehicle with the Agency in accordance with this [35 Ill. Adm. Code 848] Subpart [F], received approval of such registration from the Agency, and such registration is current, valid and in effect.
- 2) The owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of this [35 Ill. Adm. Code 848] Subpart [F].

A violation of 35 Ill. Adm. Code 848.601(a)(1) is alleged for the following reason: **Failure to register as an Illinois registered tire transporter.**

17. Pursuant to 35 Ill. Adm. Code 848.601(a)(2), except as provided in subsection [848.601] (c), no person shall transport more than 20 used or waste tires in a vehicle unless the following requirements are met.

- 1) The owner or operator has registered the vehicle with the Agency in accordance with this [35 Ill. Adm. Code 848] Subpart [F], received approval of such registration from the Agency, and such registration is current, valid and in effect.
- 2) The owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of this [35 Ill. Adm. Code 848] Subpart [F].

A violation of 35 Ill. Adm. Code 848.601(a)(2) is alleged for the following reason: **Failure to display an Illinois registered tire transporter placard on your vehicle.**

Suggested Resolutions

Immediately complete the attached Notification/Registration form and pay the required tire storage fee for 2005.

By June 19, 2005, dispose of all used/waste tires on site using an Illinois registered tire transporter.

Or

Immediately drain all water from the used/waste tires on site. Immediately store all the used tires in such a manner as to prevent them from accumulating water. Waste tires must be disposed using an Illinois registered tire transporter.

By June 19, 2005, complete the attached:

- Contingency Plan – a sample plan was provided. Please modify this plan as needed.
- Annual Tire Summary. Please complete and submit this form to Springfield (Headquarters).
- Daily Tire Record. Immediately track the number of tires generated on your property. This form must be kept on site for IEPA review.

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.

0998215024-LaSalle County
Sheridan (Mission Twp.)/Sheridan Sand & Gravel
FOS File

NARRATIVE INSPECTION REPORT

On April 19, 2005, I (Shaun Newell) inspected the above referenced facility. The purpose of the inspection was to investigate a citizen complaint referred to the LaSalle County Environmental Services & Land Use Department, which was then referred to the Rockford Regional Office. The complaint, C-05-021R, alleged that two sand & gravel pits located near Sheridan, Illinois contained various containers with waste tires and inoperable vehicles. Apparently, there also was an allegation that contaminated diesel fuel had been buried on site. Christy Vargochik, an inspector with LaSalle County, initially inspected the two sites on April 6, 2005 to determine whether the sites contained waste tires. Once Ms. Vargochik had determined that there were dumpsters and semi trailers containing waste tires on site, the Rockford Regional Office was notified. According to LaSalle County court records, the property located at 2679 N. 4201 Rd. is owned/operated by Branko & Tony Vardijan of Chicago, Illinois. Branko Vardijan apparently owns Ravenswood Disposal Service, a construction & demolition debris transfer station located at 221 N. Washtenaw in Chicago, Illinois 60612. According to IEPA records, Ravenswood Disposal Service has a site number LPC#0316275201 in the SEIDS database. IEPA database also verifies that there apparently was a diesel spill at Ravenswood Disposal Service that generated an IEMA #20012066 number on December 19, 2001. The City of Chicago Environmental Services Division, under a delegated agreement with the IEPA, performs inspections monthly at Ravenswood Disposal. No apparent solid waste violations have been noted during the City of Chicago inspections.

Before investigating the site on April 19, 2005, Ms. Vargochik and I attempted to contact Branko Vardijan at Ravenswood Disposal Service. He was not available but at approximately 11:05 A.M., Ms. Vargochik received permission to enter the property by speaking with Tony Vardijan. Ms. Vargochik and I then drove to sand pit #1 located west of Sheridan along County Highway 32. Numerous inoperable vehicles and trucks entering the site with C & D waste were observed on site. Ms. Vargochik and I interviewed Dan Hughes, an employee who operates the site. Mr. Hughes acknowledged that clean construction debris from Ravenswood Disposal is shipped to this location. On-site records are kept for loads leaving the facility. Mr. Hughes contacted his boss and we then drove to sand pit #2 located at 2679 N. 4201 Rd. in Mission Township. The inspection began at 11:20 A.M. Mr. Hughes unlocked the gate and we drove to the center of the pit. Numerous inoperable vehicles (inoperable bulldozer, heavy trucks), semi/box trailers, and seven roll-off boxes were identified on site. I examined each container and discovered approximately 2,000 waste semi, truck, car and tractor tires inside seven roll-off boxes and two open top semi trailers. I estimated approximately 50% were found off rim with stagnant water visible. To obtain an overall view of the waste tires inside the containers, I climbed on top of a nearby inoperable bulldozer. Four photographs were taken to show the waste tires inside the containers. Photograph 0998215024-041905-001 faces northwest showing the two semi trailers on the right that contain water accumulation. Photograph 0998215024-041905-002 faces west showing the waste tires inside the roll-off boxes. Photograph 0998215024-041905-003 faces northwest showing an overview of the two open top trailers full of semi tires. Photograph 0998215024-041905-004 faces west showing the waste tires inside the roll-off boxes.

0998215024-LaSalle County
Sheridan (Mission Twsp.)/Sheridan Sand & Gravel
FOS File

I then asked Mr. Hughes how long the waste tires were on site and Mr. Hughes acknowledged that they were on site longer than one year. A satellite image taken by USGS on April 13, 2001 shows the semi trailers in the center of the property. Branko Vardijan was interviewed by phone that same day and acknowledged the waste tires were temporarily transferred from his facility about a year ago. Mr. Vardijan stated that the facility has disposed of waste tires through Tire Management in Aurora, Illinois in the past. I explained that the facility must register as a tire storage site, complete a Notification/Registration form, and submit it to Springfield, Illinois. I also informed Mr. Vardijan that all the used/waste tires must be disposed using an Illinois registered tire transporter. I suggested that the facility must obtain disposal receipts to verify proper disposal.

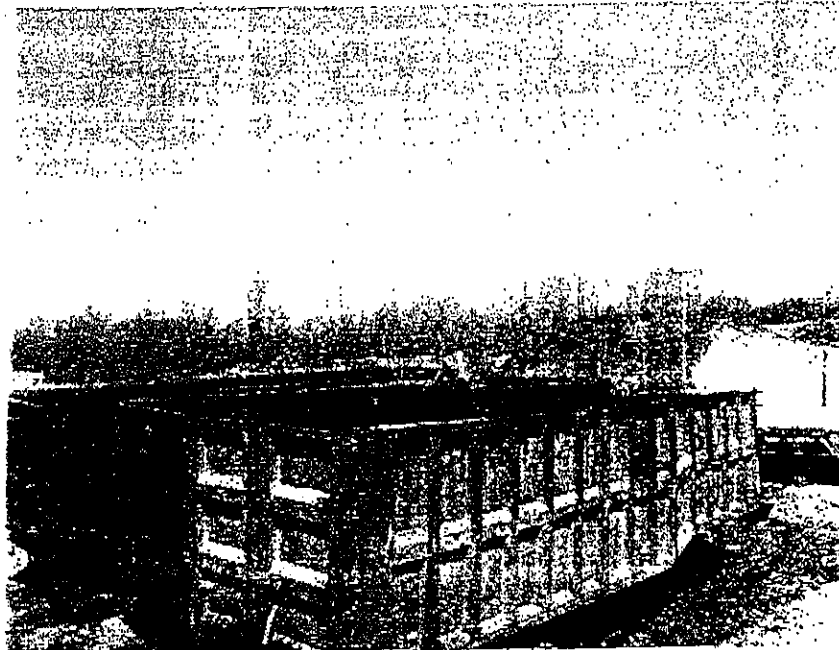
Mr. Hughes, Ms. Vargochik, and I then walked to the "fill area" located southwest of the waste tire storage area. Clean construction debris approximately 5-8 feet thick in some areas, was observed covering an estimated 30 acres of land. Diminimus pieces of wood and plastic were found in the area. Large chunks of concrete, rocks, bricks, sand and other C & D debris were observed on site. Mr. Hughes stated that this quarry is not active but was formerly used to wash sand. An estimated 50% of this area was covered by C & D debris. The C & D debris has been manicured using heavy equipment as evidenced by the tire tracks found on top of the filled area. Photograph 0998215024-041905-005 faces east showing an overview of the C & D quarry. Photograph 0998215024-041905-006 faces southeast showing the face of the C & D fill area. Due to the extreme thickness of the fill area it was impossible to determine whether or not diesel contaminated soil was buried on site. TVA readings showed background readings and no samples were taken. Branko Vardijan was contacted by phone at the end of the inspection and informed of my findings. I completed a Clean Construction or Demolition Debris Disposal Site Inspection Checklist as I interviewed Mr. Vardijan by phone. Mr. Vardijan stated that the C & D waste is screened by hand at the Ravenswood Disposal transfer station. No FID or PID screenings are completed. Mr. Vardijan acknowledges that records are maintained for each load and the facility tries to comply with IEPA law. I suggested that the facility might want to consider a screening process for C & D waste entering the Sheridan facility. Mr. Vardijan suggested that he and his brother would consider my advice. The inspection concluded at 12:30 P.M.

Based on my inspection results, the following alleged used/waste tire violations were cited: Sections 21(k), 55(a)(4), 55(d)(1), 55(e), 55(g), 55.6(b), 55.8(b) of the Illinois Environmental Protection Act and Sections 848.202(b)(4), 848.202(b)(5), 848.202(c)(1), 848.202(c)(2), 848.302(a)(1), 848.302(a)(2), 848.304(c), 848.305, 848.601(a)(1), and 848.601(a)(2) of 35 Illinois Adm. Code.

LPC # 0998215024-LaSalle County
Sheridan/Sheridan Sand & Gravel
FOS File

DIGITAL PHOTOGRAPH PHOTOCOPIES

DATE: April 19, 2005
TIME: 11:37 A.M.
DIRECTION: Northwest
PHOTO by: S. Newell
PHOTO FILE NAME:
0998215024-041905-003
COMMENTS: Facing NW
showing an overview of the
two open top trailers full of
waste semi tires.



DATE: April 19, 2005
TIME: 11:40 A.M.
DIRECTION: West
PHOTO by: S. Newell
PHOTO FILE NAME:
0998215024-041905-004
COMMENTS: Facing W
showing the waste tires inside
the roll-off boxes.



LPC # 0998215024-LaSalle County
Sheridan/Sheridan Sand & Gravel
FOS File

DIGITAL PHOTOGRAPH PHOTOCOPIES

DATE: April 19, 2005

TIME: 11:30 A.M.

DIRECTION: Northwest

PHOTO by: S. Newell

PHOTO FILE NAME:

0998215024-041905-001

COMMENTS: Facing NW
showing the two trailers from
center to right of the
photograph that are full of
waste tires.



DATE: April 19, 2005

TIME: 11:35 A.M.

DIRECTION: West

PHOTO by: S. Newell

PHOTO FILE NAME:

0998215024-041905-002

COMMENTS: Facing W
showing the waste tires inside
the roll-off boxes.



LPC # 0998215024-LaSalle County
Sheridan/Sheridan Sand & Gravel
FOS File

DIGITAL PHOTOGRAPH PHOTOCOPIES

DATE: April 19, 2005
TIME: 12:10 P.M.
DIRECTION: East
PHOTO by: S. Newell
PHOTO FILE NAME:
0998215024-041905-005
COMMENTS: Facing E
showing an overview of the C
& D quarry.



DATE: April 19, 2005
TIME: 12:15 P.M.
DIRECTION: Southeast
PHOTO by: S. Newell
PHOTO FILE NAME:
0998215024-041905-006
COMMENTS: Facing SE
showing the face of the C & D
fill area.



STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY

SITE SKETCH

Date of Inspection: 04-19-05

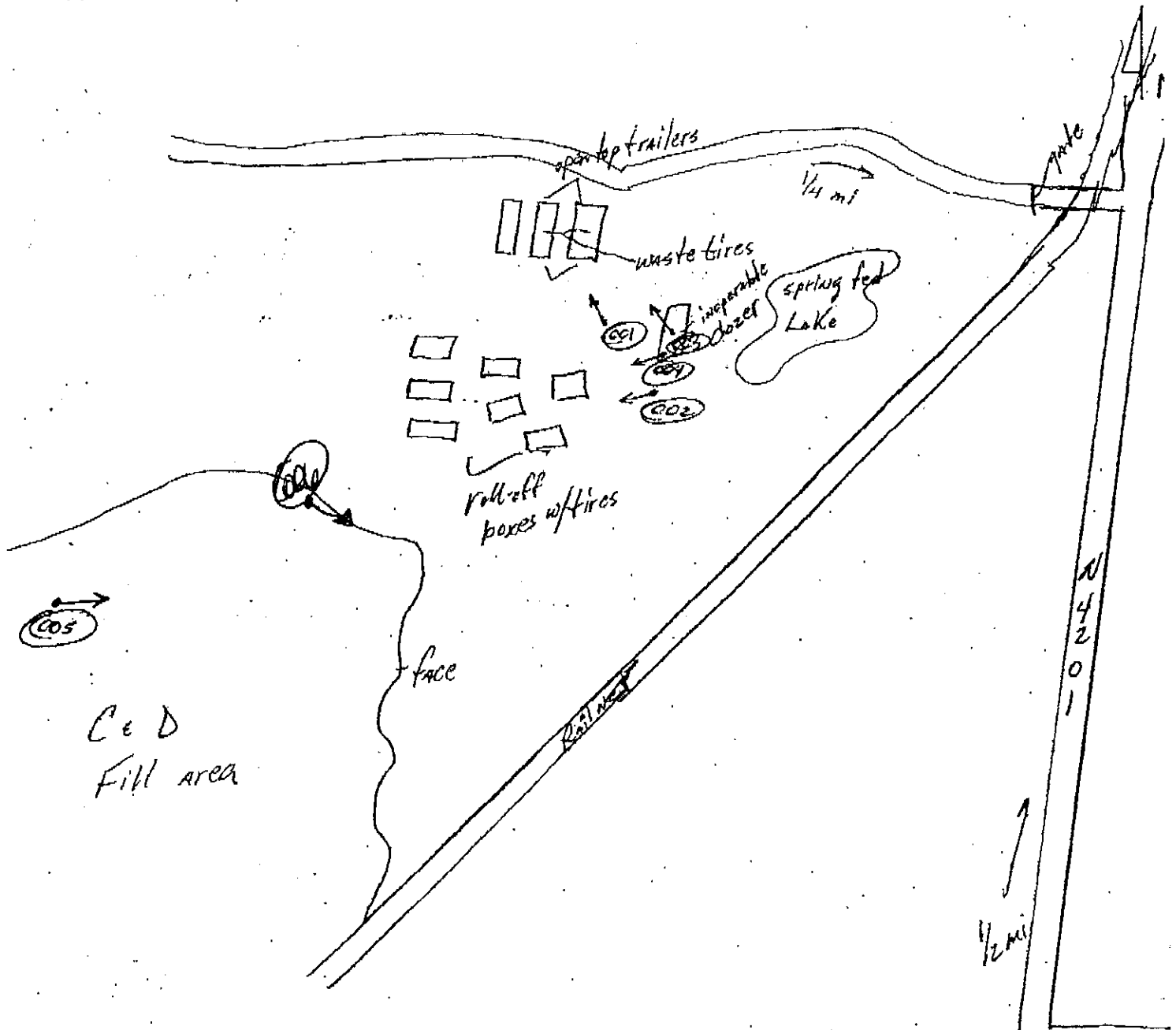
Inspector: NEWELL

Site Code: 0998215024

County: LaSalle

Site Name: Sheridan Sand & Gravel

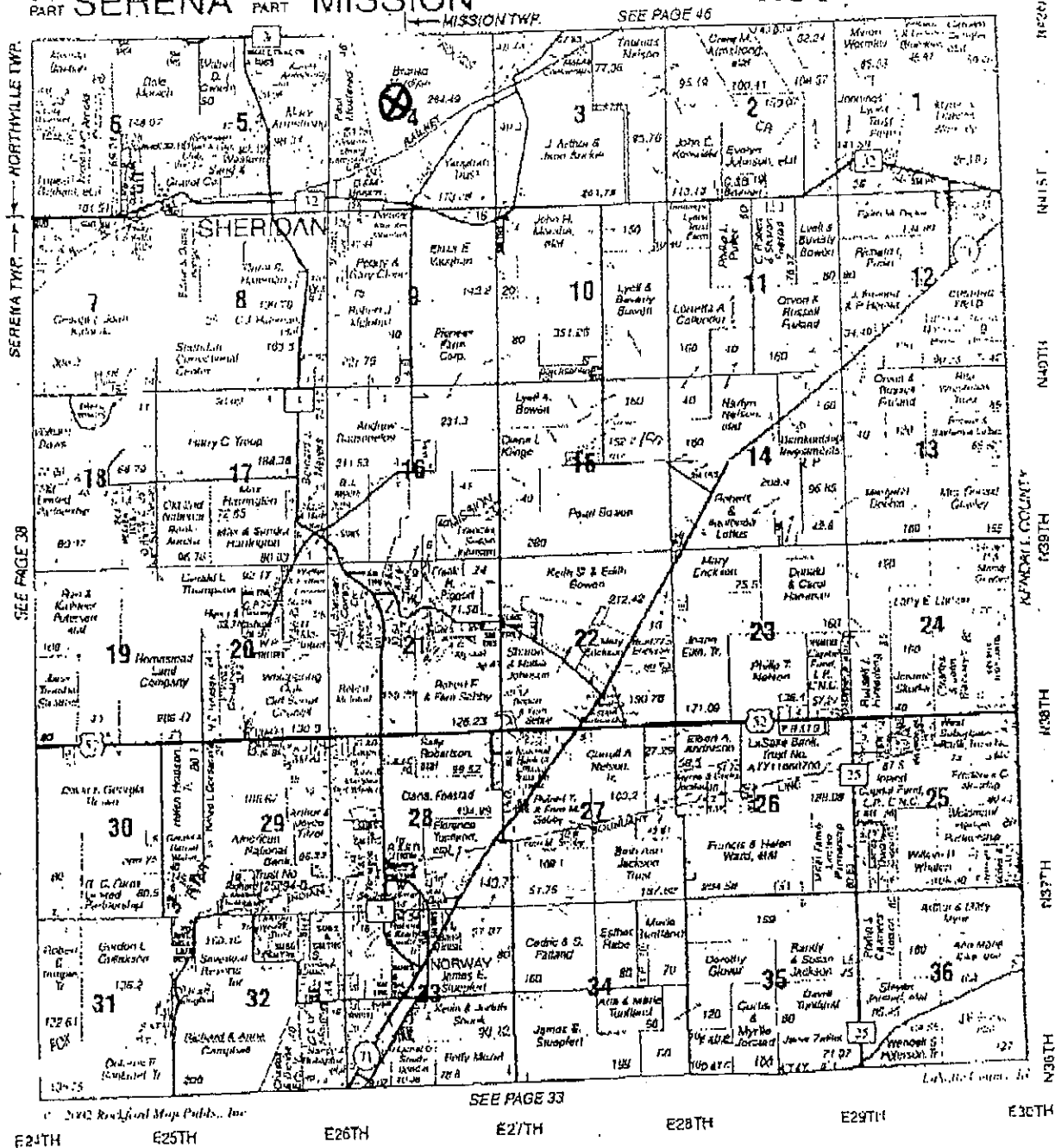
Time: 11:20A - 12:30P



→ 1 mi To Sheridan Co Hwy 32

SOUTH PART NORTHVILLE
EAST PART SERENA SOUTH PART MISSION

T.35N.-R.5E.



[Send To Printer](#) [Back To TerraServer](#) [Change to 1:100,000 Print Size](#) [Show Grid Lines](#) [Change to 1:100,000](#)
USGS 2 km NE of Sheridan, Illinois, United States 13 Apr 2001



0 100M

0 100yd

Image courtesy of the U.S. Geological Survey

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<http://terraserver.homeadvisor.msn.com/PrintImage.aspx?T=1&S=10&Z=16&X=1806&Y...> 4/27/2005

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Tire Storage Site Inspection Checklist

County: LaSalle LPC#: 0998215024 Region: 1 - Rockford

City/Facility Name: Sheridan (Mission Twp)/Sheridan Sand & Gravel

Facility Location: 2679 N. 4201 Rd. Sheridan, IL 60551 Telephone: (773) 638-7676

Date: 04-19-05 Time: From 11:20 A To 12:30P Previous Inspection Date: None

Inspector(s): Newell; Vargochik (LaSalle Co. Env. Serv. & Land Use Depart.) No. of Photos Taken: # 6

Weather: Sunny 80 degrees No. of Samples Taken: N/A

Interviewed: Dan Hughes-employee; Branko Vardijan-property/business owner Complaint #: C-05-021R

Waste Tire Hauler Used: None Hauler Registration Number: N/A

Responsible Party Mailing Address(es):
Ravenswood Disposal
Attn: Branko & Tony Vardijan
221 N. Washtenaw Ave.
Chicago, IL 60612

2,000 est.

Estimated Number of Used Tires Located At This Facility, including altered, converted and reprocessed tires.

SECTION	DESCRIPTION	VIOL
ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS		
1	21(k) FAIL OR REFUSE TO PAY ANY FEE IMPOSED UNDER THIS ACT	☒
2	55(a)(4) CAUSE OR ALLOW THE OPERATION OF A TIRE STORAGE SITE EXCEPT IN COMPLIANCE WITH BOARD REGULATIONS Note: Also Mark appropriate Violations of Part 848	☒
3	55(b-1) NO PERSON SHALL KNOWINGLY MIX ANY USED OR WASTE TIRE, EITHER WHOLE OR CUT, WITH MUNICIPAL WASTE	☐
4	55(c) FAILURE TO FILE THE REQUIRED NOTIFICATION WITH THE AGENCY BY 1/1/90 OR WITHIN 30 DAYS OF COMMENCEMENT OF THE STORAGE ACTIVITY.	☐
5	55(d)(1) CAUSE OR ALLOW THE OPERATION OF A TIRE STORAGE SITE WHICH CONTAINS MORE THAN 50 USED TIRES WITHOUT MEETING THE FOLLOWING REQUIREMENTS BY JANUARY 1 OF EACH YEAR: i. Register the Site with the Agency ii. Certify to the Agency that the Site Complies with any Applicable Standards Adopted by the Board Pursuant to Section 55.2 iii. Report to the Agency the Number of Tires Accumulated, the Status of Vector Controls, and the Actions Taken to Handle and Process the Tires iv. Pay the Fee Required under Subsection (b) of Section 55.6	☒
6	55(e) CAUSE OR ALLOW THE STORAGE, DISPOSAL, TREATMENT OR PROCESSING OF ANY USED OR WASTE TIRE IN VIOLATION OF ANY REGULATION OR STANDARD ADOPTED BY THE BOARD. Note: Also Mark appropriate Violations of Part 848	☒
7	55(f) ARRANGE FOR THE TRANSPORTATION OF USED OR WASTE TIRES AWAY FROM THE SITE OF GENERATION WITH A PERSON KNOWN TO OPENLY DUMP SUCH TIRES	☐
8	55(g) ENGAGE IN ANY OPERATION AS A USED OR WASTE TIRE TRANSPORTER EXCEPT IN COMPLIANCE WITH BOARD REGULATIONS. Note: Also Mark a Violation of Subpart F	☒
9	55(h) CAUSE OR ALLOW THE COMBUSTION OF ANY USED OR WASTE TIRE IN AN ENCLOSED DEVICE UNLESS A PERMIT HAS BEEN ISSUED BY THE AGENCY	☐
10	55(i) CAUSE OR ALLOW THE USE OF PESTICIDES TO TREAT TIRES EXCEPT AS PRESCRIBED BY	☐

LPC #: 0998215024 - LaSalle
 Date: 04-19-05

	(1)	Develop a tire storage plan in consultation with fire officials meeting the requirements of: 848.204 (c)(1) (A) ☐ considering the type of building to be used for the tire storage (B) ☐ the plan shall include tire storage arrangement; aisle space; clearance distances between tire piles and sprinkler deflectors; and access to fire fighting personnel and equipment (C) ☐ a copy of the plan shall be filed with the Agency within 60 days and implemented within 14 days of filing with the Agency.	☐
	(2)	Have and maintain a contingency plan which meets the requirements of Section 848.203	☐
	(3)	Meet the record keeping and reporting requirements of Subpart C Note: Also Mark a Violation of Section 848, Subpart C	☐
22	848.204(d)	A BUILDING THAT STORES MORE THAN 10,000 USED OR WASTE TIRES, AND WAS CONSTRUCTED AFTER 5/10/91, FOR THE PRIMARY PURPOSE OF STORING USED OR WASTE TIRES, SHALL COMPLY WITH THE NFPA 231D BUILDING STANDARD.	☐
PESTICIDE TREATMENT			
23	848.205	OWNERS OR OPERATORS OF TIRE STORAGE SITES TREATING USED OR WASTE TIRES WITH PESTICIDES PURSUANT TO THIS PART OF TITLE XIV OF THE ACT (SHALL):	
	(a)	Use a Pesticide Labeled for Control of Mosquito Larvae Unless an Adult Mosquito Problem is Identified	☐
	(b)	Maintain a record of pesticide use at the site which shall include for each application: (1) ☐ Date of Pesticide Application (2) ☐ Number of Used or Waste Tires Treated (3) ☐ Amount of Pesticide Applied (4) ☐ Type of Pesticide Used	☐
	(c)	Notify the Agency of Pesticide Use Within 10 Days of Each Application. Notification shall include the information in 848.205(b).	☐
24	848.205(d)	Persons Applying Pesticides to Used and Waste Tires Must Comply with the Requirements of the Illinois Pesticide Act (Ill. Rev. Stat. 1989, ch. 5, par. 801 et seq.)	☐
PART 848: SUBPART C: RECORD KEEPING AND REPORTING Note: Applies to Storage Sites with More than 500 Used or Waste Tires			
25	848.302(a)	The owner/operator shall keep on site a: (1) ☒ Daily Tire Record (2) ☒ Annual Tire Summary	☒
26	848.303(a)	FAILURE TO MAINTAIN A DAILY TIRE RECORD THAT INCLUDES: ☐ Day of the Week ☐ Date ☐ Agency Site Number ☐ Site Name and Address	☐
27	848.303(b)	FAILURE TO RECORD IN THE DAILY TIRE RECORD THE FOLLOWING INFORMATION (1) ☐ Weight or volume of used or waste tires received at the site during the operating day (2) ☐ Weight or volume of used or waste tires transported from the site and the destination of the tires so transported. (3) ☐ Total number of used or waste tires remaining in storage at the conclusion of the day. (4) ☐ Weight or volume of used or waste tires burned or combusted during the day.	☐
28	848.304	FAILURE TO MAINTAIN ON SITE AN ANNUAL TIRE SUMMARY FOR EACH CALENDAR YEAR THAT INCLUDES:	☐
	(a)	The site number, name and address and the calendar year for which the summary applies.	☐
	(b)(1)	The weight or volume of used or waste tires received at the site during the calendar year.	☐
	(b)(2)	The weight or volume of used or waste tires transported from the site during the calendar year.	☐
	(b)(3)	The total number of used or waste tires determined in PTE remaining in storage at the conclusion of the calendar year	☐

LPC#: 0998215024-LaSalle
 Date: 04-19-05

		(A) ☐ Tires are separated by a Berm 1.5 times the height of the tire pile (B) ☐ Separation Requirements of this part.	
17	848.202(d)	IN ADDITION TO THE REQUIREMENTS SET FORTH IN 848.202 (b) AND (c), THE OWNER OR OPERATOR AT SITES AT WHICH MORE THAN 10,000 USED OR WASTE TIRES ARE LOCATED SHALL:	
	(1)	Completely Surround the Site by Fencing in Good Repair Which Is Not less than 6 Feet in Height	☐
	(2)	Maintain an Entrance to the Area Where Used or Waste Tires are Located, Which is Controlled At all Times by an Attendant, Locked Entrance, Television Monitors, Controlled Roadway Access or Other Equivalent Mechanism	☐
	(3)	Completely Surround the Area Where Used or Waste Tires Are Stored by an Earthen Berm or Other Structures Not Less Than 2 Feet in Height Capable of Containing Runoff Resulting from Tire Fires, and Accessible by Fire Fighting Equipment, Except that the Owner or Operator Shall Provide a Means for Access through or Over the Berm or Other Structure	☐
18	848.203	CONTINGENCY PLAN REQUIREMENTS FOR STORAGE SITES WITH MORE THAN 500 TIRES	
	(a)	The owner/operator must meet the requirements of Section 848.203 Note: Also Mark a Violation of 848.203(b), (c), (d), (e), (f), (g), or (h)	☐
	(b)	The contingency plan must be designed to minimize the hazard to human health and the environment from fires and run-off of contaminants resulting from fires and from disease spreading mosquitos and other nuisance organisms which may breed in water accumulations in used or waste tires.	☐
	(c)	Immediately implement the contingency plan whenever there is a fire or run-off resulting from a tire fire, or whenever there is evidence of mosquito production.	☐
	(d)	The contingency plan must describe the actions that must be taken in response to fires, run-off resulting from tire fires and mosquito breeding in used or waste tires.	☐
	(e)	The contingency plan must include evacuation procedures for site personnel, including signals, evacuation routes and alternate evacuation routes as well as provisions for pesticide application.	☐
	(f)	The contingency plan must be maintained at the site and submitted to state and local authorities.	☐
	(g)	The contingency plan must be reviewed and amended within 30 days if the plan fails or the emergency coordinator changes.	☐
	(h)	At all times, there must be one employee on site or on call with responsibility for coordinating emergency response procedures. The emergency coordinator must be familiar with the plan and all aspects of the site, and have the authority to commit the resources to carry out the plan.	☐
STORAGE OF USED AND WASTE TIRES WITHIN BUILDINGS			
19	848.204(a)	FAILURE TO MEET THE REQUIREMENTS OF SECTION 848.204 Note: Also Mark a Violation of 848.204(b), (c), or (d)	☐
20	848.204(b)	STORAGE OF LESS THAN 500 TIRES WITHIN A BUILDING ALLOWED IF: (1) ☐ Tires Drained of All Water Prior to Placement in the Building (2) ☐ All of the Building's Windows and Doors Maintained in Working Order and Secured to Prevent Unauthorized Access. (3) ☐ The Building Is Maintained So That it Is Fully Enclosed and Has a Roof and Sides Which Are Impermeable to Precipitation (4) ☐ The Storage of Used or Waste Tires Is not in a Single Family Home or a Residential Dwelling	☐
21	848.204(c)	IN ADDITION TO THE REQUIREMENTS SET FORTH IN SECTION 848.204(b), THE OWNER OPERATOR OF A SITE WITH 500 OR MORE USED OR WASTE TIRES STORED WITHIN BUILDINGS SHALL:	☐

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 Date: 04-19-05

	(b)(4)	The weight or volume of used or waste tires combusted during the calendar year.	☐
29	848.304(c)	FAILURE TO SUBMIT THE ANNUAL TIRE SUMMARY BY JANUARY 31 OF EACH YEAR	☒
30	848.305	FAILURE TO RETAIN REQUIRED RECORDS ON SITE FOR 3 YEARS	☒
PART 848: SUBPART D: FINANCIAL ASSURANCE NOTE: Applies to Sites which have Stored 5000 or More Used or Waste Tires			
31	848.400(b)(1)	AT TIRE STORAGE SITES AT WHICH TIRES ARE FIRST STORED ON OR AFTER 1/1/92, FAILURE TO COMPLY WITH SUBPART D PRIOR TO STORING ANY USED OR WASTE TIRES Note: Also Mark a Violation of 848.401 or 848.404	☐
32	848.400(b)(2)	AT TIRE STORAGE SITES AT WHICH TIRES ARE STORED PRIOR TO 1/1/92, FAILURE TO COMPLY WITH SUBPART D BY 1/1/92. Note: Also Mark a Violation of 848.401 or 848.404	☐
33	848.401(a)	FAILURE TO MAINTAIN FINANCIAL ASSURANCE EQUAL TO OR GREATER THAN THE CURRENT COST ESTIMATE CALCULATED PURSUANT TO SECTION 848.404 AT ALL TIMES, EXCEPT AS OTHERWISE PROVIDED BY 848.401 (b).	☐
34	848.401(b)	FAILURE TO INCREASE THE TOTAL AMOUNT OF FINANCIAL ASSURANCE SO AS TO EQUAL THE CURRENT COST ESTIMATE WITHIN 90 DAYS AFTER ANY OF THE FOLLOWING: (1) ☐ an increase in the current cost estimate (2) ☐ a decrease in the value of a trust fund (3) ☐ a determination by the Agency that an owner or operator no longer meets the financial test of Section 848.415 (4) ☐ notification by the owner or operator that the owner or operator intends to substitute alternative financial assurance, as specified in Section 848.406 for self-insurance	☐
35	848.404(a)(2)	BY JANUARY 1 OF EACH YEAR, FAILURE TO SUBMIT A WRITTEN COST ESTIMATE OF THE COST OF REMOVING ALL TIRES.	☐
36	848.404(b)	FAILURE TO REVISE THE COST ESTIMATE WHEN COST ESTIMATES INCREASE.	☐
PART 848: SUBPART F: TIRE TRANSPORTATION REQUIREMENTS			
37	848.601(a)	NO PERSON SHALL TRANSPORT MORE THAN 20 USED OR WASTE TIRES IN A VEHICLE UNLESS THE FOLLOWING REQUIREMENTS ARE MET: (1) ☒ the owner or operator has registered the vehicle with the Agency in accordance with Subpart F, received approval of such registration from the Agency, and such registration is current, valid and in effect (2) ☒ the owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of Subpart F.	☒
38	848.601(b)	NO PERSON SHALL PROVIDE, DELIVER OR TRANSPORT USED OR WASTE TIRES TO A TIRE TRANSPORTER FOR TRANSPORT UNLESS THE TRANSPORTER'S VEHICLE DISPLAYS A PLACARD ISSUED BY THE AGENCY UNDER SUBPART F IDENTIFYING THE TRANSPORTER AS A REGISTERED TIRE HAULER.	☐
39	848.606(a)	UPON APPROVAL OF A REGISTRATION AS A TIRE TRANSPORTER, THE OWNER OR OPERATOR OF ANY VEHICLE REGISTERED TO TRANSPORT USED OR WASTE TIRES SHALL PLACE A PLACARD ON OPPOSITE SIDES OF THE VEHICLES WHICH DISPLAYS A NUMBER ISSUED BY THE AGENCY FOLLOWING THE WORDS "Registered Tire Transporter: (number)."	☐
40	848.606(b)	REGISTERED TIRE TRANSPORTER NUMBERS AND LETTERS SHALL BE REMOVABLE ONLY BY DESTRUCTION. DIRECTLY ADJACENT TO THE WORDS AND NUMBER, THE VEHICLE OWNER AND OPERATOR SHALL DISPLAY A SEAL FURNISHED BY THE AGENCY WHICH SHALL DESIGNATE THE DATE ON WHICH THE REGISTRATION EXPIRES.	☐
THE FOLLOWING VIOLATIONS MAY BE CITED WHEN WASTES, INCLUDING TIRES, HAVE BEEN <u>DISPOSED</u> AT A TIRE STORAGE SITE			
41	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS.	☐
42	9(c)	CAUSE OR ALLOW OPEN BURNING	☐

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43	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	☐
44	12(d)	CREATE A WATER POLLUTION HAZARD	☐
45	21(a)	CAUSE OR ALLOW OPEN DUMPING ☐ USED TIRES ☐ OTHER WASTE	☐
46	21(d)(2)	CONDUCT A WASTE STORAGE OPERATION IN VIOLATION OF ANY REGULATIONS OR STANDARDS ADOPTED BY THE BOARD UNDER THIS ACT. Note: Also Mark appropriate Violations of Part 848	☐
47	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE AT A SITE WHICH DOES NOT MEET THE REQUIREMENTS OF THIS ACT AND REGULATIONS. Note: Also Mark appropriate Violations of Part 848	☐
48	21(p)	CAUSE OR ALLOW THE OPEN DUMPING OF ANY WASTE IN A MANNER WHICH RESULTS IN ANY OF THE FOLLOWING	
	(1)	Litter	☐
	(2)	Scavenging	☐
	(3)	Open Burning	☐
	(4)	Deposition of Waste in Standing or Flowing Waters	☐
	(5)	Proliferation of Disease Vectors	☐
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	☐
49	55(a)	NO PERSON SHALL:	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	☐
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	☐
	(5)	Abandon, Dump or Dispose of Any Used or Waste Tire on Private or Public Property	☐
OTHER REQUIREMENTS			
50.		APPARENT VIOLATION OF: ☐ PCB CASE NUMBER: ☐ CIRCUIT COURT ORDER ENTERED ON:	☐
			☐

Signature of Inspector(s):

Shawn A. Powell E.P.S.M.

Informational Notes:

1. [Illinois] Environmental Protection Act: 415 ILCS 5/1 et seq.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G, Chapter I, Subchapter m, Part 848.
4. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in the references listed in #1, #2, and #3 above.
5. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
6. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
7. Items marked with an "NE" were not evaluated at the time of this inspection.

Inspection Checklist

GPS Coordinates: -88.66273 41.53782

Ravenswood Disposal
Attn: Branko & Tony Vardijan
221 N. Washtenaw Ave.
Chicago, IL 60612

7. Is filling taking place in a wetland? Yes _____ No X
8. Is the clean C & D being deposited so as to be no higher than the highest point of elevation existing prior to filling? Yes X No _____
9. Does this facility perform rock crushing activities on site? Yes _____ No X
10. Has the site been covered with soil to support vegetation? Yes _____ No X NA _____

Explain. Branko Vardijan stated by phone that there are plans in the future to fill in the quarry with several feet of C & D waste and eventually seed for vegetation. _____

11. Is the site operating in compliance with Section 3.160 (b) of the Act? Yes _____ No X

Record Keeping

12. Are employee training procedures in place? Yes _____ No X

Documented? Yes _____ No X

13. Is a daily log of incoming loads maintained? Yes X No _____

14. Is the Generator of the Clean C & D recorded in the log? Yes X No _____

15. Is the Transporter of the Clean C & D recorded in the log? Yes X No _____

16. Is the place of origin of the Clean C & D recorded in the log? Yes _____ No X

17. If the site is over one acre does the facility have a Storm Water Permit issued by the Bureau of Water?

Yes _____ No X Permit Date Issued: _____

Agency Field Sampling & Screening

18. Was a sample from an incoming load collected? Yes _____ No X

19. Was a sample from the deposited fill collected? Yes _____ No X

TVA reading: background _____

20. Does the operator know of any other operating clean C & D disposal sites in the area?

Yes _____ No X

List: _____

OTHER REQUIREMENTS

OTHER REQUIREMENTS			
	OTHER:	APPARENT VIOLATION OF: () PCB; () CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	

Informational Notes



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

847/294-4000

847/294-4083 (Fax)

August 26, 2005

CERTIFIED MAIL
RETURN RECEIPT
#7003 3110 0000 4254 9263

Sheridan Sand & Gravel
Attn: Branko Vardijan
2679 North 4201 Road
Sheridan, Illinois 60551

Re: **Notice of Intent to Pursue Legal Action**
LPC #0998215024 - LaSalle County
Sheridan (Mission Twp.)/Sheridan Sand & Gravel
Compliance File

Dear Mr. Vardijan:

This Notice of Intent to Pursue Legal Action is provided pursuant to Section 31(b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(b)(2002). The Illinois Environmental Protection Agency ("Illinois EPA") is providing this notice because it is the belief of the Illinois EPA that the alleged violations which are set forth in Attachment A cannot be resolved without the involvement of the Office of the Attorney General or the State's Attorney.

The Illinois EPA is providing this notice because it may pursue legal action for the violations of environmental statutes, regulations or permits specified in Attachment A. This Notice of Intent to Pursue Legal Action provides you the opportunity to schedule a meeting with representatives of the Illinois EPA to attempt to resolve the violations of the Act, regulations and permits specified in Attachment A. If a meeting is requested, it must be held within thirty (30) days of receipt of this notice unless an extension of time is agreed to by the Illinois EPA.

Page 2

Due to the nature and seriousness of the violations cited in Attachment A, 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.

If you wish to schedule a meeting with representatives of the Illinois EPA or have any questions, please contact Paul Jagiello at 847/294-4076 within 20 days of your receipt of this notice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Jagiello".

Paul Jagiello
Assistant Counsel
Division of Legal Counsel

Attachment

PRJ:dfa:Vardijan.ltr.1

Attachment

1. Pursuant to Section 21(k) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(k)), no person shall fail or refuse to pay any fee imposed under this Act.

A violation of Section 21(k) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(k)) is alleged for the following reason: **Failure to pay the required \$100.00 Annual Tire Storage fee for 2005.**

2. Pursuant to Section 55(a)(4) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(a)(4)), no person shall cause or allow the operation of a tire storage site except in compliance with Board regulations.

A violation of Section 55(a)(4) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(a)(4)) is alleged for the following reason: **Waste tires have accumulated on site for longer than a year.**

3. Pursuant to Section 55(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(d)(1)), beginning January 1, 1992, no person shall cause or allow the operation of a tire storage site which contains more than 50 used tires, unless the owner or operator, by January 1, 1992 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, (i) registers the site with the Agency, (ii) certifies to the Agency that the site complies with any applicable standards adopted by the Board pursuant to Section 55.2, (iii) reports to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle and process the tires, and (iv) pays the fee required under subsection (b) of Section 55.6.

A violation of Section 55(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(d)(1)) is alleged for the following reason: **Failure to register as a tire storage site.**

4. Pursuant to Section 55(e) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(e)), no person shall cause or allow the storage, disposal, treatment or processing of any used or waste tire in violation of any regulation or standard adopted by the Board.

A violation of Section 55(e) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(e)) is alleged for the following reason: **Failure to prevent the waste tires from accumulating water.**

5. Pursuant to Section 55(g) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(g)), no person shall engage in any operation as a used or waste tire transporter except in compliance with Board regulations.

A violation of Section 55(g) of the [Illinois] Environmental Protection Act (415 ILCS 5/55(g)) is alleged for the following reason: **Waste tires were transferred to the site and transporter was not permitted to haul tires.**

6. Pursuant to Section 55.6(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.6(b)), beginning January 1, 1992, in addition to any other fees required by law, the owner or operator of each site required to be registered under subsection (d) of Section 55 shall pay to the Agency an annual fee of \$100. Fees collected under this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

A violation of Section 55.6(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.6(b)) is alleged for the following reason: **Failure to pay the required tire storage fee by January 1 of each year.**

7. Pursuant to Section 55.8(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.8(b)), a person who accepts used tires for recycling under subsection (a) shall not allow the tires to accumulate for periods of more than 90 days.

A violation of Section 55.8(b) of the [Illinois] Environmental Protection Act (415 ILCS 5/55.8(b)) is alleged for the following reason: **Waste tires have accumulated on site longer than 90 days.**

8. Pursuant to 35 Ill. Adm. Code 848.202(b)(4), at sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirement: Used or waste tires shall be drained of water on the day of generation or receipt.

A violation of 35 Ill. Adm. Code 848.202(b)(4) is alleged for the following reason: **Failure to drain the water from used/waste tires stored inside the box trailer.**

9. Pursuant to 35 Ill. Adm. Code 848.202(b)(5), at sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirement: Used or waste tires received at the site shall not be stored unless within 14 days after the receipt of any used tire the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water.

A violation of 35 Ill. Adm. Code 848.202(b)(5) is alleged for the following reason: **Failure to prevent water from accumulating inside waste tires that have been stored on site longer than 14 days.**

10. Pursuant to 35 Ill. Adm. Code 848.202(c)(1), in addition to the requirements set forth in subsection [848.202] (b), the owner or operator shall comply with the following requirement at sites at which more than 500 used or waste tires are located. A contingency plan, which meets the requirements of Section 848.203 shall be maintained.

A violation of 35 Ill. Adm. Code 848.202(c)(1) is alleged for the following reason: **There were more than 500 tires on site and no Contingency Plan on site.**

11. Pursuant to 35 Ill. Adm. Code 848.202(c)(2), in addition to the requirements set forth in subsection [848.202] (b), the owner or operator shall comply with the following requirement at sites at which more than 500 used or waste tires are located. The recordkeeping and reporting requirements of [35 Ill. Adm. Code 848] Subpart C shall be met.

A violation of 35 Ill. Adm. Code 848.202(c)(2) is alleged for the following reason: There are no tire disposal records on site.

12. Pursuant to 35 Ill. Adm. Code 848.302(a)(1), the owner or operator shall keep a record of used and waste tires at the site. The owner and operator shall keep the following records:
 - 1) Daily Tire Record
 - 2) Annual Tire Summary

A violation of 35 Ill. Adm. Code 848.302(a)(1) is alleged for the following reason: **Tire storage sites that maintain more than 500 used/waste tires are required to keep a Daily Tire Record on site. There was no Daily Tire Record on site.**

13. Pursuant to 35 Ill. Adm. Code 848.302(a)(2), the owner or operator shall keep a record of used and waste tires at the site. The owner and operator shall keep the following records:
 - 1) Daily Tire Record
 - 2) Annual Tire Summary

A violation of 35 Ill. Adm. Code 848.302(a)(2) is alleged for the following reason: **Tire storage sites that maintain more than 500 used/waste tires are required to keep an Annual Tire Summary. There is no evidence that an Annual Tire Summary was submitted to Springfield Headquarters.**

14. Pursuant to 35 Ill. Adm. Code 848.304(c), the Annual Tire Summary shall be received by the Agency on or before January 31 of each year and shall cover the preceding calendar year.

A violation of 35 Ill. Adm. Code 848.304(c) is alleged for the following reason: **Failure to submit an Annual Tire Summary by January 31 of each year.**

15. Pursuant to 35 Ill. Adm. Code 848.305, copies of all records required to be kept under this [35 Ill. Adm. Code 848] Subpart [C] shall be retained by the owner and operator for three years and shall be made available at the site during the normal business hours of the operator for inspection and photocopying by the Agency.

A violation of 35 Ill. Adm. Code 848.305 is alleged for the following reason: No tire records were found on site.

16. Pursuant to 35 Ill. Adm. Code 848.601(a)(1), except as provided in subsection [848.601] (c), no person shall transport more than 20 used or waste tires in a vehicle unless the following requirements are met.

- 1) The owner or operator has registered the vehicle with the Agency in accordance with this [35 Ill. Adm. Code 848] Subpart [F], received approval of such registration from the Agency, and such registration is current, valid and in effect.
- 2) The owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of this [35 Ill. Adm. Code 848] Subpart [F].

A violation of 35 Ill. Adm. Code 848.601(a)(1) is alleged for the following reason: **Failure to register as an Illinois registered tire transporter.**

17. Pursuant to 35 Ill. Adm. Code 848.601(a)(2), except as provided in subsection [848.601] (c), no person shall transport more than 20 used or waste tires in a vehicle unless the following requirements are met.

- 1) The owner or operator has registered the vehicle with the Agency in accordance with this [35 Ill. Adm. Code 848] Subpart [F], received approval of such registration from the Agency, and such registration is current, valid and in effect.
- 2) The owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of this [35 Ill. Adm. Code 848] Subpart [F].

A violation of 35 Ill. Adm. Code 848.601(a)(2) is alleged for the following reason: **Failure to display an Illinois registered tire transporter placard on your vehicle.**

Ph: 815 / 434-8666

LA SALLE COUNTY
ENVIRONMENTAL SERVICES AND DEVELOPMENT

Fax: 815 / 433-9303

MICHAEL E. HARSTED
DEPARTMENT DIRECTOR

119 WEST MADISON STREET
ROOM 400
OTTAWA ILLINOIS 61350

June 8, 2005

Mr. Branko Vardijan
221 N. Washtenaw
Chicago, IL 60612

RE: Compliance File
LaSalle County
Mission Township / Co 05-020
Bowen Pit Property

Dear Mr. Vardijan:

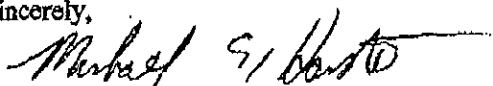
On June 6, 2005, personnel from this Department conducted an inspection at the Bowen Pit in Sheridan, Illinois. At the time of that inspection, it has been determined that no violations currently exist on your property. This letter is meant to be a reminder that we have not yet received copies of the receipts for the material that were removed. Where we appreciate the attention to abating the violations, we must have documentation on the materials that were removed from the property.

Written communication should be directed to

LaSalle County Department of Environmental Services and Development
Attn.: Michael E. Harsted, Director
119 West Madison Street, Room 400
Ottawa, IL 61350

Questions regarding this matter should be directed to myself at (815) 434-8666.

Sincerely,



Michael E. Harsted
Director
LaSalle County Department of Environmental Services and Development

cc: IEPA BOL/FOS
IEPA Rockford Region 1
File



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 3, 2006

Sent Via U.S. Mail

Mr. Kenneth Anspach
Anspach & Associates
8 South Michigan Avenue
Suite 3400
Chicago, Illinois 60603

Re: Sheridan Sand & Gravel Co.: Violations of Illinois Environmental Protection Act

Dear Mr. Anspach,

The Illinois Environmental Protection Agency ("EPA") has referred the above-referenced matter to the Office of the Attorney General for the initiation of legal enforcement action. On approximately April 19, 2005, the Illinois EPA conducted a tire storage inspection at the Sheridan Sand and Gravel facility located at 2679 North 4201 Road in Sheridan, Illinois. During the inspection, the Illinois EPA observed approximately 2000 used/waste tires at the site, which constitutes violations of the Illinois Environmental Protection Act. As you know, on May 4, 2005, the Illinois EPA issued violation notice number L-2005-01188 to Sheridan Sand and Gravel pursuant to Section 31(a)(1) of the Illinois Protection Act, 415 ILCS 5/31(a)(1).

Our Office policy is to approach a potential defendant before filing a formal complaint in an effort to resolve the matter. In this case, an acceptable alternative to litigation would consist of entering into a court approved settlement. A settlement agreement would include, among other things, a compliance schedule for incorporation of a technical remedy, an agreement to cease and desist from future violations of the Illinois Environmental Protection Act and related regulations and payment of a civil penalty. Section 42 of the Act, 415 ILCS 5/42, provides for penalties up to \$50,000 per violation, plus \$10,000 per day *each* violation continues.

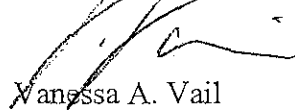
The Illinois Attorney General's Office offers you the opportunity to meet with representatives of this office and the Illinois EPA in order to discuss resolution of this matter. **A meeting is scheduled for Friday, January 13, 2006 at 11:00 am** at our office located at 188 West

EXHIBIT "D"

Mr. Kenneth Anspach
January 3, 2006

Randolph, 20th Floor, Chicago. Please telephone me to confirm your attendance at this meeting by **January 9, 2006**. Should you choose to not respond to this letter, a formal complaint will be filed without resolving this matter.

Very truly yours,



Vanessa A. Vail
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601
(312) 814-5361

cc: Mr. Paul Jagiello, Assistant Counsel: IEPA