

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 07-0004
	)	(IEPA No. 139-06-AC)
vs.	)	(Administrative Citation)
	)	
FRANK WILHELM,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Ms. Dorothy M. Gunn	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**, directed to the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

FRANK WILHELM,  
Respondent,

Dated: January 19, 2007

By:     /s/ Christine G. Zeman      
Christine G. Zeman

Christine G. Zeman  
Monica T. Rios  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

**CERTIFICATE OF SERVICE**

I, Christine G. Zeman, the undersigned, hereby certify that I have served the attached MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT upon:

Ms. Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on January 19, 2007; and upon:

Michelle M. Ryan, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, Illinois 62794-9274

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on January 19, 2007.

/s/ Christine G. Zeman  
Christine G. Zeman

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 07-0004
	)	(IEPA No. 139-06-AC)
vs.	)	(Administrative Citation)
	)	
FRANK WILHELM,	)	
	)	
Respondent.	)	

**MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

NOW COMES Respondent, FRANK WILHELM, by and through HODGE DWYER ZEMAN, and pursuant to 35 Ill. Admin. Code §§ 101.500, 101.506, and 101.516 for its Motion to Dismiss, or in the alternative, Motion for Summary Judgment states as follows:

**I. BACKGROUND**

On July 28, 2006, Complainant filed an Administrative Citation (“AC”) with the Illinois Pollution Control Board (“Board”) alleging, *inter alia*, that Respondent, Frank Wilhelm, owns and operates an open dumping facility without an Illinois Environmental Protection Agency Operating Permit. *See* Administrative Citation, *Illinois Environmental Protection Agency v. Frank Wilhelm*, AC 2007-004 at ¶¶1-2 (Ill.Pol.Control.Bd. July 28, 2006). In addition, Complainant alleges that “Respondent has owned and operated said facility at all times pertinent hereto.” *Id.* at ¶3. According to the AC, the facility that is the subject of the AC is commonly known as Decatur/Wilhelm (hereinafter “subject property”) and is located at:

Part of the West Half of the Northeast Quarter and the East Half of the East Half of the Northwest Quarter in Section 32, Township 17, North Range 2 East of the Third Principal Meridian, Macon County, Illinois.

*Id.* at ¶1.

Respondent has previously provided the Illinois Environmental Protection Agency (“Illinois EPA”) and the Board with documentation, which was attached to his Petition to Contest, that shows that Respondent is not the owner of the subject property. *See, generally*, Chicago Title Insurance Policy, dated December 8, 1986, attached to the Petition to Contest as Exhibit A, filed with the Board on September 1, 2006, and served upon the Illinois EPA. In addition, in correspondence dated September 27, 2006, counsel for Respondent provided the Illinois EPA with a copy of a December 8, 1986, deed showing that the current owner of the property is Mr. Ferdinand Wilhelm, which is also attached hereto, as referenced below, in certified form, in support of this Motion. As the Orders of the Board’s hearing officer state, the Illinois EPA acknowledged that it may yet be considering the documentation regarding ownership that it was previously provided; accordingly, Respondent is compelled to bring this issue to the Board for resolution.

In furtherance of this Motion, Respondent has attached hereto as Exhibits A, B and C, respectively, documentation demonstrating conclusively that Respondent is not the owner of the subject property. *See* Chicago Title Insurance Policy, dated December 8, 1986, attached hereto as Exhibit A (issued December 8, 1986 for the subject property described in the AC, but not issued to or naming Respondent as owner); copy of a certified deed, dated November 14, 1986, for subject property, attached hereto as Exhibit B (showing Respondent, Frank E. Wilhelm, and his wife, Verina Wilhelm, as

Joint Tenants of the subject property as of November 14, 1986); and copy of a certified deed dated December 8, 1986, for the subject property, attached hereto as Exhibit C (transferring ownership of the subject property on December 8, 1986 from Respondent, Frank E. Wilhelm, and Respondent's wife, Verina Wilhelm to Ferdinand W. Wilhelm, the current owner of the property). Respondent, therefore, has not owned the subject property since December 8, 1986, and cannot be held liable as owner, as he is charged, for the alleged violations of the Illinois Environmental Protection Act that may or may not have occurred on the subject property, because the AC was improperly issued pursuant to 35 Ill. Admin. Code § 108.206. *See also* explanation and citations as set out more fully below.

## **II. RESPONDENT IS NOT THE OWNER OF THE SUBJECT PROPERTY**

Section 108.206 of the Board regulations provides, in relevant part, “[a] formal petition to contest must include any reasons why the AC Recipient believes that AC was improperly issued, including: a) The AC Recipient does not own the property . . . .” 35 Ill. Admin. Code § 108.206. In addition, the Board has dismissed parties to an AC from an action based on the parties’ non-ownership status regarding the subject property of the AC.

For example, in *Illinois EPA v. Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O’Hara Construction, Inc.*, AC No. 05-54 (Ill.Pol.Control.Bd. April 21, 2005) the Illinois EPA, when it issued the AC, contended that the Ray Logsdon Estate (“Estate”) “was ‘involved in the ownership of the site.’” *Id.* at 2 (citations omitted). The Illinois EPA, upon “learning that the Estate was closed in 1978,” filed a motion to

dismiss the Estate, which was granted by the Board. *Id.* at 2-3. In *County of Jackson v. Glasper*, (hereinafter “*Glasper*”), the Complainant issued an AC to Elwood Glasper and Tony Glasper, but filed a motion to voluntarily dismiss the AC “[d]ue to recent developments involving ownership and control of the site . . . .” *Glasper*, AC 05-068 at 1 (Ill.Pol.Control.Bd. May 9, 2005). The Board granted the Complainant’s Motion. *Glasper*, AC 05-068 (Ill.Pol.Control.Bd. May 19, 2005).

The certified deeds from the Macon County Recorder’s Office show that although Respondent and his wife were previous owners of the subject property as joint tenants, Respondent is not the current owner and was not the owner at the time of any of the allegations in the AC. Respondent is not the owner of the property, which according to the Board’s rules demonstrates that the “AC was improperly issued.” 35 Ill. Admin. Code § 108.206.

Although Section 101.506 of the Board’s rules provides that motions to dismiss must be filed within 30 days after service of the challenged document, none of the parties in this matter will be prejudiced by the Board’s consideration of this Motion because the Respondent has raised ownership and other issues in its Petition, and the Petition included documentation identifying the true owner of the subject property. In addition, as noted above, the Board’s October 5, 2006, Order provides that the Complainant is looking into the ownership issue, and no hearing has yet been set. Indeed, the undersigned notified the Illinois EPA prior to the filing of Respondent’s Petition that Respondent is not the owner of the subject property. While the Illinois EPA previously has been provided with documentation showing that Respondent is not the owner of the

site, and acknowledged to the Board's hearing officer that it is looking into the issue, nevertheless, prolonging this matter any longer is burdensome to Respondent. *See Exhibits A, B, and C*, respectively (showing conclusively that Respondent is not the owner of the property, including copies of certified deeds transferring ownership of the property from Respondent and his wife, as joint tenants, to Ferdinand Wilhelm).

Because the AC was improperly issued to Respondent, who does not own the subject property, Respondent's Motion to Dismiss must be granted.

### **III. STANDARD FOR MOTION FOR SUMMARY JUDGMENT**

The Board rules also provide for the filing of motions for summary judgment. *See* 35 Ill. Admin. Code § 101.516(a). In cases before the Board, as in cases before a Court, "[s]ummary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *IEPA v. Ted Harrison and Gerald Gill*, PCB No. 05-08, 2006 Ill. ENV LEXIS 208, at \*3 (Ill.Pol.Control.Bd. Apr. 6, 2006) (citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998)) (hereinafter "*Dowd*"); *accord*, 35 Ill. Admin. Code § 101.516(b).

While the Board has stated that "summary judgment 'is a drastic means of disposing of litigation,' and therefore should be granted only when the movant's right to the relief 'is clear and free from doubt,'" nevertheless, the Board citing to the Illinois Supreme Court has also stated: "use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit." *Harrison* at 3 (citing

*Purtill v. Hess*, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986)). The Illinois Supreme Court also explained:

If a party moving for summary judgment supplies facts which, if not contradicted, would entitle such party to a judgment as a matter of law, the opposing party cannot rely on his pleadings alone to raise issues of material fact. Thus, facts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffidavit are admitted and must be taken as true for purposes of the motion.

*Purtill*, at 111 Ill.2d at 240-41, 489 N.E.2d at 871-72.

For purposes of a motion for summary judgment, a fact is “material” if it is “[r]elated to the essential elements of the cause of action.” *Smith v. Neumann*, 289 Ill. App. 3d 1056, 1069, 682 N.E.2d 1245, 1254 (2d Dist. 1997) (citations omitted). That is, if it will “affect the outcome of a party’s case.” *Westbank v. Maurer, et al.*, 276 Ill. App. 3d 553, 562, 658 N.E.2d 1381, 1389 (2d Dist. 1995). Thus, “[f]actual issues which are not material to the essential elements of the cause of action or defense, regardless of how sharply controverted, do not warrant the denial of summary judgment.” *Swope v. Northern Illinois Gas Co.*, 251 Ill. App. 3d 850, 858, 623 N.E.2d 841, 846 (3d Dist. 1993) (citation omitted) (cited by the Board in *Environmental Site Developers, Inc. v. White & Brewer Trucking, Inc.*, PCB No. 96-180, 1997 Ill. ENV LEXIS 649, at \*\*27-28 (Ill.Pol.Control.Bd. Nov. 20, 1997), where the Board stated that “raising an issue with respect to one of the factors listed in section 33(c) will not ... necessarily preclude entry of partial summary judgment solely on the issue of whether a violation occurred”).

Finally, also note that “a party opposing a motion for summary judgment may not rest on its pleadings, but must ‘present a factual basis which would arguably entitle [it] to a judgment.’” *Cassens and Sons, Inc. v. IEPA*, PCB No. 01-102, 2004 Ill. ENV LEXIS



635 at \*\*11-12 (Ill.Pol.Control.Bd. Nov. 18, 2004) (quoting *Gauthier v. Westfall*, 266 Ill. App. 3d 213, 220, 639 N.E.2d 994, 999 (2d Dist. 1994)). The *Gauthier* decision cited by the Board in *Cassens* makes clear that “[i]f from the papers on file, a plaintiff fails to establish an element of his cause of action, summary judgment for the defendant is proper.” *Gauthier*, 266 Ill. App. 3d at 220, 693 N.E.2d at 999 (citations omitted).

Section 101.504 of the Board’s procedural rules also provides that “[f]acts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109].” 35 Ill. Admin. Code § 101.504. Respondent has attached as Exhibit D the affidavit of Ferdinand Wilhelm attesting to the fact that he is and has been the owner of the subject property at all times relevant to the claims alleged in the AC, as well as attesting that, Frank Wilhelm has neither been the owner of the property since December 8, 1986, nor associated with the subject property since that time.

**IV. RESPONDENT DOES NOT HAVE CONTROL OVER THE SUBJECT PROPERTY**

As stated, summary judgment is proper when “the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Harrison* at 3. It is clear from the pleadings and Ferdinand Wilhelm’s Affidavit, attached hereto as Exhibit D, as well as the discussion above that Respondent is not the owner of the subject property, because therefore, the Illinois EPA cannot establish an element of its cause of action, that the “AC was improperly issued.” 35 Ill. Admin. Code § 108.206.

Further, the Board has stated that “the Agency ‘must show that the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred.’” *Harrison* at 9-10 (quoting *Vermilion v. Village of Tilton*, PCB No. 04-22 at 11 (Ill.Pol.Control.Bd. Dec. 16, 2004) (citing *People v. A.J. Davinroy*, 249 Ill. App. 3d 788, 793, 618 N.E.2d 620 (5th Dist. 1993)). Because Respondent is not the owner of the subject property, nor has been associated with the subject property since its transfer in 1986 to his brother, Ferdinand “Bill” Wilhelm, the Illinois EPA will be unable to establish an element of its cause of action, namely that Respondent had control over the alleged pollution or control over the subject property. Further, as attested to in the attached affidavit, the Respondent did not cause or allow the alleged open dumping, which, if such occurred as alleged, was the result of uncontrollable circumstances pursuant to 35 Ill. Admin. Code § 108.206(b) and (d).

Even when considering the pleadings and the Affidavit of Mr. Ferdinand Wilhelm strictly against the movant in favor of the opposing party, *see Harris* at 3 (citing *Dowd*), Respondent’s right to relief is clear and free from doubt. For the foregoing reasons, summary judgment in favor of the Respondent is proper.

**V. CONCLUSION**

WHEREFORE, for the reasons stated above, Respondent, FRANK WILHELM, respectfully moves the Illinois Pollution Control Board to grant Respondent’s Motion to Dismiss with prejudice pursuant to Section 108.206 because the AC was improperly

issued, or in the alternative pursuant to the same section, grant Respondent's Motion for Summary Judgment as to all counts of the Administrative Citation, to enter judgment in favor of Respondent and against Complainant, and to award Respondent such other relief as the Illinois Pollution Control Board deems just.

Respectfully submitted,

FRANK WILHELM,  
Respondent,

By:           /s/ Christine G. Zeman            
Christine G. Zeman

Dated: January 19, 2007

Christine G. Zeman  
Monica T. Rios  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

WILH:001/Fil/Revised Motion for Summary Judgment

AMERICAN LAND TITLE ASSOCIATION  
OWNER'S POLICY FORM B-1970  
(Amended 10-17-70)

14 0122 04 023670

CHICAGO TITLE INSURANCE COMPANY

*42.5 acres*

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land; or
4. Unmarketability of such title.

*In Witness Whereof*, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of the date of policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

Issued by:  
GARY K. ANDERSON  
145 S. Water St.  
Decatur, Illinois 62523  
(217) 428-6675

CHICAGO TITLE INSURANCE COMPANY

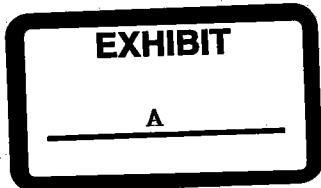
By:

*Robert L. Pella*

President.

ATTEST:

*Thomas J. Adams*  
Secretary.



IMPORTANT

This policy necessarily relates solely to the title as of the date of the policy. In order that a purchaser of the real estate described herein may be insured against defects, liens or encumbrances, this policy should be reissued in the name of such purchaser.

OFFICE FILE NUMBER	POLICY NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE
Macon #45794	14-0122-04-023670	December 8, 1986	\$70,000.00

1. Name of Insured:

FERDINAND W. WILHELM

2. The estate or interest in the land described herein and which is covered by this policy is:  
Fee simple

3. The estate or interest referred to herein is at Date of Policy vested in the insured.

4. The land herein described is encumbered by the following mortgage or trust deed, and assignments:

NONE

and the mortgages or trust deeds, if any, shown in Schedule B hereof.

5. The land referred to in this policy is described as follows:

Part of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  and the East  $\frac{1}{2}$  of the East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section Thirty-two (32), Township Seventeen (17) North, Range Two (2) East of the 3rd P.M., Macon County, Illinois, said tract being more particularly described as follows: Beginning at the Northwest corner of the Northeast  $\frac{1}{4}$  of said Section 32, running thence S 88°41'54" West for 653.60 feet; thence S 0°16'40" West for 2643.05 feet; thence North 89°20'00" East for 235.50 feet; thence North 0°08'49" East for 670.00 feet; thence North 89°20'00" East for 424.00 feet; thence S 0°08'49" West for 290.00 feet; thence North 88°28'30" East for 189.40 feet; thence S 0°08'49" West for 150.00 feet; thence N 88°28'30" East for 284.10 feet; thence S 0°08'49" West for 230.00 feet; thence N 88°28'30" East for 444.84 feet; thence North 0°03'00" East for 638.20 feet; thence North 88°28'30" East for 145.50 feet; thence North 0°03'00" West for 438.08 feet; thence North 89°59'23" East for 250.42 feet; thence North 0°03'00" West for 30.00 feet; thence South 89°58'51" West for 396.00 feet; thence North 0°03'00" West for 275.00 feet; thence North 89°58'51" East for 12.00 feet; thence North 7°51'02" East for 546.40 feet; thence North 25°52'54" East for 62.44 feet; thence N 50°09'36" West for 291.00 feet; thence S 25°20'24" West for 343.55 feet; thence North 89°55'37" West for 445.43 feet; thence North 1°27'59" East for 235.00 feet; thence North 89°39'47" West for 215.15 feet; thence North 0°08'49" East for 530.25 feet to the point of beginning, except the South 1099.95 feet thereof. Situated in Macon County, Illinois.

This policy valid only if Schedule B is attached.

Policy Number 14-0122-04-023670

Owners

Policy Number None

Loan

This policy does not insure against loss or damage by reason of the following exceptions:

**General Exceptions:**

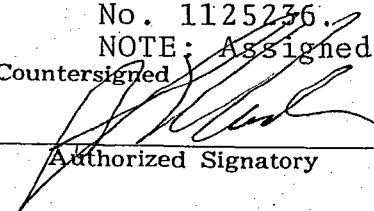
- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
- (3) Easements or claims of easements not shown by the public records.
- (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) Taxes or special assessments which are not shown as existing liens by the public records.

**Special Exceptions:** The mortgage, if any, referred to in Item 4 of Schedule A.

- (1) Taxes for 1986, which as of the date of this policy are not yet due or payable.
- (2) Rights of the Public, the State of Illinois, the County, the Township and the municipality in and to that part of the premises in question taken, used, or dedicated for roads or highways.
- (3) Rights of way for drainage ditches, drain tiles, feeders, laterals, and underground pipes, if any.
- (4) Rights of Illinois Iowa Power Company, an Illinois Corporation, its successors and assigns, under and by virtue of Easement dated March 9, 1940 and recorded July 26, 1940 in Book 797, Page 188 as Document No. 326723. (Affects "Generally adjacent to and parallel with the Southwestern right of way line of the Illinois Central Railroad Company, all poles to be set within 20 feet of the right of way of said railroad company)
- (5) Rights of Illinois Power Company, an Illinois Corporation, under and by virtue of Easement dated December 12, 1974 and recorded January 24, 1975 in Book 1823, Page 118 as Document No. 968309. (Affects the West 10 feet & the North 10 feet of that part of the West 377.95 feet of the West  $\frac{1}{4}$  Northeast  $\frac{1}{4}$  of Section 32-17-2 E of the 3rd P.M., lying South and West of the Illinois Central Railroad right of way, except the South 230 feet thereof and except the North 530.25 feet thereof)
- (6) Rights of Illana Company, under and by virtue of Right of Way Contract dated March 4, 1939 and recorded May 9, 1939 in Book 779, Page 521 as Document No. 309930, to lay, maintain, inspect, alter, repair, operate, replace, remove and re-lay a pipeline for the transportation of oil, gas, etc. (Affects East  $\frac{1}{2}$  East  $\frac{1}{2}$  Northwest  $\frac{1}{4}$  of Section 32-17-2E. NOTE: Amended by instrument recorded October 21, 1981 in Book 2080, Page 825 as Document No. 1125236.

NOTE: Assigned to Phillips Petroleum Company.

Countersigned



Authorized Signatory

Schedule B of this Policy consists of 2 pages.

Macon #45794

(Schedule B continued)

Policy Number 14-0122-04-023670  
OwnersPolicy Number None  
Loan

- (7) Rights of Phillips Petroleum Company, under and by virtue of Right of Way Contract dated July 14, 1951 and recorded August 31, 1951 in Book 1077, Page 415 as Document No. 509867.
- (8) Rights of Weldon H. Owens and Dorothy, M. Owens, husband and wife, for an easement of ingress and egress as created in Trustee's Deed dated December 13, 1974 and recorded December 18, 1974 in Book 1820, Page 671 as Document No. 966937.
- (9) NOTE: Access over the Illinois Central Gulf right-of-way is by license.

**1. Definition of Terms**

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company may have had against the named insured, those who succeed to the interest of such insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage hereunder.

(c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

(d) "land": the land described, specifically or by reference in Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": those records which by law impart constructive notice of matters relating to said land.

**2. Continuation of Insurance after Conveyance of Title**

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured so long as such insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such estate or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

**3. Defense and Prosecution of Actions—Notice of Claim to be given by an Insured Claimant**

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or a defense interposed against an insured in an action to enforce a contract for a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

(b) The insured shall notify the Company promptly in writing (i) in case any action or proceeding is begun or defense is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice.

(c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy.

(d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this

policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred.

**4. Notice of Loss—Limitation of Action**

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

**5. Options to Pay or Otherwise Settle Claims**

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment, by the insured claimant and authorized by the Company.

**6. Determination and Payment of Loss**

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

**7. Limitation of Liability**

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

**8. Reduction of Liability**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

**9. Liability Noncumulative**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under



## CONDITIONS AND STIPULATIONS (Continued)

any policy insuring either (a) a mortgage shown or referred to in Schedule B hereof which is a lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. The Company shall have the option to apply to the payment of any such mortgages any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed a payment under this policy to said insured owner.

### 10. Apportionment

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of said parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each such parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement herein or by an endorsement attached hereto.

### 11. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights

and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

### 12. Liability Limited to this Policy

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

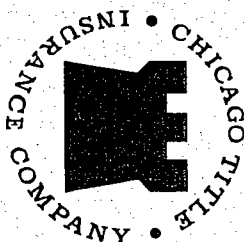
No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### 13. Notices, Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to its principal office at 111 West Washington Street, Chicago, Illinois 60602, or at any branch office of the Company.

*American Land Title Association  
Owner's Policy Form B-1970  
(Amended 10-17-70)*

POLICY  
OF  
TITLE  
INSURANCE



CHICAGO  
TITLE INSURANCE  
COMPANY  
111 WEST WASHINGTON STREET  
CHICAGO, ILLINOIS 60602

CERTIFICATION OF DOCUMENT

MACON COUNTY, ILLINOIS

2226 237  
1225432

*Return this to  
F. Wilhelm  
2245 E. William St.  
Decatur Ill.  
OK-JWV  
7  
11-10*

THIS INDENTURE, Made this 14th day of November 19 86,  
between the NORTHTOWN BANK and TRUST, a Corporation, duly organized and  
existing as a State Banking Association under the Laws of the State of Illinois, and  
duly authorized to accept and execute trusts within the State of Illinois, not personally,  
but as trustee, under the provisions of a deed or deeds in trust duly recorded and  
delivered to said NORTHTOWN BANK and TRUST in pursuance of a trust agreement  
dated the 16th day of January, 19 78, and known as  
Trust Number 158, Party of the first part and  
Frank E. Wilhelm & Verina Wilhelm, Husband & Wife, as Joint Tenants

OF \_\_\_\_\_ party of the second part.

WITNESSETH, That said party of the first part, in consideration of the  
sum of Ten (\$10.00) Dollars, and other good and  
valuable considerations in hand paid, does hereby grant, sell and convey unto  
said party of the second part, the following described real estate, situated in  
Macon County, Illinois, to-wit:

See reverse side for legal description

together with the tenements and appurtenances thereunto belonging.

TO HAVE AND TO HOLD the same unto said party of the second part, and  
to the proper use, benefit and behoof forever of said party of the second part.  
Subject to the 1986 general taxes payable in 1987 and all general  
taxes payable thereafter.  
Subject to and conveying the benefit of easements, restrictions  
and reservations of record, if any.  
This deed is executed pursuant to and in the exercise of the power and authority  
granted to and vested in said trustee by the terms of said deed or deeds in trust  
delivered to said trustee in pursuance of the trust agreement above mentioned.  
This deed is made subject to the lien of every trust deed or mortgage (if any there be)  
of record in said county given to secure the payment of money, and remaining  
unreleased at the date of the delivery hereof.

IN WITNESS WHEREOF, said party of the first part has caused its corporate  
seal to be hereto affixed, and has caused its name to be signed by these presents  
by its Exec. Vice President and attested by its Asst. Cashier,  
the day and year first above written.

ATTEST:  
[Signature]  
Asst. Cashier

NORTHTOWN BANK and TRUST  
As Trustee as aforesaid.  
by [Signature]  
M. J. Branier  
Exec. Vice President

This deed prepared by: W. T. Downing, P.O. Box 149,  
Decatur, IL 62525

Send tax bill to:

EXHIBIT  
B

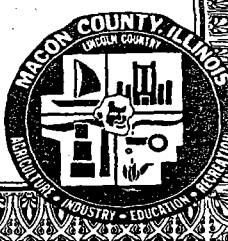
CERTIFIED COPY OF DOCUMENT

STATE OF ILLINOIS } SS DATE ISSUED 11-9-06  
COUNTY OF MACON }

I, Mary A. Eaton, Macon County Recorder, do hereby certify that this document is a true and correct copy of the original record which is on file in the office of the County Recorder, Macon County, Decatur, Illinois.

*Mary A. Eaton*

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



BOOK 2226 PAGE 238

*Return this to  
F. Wilhelm  
2245 E. Willard  
Decatur, Ill. 62521*

STATE OF ILLINOIS )  
COUNTY OF MACON ) SS

I, Cheryl L. Campbell, a Notary Public in and  
for the County and State aforesaid, hereby certify that  
JM. J. Brahier and William W. Land  
personally known to me to be the Exec Vice President  
and Asst. Cashier, respectively of the NORTHTOWN BANK  
and TRUST, Decatur, Illinois, a State Banking Association,  
and personally known to me to be the same persons whose names are  
subscribed to the foregoing instrument as such officers of said  
association, appeared before me this day in person, and acknowledged  
that as such officers of such association, they signed, sealed and  
delivered the said instrument as the free and voluntary act of such  
association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14th  
day of November A.D., 19 86



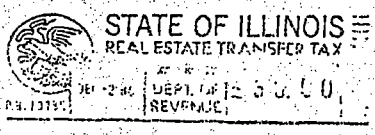
*Cheryl L. Campbell*  
Notary Public

Legal Description

*Partial below corners of 40<sup>+</sup> acres*

Part of the West Half (W $\frac{1}{2}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) and the East Half (E $\frac{1}{2}$ ) of the  
East Half (E $\frac{1}{2}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) in Section 32, Township 17 North, Range 2  
East of the Third (3rd) Principal Meridian, Macon County, Illinois, said tract being more  
particularly described as follows: Beginning at the Northwest Corner of the Northeast  
Quarter (NE $\frac{1}{4}$ ) of said Section 32, running thence S 88°41'54" W for 653.60 feet; thence  
S 0°16'40" W for 2643.05 feet; thence N 89°20'00" E for 235.50 feet; thence N 0°08'49" E  
for 670.00 feet; thence N 89°20'00" East for 424.00 feet; thence S 0°08'49" W for 290.00  
feet; thence N 88°28'30" E for 189.40 feet; thence S 0°08'49" W for 150.00 feet; thence  
N 88°28'30" E for 284.10 feet; thence S 0°08'49" W for 230.00 feet; thence N 88°28'30" E  
for 444.84 feet; thence N 0°03'00" E for 638.20 feet; thence N 88°28'30" E for 145.50 feet;  
thence N 0°03'00" W for 438.08 feet; thence N 89°59'23" E for 250.42 feet;  
thence N 0°03'00" W for 30.00 feet; thence S 89°58'51" W for 396.00 feet;  
thence N 0°03'00" W for 275.00 feet; thence N 89°58'51" E for 12.00 feet;  
thence N 7°51'02" E for 546.40 feet; thence N 25°52'54" E for 62.44 feet;  
thence N 50°09'36" W for 291.00 feet; thence S 25°20'24" W for 343.55 feet;  
thence N 89°55'37" W for 445.43 feet; thence N 1°27'59" E for 235.00 feet;  
thence N 89°39'47" W for 215.15 feet; thence N 0°08'49" E for 530.25 feet  
to the point of beginning, except the S 1099.95 feet thereof. Situated  
in the County of Macon, State of Illinois.

*ESS*



COUNTY OF MACON  
REAL ESTATE TAX STAMP  
#35<sup>00</sup> RECORDER

State of Illinois SS I Hereby  
Macon County, Ill. Certify  
that This Instrument Was Filed  
Record At 11:59 AM  
On \_\_\_\_\_

DEC -21986

Recorded in Book 2226 Page 238

*Christina P. Vang...*  
7.00 Recorder of Deeds

CERTIFICATION OF DOCUMENT

MACON COUNTY, ILLINOIS

Mail Tax Statement To:  
 (name and address)  
 FERDINAND W. WILHELM  
 2245 E. WILLIAM  
 DECATUR, ILL.

BOOK 2226 PAGE 951  
**WARRANTY DEED**  
 STATUTORY  
 DOCUMENT NO.  
**1225809**

State of Illinois, I hereby  
 Macon County ss. certify  
 That This Instrument Was Filed For  
 Record At 1:55 PM And  
 DEC -8-1986  
 Recorded in Book 2226 Page 951  
 This space for use of Recorder  
 Fee 7.00 Recorder of Deeds

Name of Grantor(s)  
 FRANK E. WILHELM  
 VERINA WILHELM  
 500 E. OVERTON  
 TUSCOLA, ILL.

for and in consideration of LOVE AND AFFECTION  
 in hand paid, conveys and warrants to: FERDINAND W. WILHELM Name and Address of Grantee(s)  
 2245 E. WILLIAM  
 DECATUR, ILL.

SEE ATTACHED

DOCUMENTARY STAMP  
 "Exempt under provisions of Paragraph  
 Section 4, Real Estate Transfer Tax Act."  
 12-5-86 Date  
 F. Wilhelm Buyer, Seller or Representative

which is situated in the County of MACON, in the State of Illinois, hereby  
 releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

Dated this DECEMBER 5 1986  
 Frank E. Wilhelm (Seal)  
 Verina Wilhelm (Seal)

STATE OF ILLINOIS }  
 COUNTY OF MACON } ss.

The foregoing instrument was acknowledged before me this 5 day  
 of DECEMBER 1986 by  
 FRANK E. WILHELM  
 VERINA WILHELM

EDWIN J. TANGNEY JR.  
 Recorder Of Deeds

for the purposes therein set forth, including the release and waiver of the right of  
 homestead.  
 Mary A. Eaton  
 Notary Public

This instrument was prepared by F. Wilhelm  
 (name) (address)

**EXHIBIT**  
C

CERTIFIED COPY OF DOCUMENT

STATE OF ILLINOIS }  
 COUNTY OF MACON } ss.

DATE ISSUED 11-9-06

I, Mary A. Eaton, Macon County Recorder, do hereby certify that this  
 document is a true and correct copy of the original record which is on file  
 in the office of the County Recorder, Macon County, Decatur, Illinois.

Mary A Eaton



## Legal Description

BOOK 2226 PAGE 952

Part of the West Half (W1) of the Northeast Quarter (NE1) and the East Half (E1) of the East Half (E1) of the Northwest Quarter (NW1) in Section 32, Township 17 North, Range 2 East of the Third (3rd) Principal Meridian, Macon County, Illinois, said tract being more particularly described as follows: Beginning at the Northwest Corner of the Northeast Quarter (NE1) of said Section 32, running thence S 88°41'54" W for 653.60 feet; thence S 0°16'40" W for 2643.05 feet; thence N 89°20'00" E for 235.50 feet; thence N 0°08'49" E for 670.00 feet; thence N 89°20'00" East for 424.00 feet; thence S 0°08'49" W for 290.00 feet; thence N 88°28'30" E for 189.40 feet; thence S 0°08'49" W for 150.00 feet; thence N 88°28'30" E for 284.10 feet; thence S 0°08'49" W for 230.00 feet; thence N 88°28'30" E for 444.84 feet; thence N 0°03'00" E for 638.20 feet; thence N 88°28'30" E for 145.50 feet;

thence N 0°03'00" W for 438.08 feet; thence N 89°59'23" E for 250.42 feet; thence N 0°03'00" W for 30.00 feet; thence S 89°58'51" W for 396.00 feet; thence N 0°03'00" W for 275.00 feet; thence N 89°58'51" E for 12.00 feet; thence N 7°51'02" E for 546.40 feet; thence N 25°52'54" E for 62.44 feet; thence N 50°09'36" W for 291.00 feet; thence S 25°20'24" W for 343.55 feet; thence N 89°55'37" W for 445.43 feet; thence N 1°27'59" E for 235.00 feet; thence N 89°39'47" W for 215.15 feet; thence N 0°08'49" E for 530.25 feet to the point of beginning, except the S 1099.95 feet thereof. Situated in the County of Macon, State of Illinois.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 07-0004
	)	IEPA No. 139-06-AC
vs.	)	(Administrative Citation)
	)	
FRANK WILHELM,	)	
	)	
Respondent.	)	

**AFFIDAVIT**

The undersigned, Ferdinand Wilhelm, being duly sworn upon his oath, states as follows:

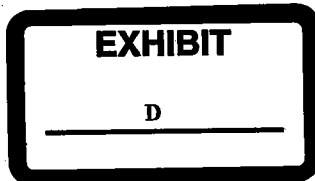
1. Affiant is the owner of the property ("subject property") described in the Administrative Citation ("AC") issued in the above-captioned matter.

2. Affiant has been the owner of the subject property since December 8, 1986, when I acquired the subject property from my brother, Frank Wilhelm, and his wife, Verina Wilhelm.

3. Frank Wilhelm, the Respondent, is my brother, who neither owns the subject property nor has custody, possession, or control of the subject property, nor has had custody, possession, control or any other interest in the subject property since Frank and Verina transferred the subject property to me in 1986.

4. To the best of my knowledge, Frank Wilhelm has not participated in and has no knowledge of the alleged open dumping, if any, that occurred on the subject property as alleged in the AC.

5. Further, I normally use the name "Bill" rather than my given name, Ferdinand.



Further affiant sayeth not.

Ferdinand Wilhelm  
Ferdinand Wilhelm

Signed and sworn to before me this 18<sup>th</sup> day of January 2006.

Lawona A. Bailey  
Notary Public

WILH:001/Fil/Affidavit & Certification - Ferdinand Wilhelm

