

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF )  
ILLINOIS, by KWAME RAOUL, )  
Attorney General of the State of Illinois, )  
 )  
Complainant, )  
 )  
v. )  
 )  
LANDFILL 33 LTD., an Illinois )  
corporation, and WENDT FAMILY )  
TRUST, an Illinois trust, )  
 )  
Respondents. )

PCB 20-32  
(Enforcement – Water)

**NOTICE OF ELECTRONIC FILING**

To: *See Service List*

PLEASE TAKE NOTICE that on the 24th day of February, 2020, the attached Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
KWAME RAOUL, Attorney General of the  
State of Illinois

By: /s/ Daniel Robertson  
Daniel Robertson  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington St., 18<sup>th</sup> Floor  
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(312) 814-3532  
drobertson@atg.state.il.us  
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**CERTIFICATE OF SERVICE**

I, DANIEL ROBERTSON, an Assistant Attorney General, do certify that I caused to be served this 24th day of February, 2020, the attached Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement upon the persons listed on the Service List *via email*.

/s/ Daniel Robertson  
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Assistant Attorney General  
Environmental Bureau  
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WENDT FAMILY TRUST,	)	
an Illinois trust,	)	
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Respondents.	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), and LANDFILL 33 LTD. ("Landfill 33") and WENDT FAMILY TRUST, an Illinois trust (collectively, "Respondents"), (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. (2018), 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 November 27, 2019, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018), against the Respondents.

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 (2018).

3. At all times relevant to the Complaint, Respondent Landfill 33 was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent Wendt Family Trust was and is an Illinois trust.

5. At all times relevant to the Complaint, Respondent Landfill 33 has operated a municipal solid waste landfill, located at 1713 South Willow Street, Effingham, Effingham County, Illinois ("Facility"). The Facility is authorized by Illinois EPA pursuant to Landfill Permit No. 1995-231-LFM and subsequent modifications, including Modification No. 80 (collectively, the "Permit").

6. At all times relevant to the Complaint, Respondent Wendt Family Trust has been the owner of the real property on which the Facility is located.

**B. Allegations of Non-Compliance**

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

Count 1: **WATER POLLUTION**  
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018)

- Count II: **OFFENSIVE DISCHARGES**  
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Section 304.106 of the Pollution Control Board Regulations (“Board Regulations”), 35 Ill. Adm. Code 304.106;
- Count III: **OFFENSIVE CONDITIONS**  
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Section 302.203 of the Board Regulations, 35 Ill. Adm. Code 302.203;
- Count IV: **VIOLATIONS OF WATER QUALITY STANDARDS**  
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and Sections 302.203, 304.105 and 304.120 of the Board Regulations, 35 Ill. Adm. Code 302.203, 304.105 and 304.120;
- Count V: **WATER POLLUTION HAZARD**  
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);
- Count VI: **FAILING TO OBTAIN NPDES PERMIT**  
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), and Section 309.102(a) of the Board Regulations, 35 Ill. Adm. Code 309.102(a);
- Count VII: **CONDUCTING WASTE DISPOSAL OPERATION IN VIOLATION OF PERMIT (as to Landfill 33 only)**  
Violation of Section 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2018), and Conditions II.2.b and II.2.c of their Permit;
- Count VIII: **ALLOWING LEACHATE FLOWS FROM A SANITARY LANDFILL OPERATION INTO WATERS OF THE STATE**  
Violation of Section 21(o)(2) and (3) of the Act, 415 ILCS 5/21(o)(2) and (3) (2018); and
- Count IX: **PENALTY FOR KILLING AQUATIC LIFE**  
Violation of Section 42(c) of the Act, 415 ILCS 5/42(c) (2018).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date.**

Respondents immediately took action to stop the release of leachate from the Facility after being informed by Illinois EPA of its occurrence. Within twenty-four (24) hours after Illinois EPA informed them of the release, Respondents took action to clean up leachate that had flowed from the Facility into the unnamed tributary to Salt Creek. Subsequently, Respondents installed a “lock-out” system at the Facility which is designed to prevent leachate releases from the Facility and placed the control equipment for this system inside a locked shed on the Facility grounds. Additionally, Respondents upgraded all pipelines for the Facility’s leachate control system from single to double-walled pipe for a total cost of \$255,135.50, as an added preventative measure.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their respective 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 Respondents 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 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), 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. The release from the Facility resulted in some harm to the environment, as evidenced by the fish kill which occurred in the unnamed tributary to Salt Creek.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility as currently permitted was and is suitable for the area in which it is located.
4. The installation of measures to prevent further equipment failures from occurring that result in leachate releases from the Facility was both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and the Board Regulations.

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

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), 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 duration of Respondents' violation is unknown. The release of leachate into the Unnamed Tributary to Salt Creek resulted in the death of at least 184 predominantly small to very small fish, having an assessed value of less than Twenty Dollars (\$20). Respondents immediately took action to stop the release upon receipt of notice and took action to clean up the contamination.

2. Respondents were diligent in attempting to come back into compliance with the Act, the Board Regulations and their Permit after first, the Illinois Department of Natural Resources and the Illinois Emergency Management Agency, and, then subsequently, the Illinois EPA notified Respondents of their noncompliance. Respondents immediately shut off the pump to the leachate collection system upon learning of the leachate release from the Facility, thereby



stopping the further release of leachate from the leachate collection system. Respondents then removed released leachate that had collected in the unnamed tributary to Salt Creek within twenty-four (24) hours of initially being notified of the leachate release.

3. The civil penalty takes into account any economic benefit realized by the Respondents as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Eighteen Thousand dollars (\$18,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondents have no previously adjudicated violations of the Act.

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

7. The Respondents are not pursuing a SEP in the resolution of this matter.

8. A Compliance Commitment Agreement was proposed by Respondents, but rejected by the Illinois EPA.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

The Respondents shall pay a civil penalty in the sum of Eighteen Thousand Dollars (\$18,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondents shall be jointly and severally liable for the payment of the civil penalty.

**B. Interest and Default**

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing

immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

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:

Daniel Robertson  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondents' facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

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

**E. Release from Liability**

In consideration of the Respondents' payment of the \$18,000.00 penalty, their commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 November 27, 2019. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

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

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

**F. 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

Daniel Robertson  
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

Todd Marvel  
Manager, Field Operations Section - Champaign  
Bureau of Land  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East

P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Respondents

Charles F. Helsten  
Hinshaw  
100 Park Avenue  
Rockford, IL 61101

Brian Hayes  
President  
Landfill 33 Ltd.  
1713 S. Willow Street  
Effingham, Illinois 62401

**G. Enforcement 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.

**H. Opportunity for Public Comment**

Pursuant to 35 Ill. Adm. Code 103.300(b)(2), the Board shall publish notice of this Stipulation for at least 30 days prior to the Board accepting the Stipulation. If public comments are submitted to the Board regarding this Stipulation, the Complainant reserves the right to withdraw its consent if the comments regarding the Stipulation disclose facts or considerations which indicate that the Stipulation is inappropriate, improper, or inadequate. Respondent consents to the entry of this Stipulation without further notice and agrees not to withdraw from or oppose acceptance of this Stipulation or to challenge any provision of the Stipulation, unless the Complainant has notified Respondent in writing that it withdraws or withholds its consent for the Stipulation. In the event the Complainant notifies the Respondent that it withdraws or withholds its consent for the Stipulation, then the terms of the agreement may not be used as evidence in any

litigation between those entities.

**I. 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

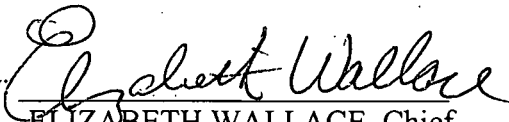
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

KWAME RAOUL  
Attorney General  
State of Illinois

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

JOHN KIM, Director  
Illinois Environmental Protection Agency

By:



ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

By:



DANA VETTERHOFFER  
Acting Chief Legal Counsel

DATE:

1/30/20

DATE:

12-6-19

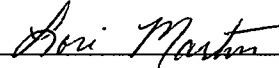
RESPONDENT

RESPONDENT

LANDFILL 33

WENDT FAMILY TRUST

By: 

By: 

Its: PRESIDENT

Its: executor

DATE: 2/3/2020

DATE: 2/3/2020

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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WENDT FAMILY TRUST,	)	
an Illinois trust,	)	
	)	
	)	
Respondents.	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2018), moves that the Illinois Pollution Control Board (“Board”) grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2018). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 12(a), 12(d), 12(f), 21(d)(1), 21(d)(2), 21(o)(2), 21(o)(3) and 42(c) of the Act, 415 ILCS 5/12(a), 12(d), 12(f), 21(d)(1), 21(d)(2), 21(o)(2), 21(o)(3) and 42(c) (2018), and Sections 302.203, 304.105, 304.106, 304.120, and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105, 304.106, 304.120, and 309.102(a).
2. Complainant filed its Complaint on November 27, 2019.
3. The parties have reached agreement on all outstanding issues in this matter.



4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2018).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL

Attorney General

State of Illinois

BY: /s/ Daniel Robertson

Daniel Robertson

Assistant Attorney General

Environmental Bureau

Illinois Attorney General's Office

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Secondary e-mail address: mcacaccio@atg.state.il.us

DATE: February 24, 2020