

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

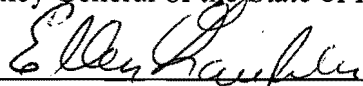
PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	
ERNEST BENNETT, an individual)	
d/b/a Bennett Excavating,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: Ernest Bennett
Rural Route 128
Cowden, IL 62422

PLEASE TAKE NOTICE that on the 11th day of July, 2014, I filed with the Clerk of the Illinois Pollution Control Board a Complaint, Stipulation and Proposal for Settlement, and a Motion to Request Relief from Hearing Requirement with Respondent Ernest Bennett, dba Bennett Excavating, copies of which are attached hereto and are hereby served upon you.

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

By: 
ELLEN O'LAUGHLIN
Assistant Attorney General
Environmental Bureau North
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-3094

Dated: July 11, 2014


THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, ELLEN O'LAUGHLIN, an Assistant Attorney General, do certify that I caused to be served on this 11th day of July, 2014, the foregoing Notice of Filing, Complaint, Stipulation, Proposed Settlement and Motion for Relief from Hearing Requirement by U.S. Certified Mail (return receipt requested), upon the following person:

Ernest Bennett
Rural Route 128
Cowden, IL 62422

by depositing true and correct copies of the same in an envelope, certified mail postage prepaid, with the United States Postal Service located at 100 W. Randolph Street, Chicago, Illinois 60601, at or before the hour of 5:00 p.m.



Ellen O'Laughlin

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
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Complainant,)	
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v.)	PCB No.
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ERNEST BENNETT, an individual)	
d/b/a Bennett Excavating,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, ERNEST BENNETT, an individual, d/b/a Bennett Excavating, Inc., as follows:

COUNT I

AIR POLLUTION

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by 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”) pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2012).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2012), and is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, ERNEST BENNETT, is an individual d/b/a Bennett Excavating, Inc.

4. Miller Fertilizer & Feed, Inc. owns property located at Route 128, Cowden,

Shelby County, Illinois (“Site”). The Site is a commercial property and is the Site for the Miller Fertilizer & Feed operation.

5. Steve Miller, the owner of Miller Fertilizer & Feeder, Inc., contracted with Respondent to demolish a commercial agricultural and chemical building that had stored fertilizer (“Building”) at the Site. The Building would have been in contact with the chemicals and fertilizer that it stored and may have been contaminated.

6. On May 30, 2013, an Illinois EPA inspector was traveling in the area of Cowden, Illinois and observed black smoke in the sky. After investigating the source of the smoke, he arrived at the Site at 12:45 p.m.

7. At the time, a large pile of debris was burning that created a plume of black smoke across the sky with winds blowing from the south at approximately 20 to 25 miles per hour.

8. The Respondent had demolished the Building and then burned it on Site.

9. No fire suppression equipment was at the Site when the Illinois EPA inspector arrived.

10. The Cowden Fire Department later arrived at the Site and sprayed water to suppress the fire but the fire continued to burn.

11. The Herrick Fire Department, the Beecher City Fire Department and the Shumway Fire Department then arrived at the Site to help suppress the fire. The fire was eventually suppressed and under control by 2:15 p.m.

12. The fire at the Site resulted in the emission of particulate matter, smoke, pollutants or contaminants into the atmosphere. Particulate matter and smoke may be inhaled

into the lungs and cause health problems, including aggravated asthma, decreased lung function, and increased respiratory symptoms.

13. A red and white granular material was present in the burned debris, which, on information and belief, was the product being stored in the Building and not removed prior to burning.

14. The run off water, caused by the spraying of water from the Fire Departments onto the demolished burned Building, had a reddish color.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides the following definition:

“Person” means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

16. Respondent, Ernest Bennett, an individual, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

17. Section 9(a) of the Act, 415 ILCS 5/9(a)(2012), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), defines contaminant as follows:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

19. Smoke, particulate matter and emissions caused by the burning of the Building are contaminants as defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

20. Section 3.115 of the Act, 415 ILCS 5/3.115 (2012), defines "air pollution" as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

21. The release into the atmosphere of smoke, particulate matter and contaminants on May 30, 2013, was injurious to the health and safety of persons in and around the Site and unreasonably interfered with the enjoyment of the property where the fire took place, and constitutes "air pollution" as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2012).

22. On May 30, 2013, Respondent caused and allowed the discharge or emission of contaminants into the environment in sufficient quantities and of such duration so as to cause or tend to cause air pollution in Illinois, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2012);

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

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

COUNT II

OPEN BURNING

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

17. Section 9(c) of the Act, 415 ILCS 5/9(c)(2012), provides, in pertinent part, as follows:

No person shall:

(c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; . . .

18. Section 3.300 of the Act, 415 ILCS 5/3.300 (2012), provides the following definition:

“Open burning” is the combustion of any matter in the open or in an open dump.

19. The burning of the demolished Building constitutes “open burning” as that term is defined by Section 3.300 of the Act, 415 ILCS 5/3.300 (2012).

20. Sections 3.385 and 3.535 of the Act, 415 ILCS 5/3.385 and 5/535 (2012), respectively, provide the following definitions:

“Refuse” means waste.

“Waste” means any garbage ... or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities ...

21. The material from the demolished Building is “waste” and “refuse” as those terms are defined in Sections 3.385 and 3.535 of the Act, 415 ILCS 5/3.385 and 5/3.535 (2012).

22. On May 30, 2013, Respondent caused or allowed the open burning of refuse and/or conducted a salvage operation by open burning, in violation of Section 9(c) of the Act, 415 ILCS 5/9(c)(2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 9(c) of the Act, 415 ILCS 5/9(c) (2012);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

COUNT III

**FAILURE TO CONDUCT AN INSPECTION
PRIOR TO DEMOLITION AND BURNING**

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

17. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2012), provides, in pertinent part, as follows:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

* * *

18. Section 61.145(a) of Title 40 of the Code of Federal Regulation (“C.F.R.”), 40 C.F.R. §61.145(a), provides, in pertinent part, as follows:

(a) Applicability. To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM...

* * *

19. Respondent failed to conduct a thorough inspection of the Building located at the Site for the presence and location of asbestos prior to commencing demolition and burning as required by 40 CFR §61.145(a).

20. By violating 40 CFR §61.145(a), Respondent thereby also violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully

requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2012), and 40 CFR §61.145(a);
3. Ordering the Respondent to cease and desist from any further violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2012), and 40 CFR §61.145(a);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

COUNT IV

FAILURE TO PROVIDE WRITTEN NOTICE OF DEMOLITION

1-17. The Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I and paragraph 17 of Count III as paragraphs 1 through 17 of this Count IV.

18. Respondent did not file a Notice of Renovation/Demolition with the Illinois EPA's Bureau of Air, nor pay the required fees prior to demolishing and burning the Building.

19. Section 61.145(b) of Title 40 of the C.F.R., 40 C.F.R. §61.145(b), provides, in

pertinent part, as follows:

(b) Notification requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

* * *

(3) Postmark or deliver the notice as follows:

(i) ... notification is required 10 working days before demolition begins.

20. Section 9.13 of the Act, 415 ILCS 5/9.13 (2012), provides in pertinent part, as follows:

Sec. 9.13. Asbestos fees.

(a) For any site for which the owner or operator must file an original 10-day notice of intent to renovate or demolish pursuant to 40 CFR 61.145(b) (part of the federal asbestos National Emission Standard for Hazardous Air Pollutants or NESHAP), the owner or operator shall pay to the Agency with the filing of each 10-day Notice a fee of \$150.

(b) If demolition or renovation of a site has commenced without proper filing of the 10-day Notice, the fee is double the amount otherwise due. This doubling of the fee is in addition to any other penalties under this Act, the federal NESHAP, or otherwise, and does not preclude the Agency, the Attorney General, or other authorized persons from pursuing an enforcement action against the owner or operator for failure to file a 10-day Notice prior to commencing demolition or renovation activities.

21. Respondent failed to provide to the Illinois EPA, a properly completed written notice of demolition/renovation at least ten (10) working days before commencing demolition and/or renovation activities and to tender the requisite asbestos notification fee in violation of Section 9.13(b) of the Act, 415 ILCS 5/9.13(b) (2012), and 40 CFR §61.145(b).

22. By violating Section 9.13(b) of the Act, 415 ILCS 5/9.13(b) (2012), and 40 CFR §61.145(b), Respondent thereby also violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count IV:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Sections 9.1(d) and 9.13(b) of the Act, 415 ILCS 5/9.1(d) and 9.13(b) (2012), and 40 CFR §61.145(b);
3. Ordering the Respondent to cease and desist from any further violations of Sections 9.1(d) and 9.13(b) of the Act, 415 ILCS 5/9.1(d) and 9.13(b) (2012), and 40 CFR §61.145(b);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

COUNT V

OPEN DUMPING

1-18. The Complainant realleges and incorporates by reference herein paragraphs 1

through 16 of Count I and paragraphs 20 through 21 of Count II as paragraphs 1 through 18 of this Count V.

19. Section 21(a) of the Act, 415 ILCS 5/21(a) (2012), provides as follows:

No person shall:

(a) Cause or allow the open dumping of waste.

20. Section 3.305 of the Act, 415 ILCS 5/3/305 (2012), provides the following definition:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

21. Section 3.185 of the Act, 415 ILCS 5/3.185 (2012), contains the following definition:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

22. Section 3.460 of the Act, 415 ILCS 5/3.460 (2012), contains the following definition:

“Site” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

23. Respondent caused or allowed the deposit, dumping, leaking or placing of waste on land such that the waste may enter the environment, be emitted into the air or discharged into any waters, including groundwaters. The Site is therefore a “disposal site” as defined in Sections 3.185 and 3.460 of the Act, 415 ILCS 5/3.185 and 3.460 (2012).

24. Section 3.445 of the Act, 415 ILCS 5/3.445 (2012), contains the following definition:

“Sanitary landfill” means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day’s operation, or by such other methods and intervals as the Board may provide by regulations.

25. At all times relevant to this Complaint, no portion of the Site has ever been covered by an Illinois EPA issued permit for the storage, treatment, or disposal of waste, and thus the Site did not fulfill the requirements of a “sanitary landfill” as defined in Section 3.445 of the Act, 415 ILCS 5/3.445 (2012).

26. On May 30, 2013, and continuing to a time best known to Respondent, Respondent caused or allowed waste, including wood, metal, shingles and suspected agricultural chemicals to be placed, deposited, or otherwise consolidated at the Site that does not fulfill the requirement of a sanitary landfill, and thereby caused or allowed the open dumping of waste.

27. By causing or allowing the open dumping of waste at the Site, Respondent violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count V:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(a) of the Act, 415 ILCS 5/21(a) (2012);

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

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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

COUNT VI

WASTE DISPOSAL AT A SITE THAT DOES NOT MEET THE REQUIREMENTS OF THE ACT

1-27. The Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I, paragraphs 20 through 21 of Count II and paragraphs 19 through 27 of Count V as paragraphs 1 through 27 of this Count VI.

28. Section 21(e) of the Act, 415 ILCS 5/21(e) (2012), provides, as follows:

No person shall:

* * *

(e) Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

29. From at least May 30, 2013 through dates better known to Respondent, Respondent disposed of the wastes at the Site without a permit issued by the Illinois EPA for the disposal of waste, and thereby disposed of waste at a facility which does not meet the requirements of the Act.

30. By disposing waste at a site which does not meet the requirements of the Act,

Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count VI:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(e) of the Act, 415 ILCS 5/21(e) (2012);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

COUNT VII

OPEN DUMPING OF WASTE RESULTING IN LITTER

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I, paragraphs 20 through 21 of Count II and paragraphs 19 through 26 of Count V as paragraphs 1 through 26 of this Count VII.

27. Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2012), provides in pertinent

part as follows:

No person shall:

* * *

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

1. litter

28. Section 3(a) of the Litter Control Act, 415 ILCS 105/3 (2012), provides the

following definition:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

29. The Illinois EPA inspector observed materials and waste from the demolished Building that Respondent placed, deposited, or otherwise consolidated at the Site and were discarded by Respondent, and therefore constitute “litter” as that term is defined in Section 3(a) of the Litter Control Act, 415 ILCS 105/3 (2012).

30. On at least May 30, 2103 and continuing to a time best known to Respondent, Respondent caused the open dumping of waste at the Site in a manner which resulted in litter, in violation of Section 21(p)(1) of the Act, 415 ILCS 21(p)(1) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count VII:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2012);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

COUNT VIII

OPEN DUMPING OF WASTE RESULTING IN OPEN BURNING

1-28. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I, paragraphs 18 through 21 of Count II and paragraphs 19 through 26 of Count V as paragraphs 1 through 28 of this Count VIII.

29. Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(1) (2012), provides in pertinent part as follows:

No person shall:

* * *

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following

occurrences at the dump site:

3. open burning;

30. On at least May 30, 2103 and continuing to a time best known to Respondent, Respondent caused the open dumping of waste at the Site in a manner which resulted in open burning, in violation of Section 21(p)(3) of the Act, 415 ILCS 21(p)(3) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count VIII:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2012);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

COUNT IX

OPEN DUMPING RESULTING IN THE DEPOSITION OF GENERAL CONSTRUCTION OR DEMOLITION DEBRIS

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I, paragraphs 20 through 21 of Count II and paragraphs 19 through 26 of Count V as paragraphs 1 through 26 of this Count IX.

27. Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2012), provides in pertinent part as follows:

No person shall:

* * *

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

* * *

(7) deposition of:

(i) general construction or demolition debris as defined in Section 3.160(a) of this Act;

* * *

28. Section 3.160 of the Act, 415 ILCS 5/3.160 (2012), provides, in pertinent part, as follows:

(a) General Construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping metals incidental to any of those materials. ...

* * *

29. The demolished and burned Building materials on the ground at the Site are

“general construction or demolition debris,” as that term is defined by Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2012).

30. On at least May 30, 2013 and continuing to a time best known to Respondent, Respondent caused open dumping that resulted in the deposition of general demolition debris at the Site, and thereby violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2012).

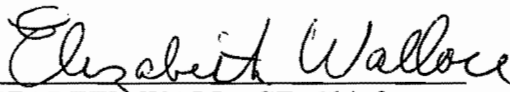
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, ERNEST BENNETT, with respect to Count IX:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2012);
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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.

PEOPLE OF THE STATE OF ILLINOIS,
ex. rel. LISA MADIGAN, Attorney General

of the State of Illinois

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

By: 
ELIZABETH WALLACE, Chief
Environmental Bureau North
Assistant Attorney General

Of Counsel:
Ellen F. O'Laughlin
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312-814-3094
eolaughlin@atg.state.il.us

* * *


3. No hearing is now scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2010).

Respectfully submitted,

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

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

BY:


ELLEN O'LAUGHLIN
Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
Chicago, Illinois 60602
(312) 814-3094

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 14-
)	(Enforcement - _____)
ERNEST BENNETT, an individual)	
d/b/a Bennett Excavating,)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Ernest Bennett, an individual d/b/a Bennett Excavating ("Respondent"), (collectively "Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board=s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1, et seq. (2012), and the Board=s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On July 11, 2014, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion

and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2012), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2012).

3. At all times relevant to the Complaint, Respondent was and is an individual residing in the State of Illinois.

4. On May 30, 2013, the Respondent demolished and then burned a commercial agricultural and chemical building on the Miller Fertilizer & Feed, Inc. property located at Route 128, Cowden, Shelby County, Illinois ("facility").

B. Allegations of Non-Compliance

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

- Count I Air Pollution, in violation of Section 9(a) of the Act;
- Count II Open Burning, in violation of Section 9(c) of the Act;
- Count III Failure to Conduct an Inspection Prior to Demolition and Burning, in violation of Section 9.1(d) of the Act and 40 CFR §61.145(a);
- Count IV Failure to Provide Written Notice of Demolition, in violation of Section 9.1(d) and 9.13(b) of the Act and 40 CFR 40 CFR §61.145(b);
- Count V Open Dumping, in violation of Section 21(a) of the Act;
- Count VI Waste Disposal at a Site that does not meet the requirements of the Act, in violation of Section 21(e) of the Act;
- Count VII Open Dumping of Waste Resulting in Litter, in violation of Section 21(p)(1) of the Act;
- Count VIII Open Dumping of Waste Resulting in Open Burning, in violation of Section 21(p)(3) of the Act; and

Count IX Open Dumping Resulting in the Deposition of General Construction or Demolition Debris, in violation of Section 21(p)(7)(i) of the Act.

C. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was and is suitable for the area in which it is located.
4. Obtaining a permit prior to demolition and compliance with its terms is both technically practicable and economically reasonable.
5. Miller Fertilizer & Feed, Inc. entered into a program with the Illinois EPA for oversight of actions in regard to clean-up of the demolished and burned building at the Site. On April 25, 2014, the Illinois EPA accepted a *Remedial Action Completion Report* submitted by Miller Feed & Fertilizer and determined that, based upon information submitted, the clean-up of the demolished and burned building had been successfully demonstrated and no further preventive or corrective action was required at the Site.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

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

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

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations

thereunder or to secure relief therefrom as provided by this Act;

- (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
- (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
- (6) whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
- (7) whether the respondent has agreed to undertake a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
- (8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. The violations began on or around May 30, 2013, and were individually resolved at various times in the following year.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board Regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.
3. Respondent did benefit economically from his noncompliance and failure to take necessary steps prior to demolishing and burning the commercial agricultural and chemical building on the Site.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of two thousand dollars (\$2,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of two thousand dollars (\$2,000.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

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

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

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be

sent to:

Ellen O'Laughlin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

C. Future Compliance

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

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

D. Release from Liability

In consideration of the Respondent's payment of the \$2,000.00 penalty, his commitment to cease and desist as contained in Section V.C.2. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on July 11, 2014. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or

regulations;

- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), or entity other than the Respondent.

E. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Ellen O'Laughlin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

Kyle Nash Davis
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Mike Mullins
Bureau of Land
Illinois Environmental Protection Agency
2125 S. First Street
Champaign, Illinois 61620

As to the Respondent

Ernest Bennett
Rural Route 1
Cowden, Illinois 62422

F. Enforcement and Modification of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

G. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

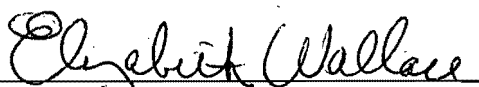
PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Director
Illinois Environmental Protection Agency

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

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 7/9/14

DATE: 7/3/14

RESPONDENT

Ernest Bennett
ERNEST BENNETT

DATE: 6-5-14