

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO.</b>
	)	<b>(Enforcement – Land)</b>
<b>BUENING IMPLEMENT, INC., an Illinois</b>	)	
<b>Corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you. **You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.**

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

Respectfully submitted,

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

By: /s/Raymond J. Callery  
Raymond J. Callery  
Assistant Attorney General  
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Date: November 23, 2020

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**Service List**

For the Respondent  
Buening Implement, Inc.  
c/o Andrew Goeckner  
18880 North U.S. Highway 45  
Effingham, IL 62401

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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<b>Complainant,</b>	)	
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<b>v.</b>	)	<b>PCB NO.</b>
	)	<b>(Enforcement – Land)</b>
<b>BUENING IMPLEMENT, INC.,</b>	)	
<b>an Illinois corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of the Respondent, BUENING IMPLEMENT, INC., an Illinois corporation, as follows:

**COUNT I**  
**OPEN DUMPING OF PETROLEUM-CONTAMINATED SOIL**

1. This Count is brought by the Attorney General on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2018), against Respondent, BUENING IMPLEMENT, INC., an Illinois corporation.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2018), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board.

3. The Illinois Pollution Control Board (“Board”) is an independent board created by the General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2018), and charged, *inter alia*, with the duty of determining standards and adopting regulations.

4. This Count is brought after providing Respondent with notice and the opportunity for a meeting with the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018).

5. Respondent is an Illinois corporation in good standing and operates a farm implement dealership located at 18880 North U.S. Highway 45 in Effingham, Effingham County, Illinois (“Source Site”).

6. According to Illinois State Farm Marshal records, two 500-gallon underground storage tanks (“USTs”) were installed at the Source Site in 1959 and were removed in 1988.

7. Esker & Walker Construction, Inc. (“Esker & Walker”) operates a concrete construction business located at 16782 E. 1635th Avenue, in Teutopolis, Effingham County, Illinois (“Disposal Site”).

8. In December 2018, Respondent removed soil from the Source Site and deposited it at the Disposal Site owned by Esker & Walker.

9. On December 20, 2018, Illinois EPA conducted inspections at both the Source Site and the Disposal Site. The soil deposited at the Disposal Site by Respondent was found to be contaminated with petroleum constituents.

10. Respondent completed the removal of the petroleum-contaminated soil from the Disposal Site on March 4-5, 2019. Approximately 366.47 tons of contaminated soil were hauled from the Disposal Site by Charles Heuerman Trucking Co. and disposed of at Landfill 33 in Effingham, Illinois.

11. After the contaminated soil was removed, Environmental Audits & Consultants, Inc. collected four soil samples at the Disposal Site to verify that the contaminated soils had been removed. The soil samples were analyzed by First Environmental Laboratories, Inc. in Naperville, Illinois.

12. Sections 3.185, 3.205, 3.305, 3.385, 3.445 and 3.535 of the Act, 415 ILCS 5/3.185, 3.205, 3.305, 3.385, 3.445 and 3.535 (2018), respectively, provide the following definitions:

“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.

“Generator” means any person whose act or process produces waste.

“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.

“Refuse” means waste.

“Sanitary landfill” means a facility permitted by the Agency for the disposal of waste on land . . . .

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility 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 . . . .

\* \* \*

13. The petroleum-stained soil at the Disposal Site on December 20, 2018, and other dates best known to Respondent, 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 3.535 (2018).

14. Respondent deposited petroleum-stained soil on the land at the Disposal Site in a manner so that the waste or constituents thereof could enter the environment or be emitted into

the air or discharged into water, including ground waters, such that the petroleum-stained soil was “disposed” of at the Disposal Site, as that term is defined in Section 3.185 of the Act, 415 ILCS 5/3.185 (2018).

15. The Disposal Site is not permitted by the Agency for the disposal of waste on land and therefore is not a “sanitary landfill,” as that term is defined in Section 3.445 of the Act, 415 ILCS 5/3.445 (2018).

16. Section 21 of the Act, 415 ILCS 5/21 (2018), provides, in pertinent part, as follows:

No person shall:

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

\* \* \*

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit . . . ;
2. In violation of any regulations or standards adopted by the Board under this Act; or

\* \* \*

(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.

\* \* \*

17. By hauling petroleum-contaminated soil from the Source Site and depositing it at the Disposal Site, Respondent caused or allowed the open dumping of waste at the Disposal Site.

18. By causing or allowing the open dumping of waste at the Disposal Site, Respondent violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2018).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, BUENING IMPLEMENT, INC., as follows:

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

B. Finding that Respondent violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2018);

C. Ordering Respondent to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

**COUNT II**  
**CONDUCTING A WASTE-DISPOSAL OPERATION WITHOUT A PERMIT**  
**GRANTED BY THE AGENCY**

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

17. Section 810.103 of the Board's Solid Waste Disposal Regulations, 35 Ill. Adm. Code 810.103, provides the following definitions:

\* \* \*

“Facility” means a site and all equipment and fixtures on a site used to treat, store or dispose of solid or special wastes. A facility consists of an entire solid or special waste treatment, storage, or disposal operation. . . .

\* \* \*

“Landfill” means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, landfills include waste piles, as defined in this Section.

\* \* \*

“Solid Waste” means a waste that is defined in this Section as an inert waste, as a putrescible waste, as a chemical waste or as a special waste, and which is not also defined as a hazardous waste pursuant to 35 Ill. Adm. Code 721.

\* \* \*

18. Section 812.101(a) of the Board's Solid Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a), provides, in pertinent part, as follows:

All persons, except those specifically exempted by Section 21(d) of the Act, shall submit to the Agency an application for a permit to develop and operate a landfill . . .

\* \* \*

19. The Disposal Site is not permitted by the Agency for the disposal of waste on land.

20. By conducting a waste-disposal operation at the Disposal Site without a permit granted by the Agency, Respondent violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018).

21. The area where petroleum-stained soils were disposed of at the Disposal Site was a "landfill" as that term is defined in Section 810.103 of Board's Solid Waste Disposal Regulations, 35 Ill. Adm. Code 810.103.

22. By developing and operating a landfill at the Disposal Site without applying for a permit from Illinois EPA, Respondent violated Section 812.101(a) of the Board's regulations, 35 Ill. Adm. Code 812.101(a).

23. By violating Section 812.101(a) of the Board's regulations, 35 Ill. Adm. Code 812.101(a), Respondent further violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, BUENING IMPLEMENT, INC., as follows:

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

B. Finding that Respondent violated Sections 21(d)(1) and (d)(2) of the Act, 415 ILCS 5/21(d)(1) and (d)(2) (2018), and Section 812.101(a) of the Board's regulations, 35 Ill. Adm. Code 812.101(a);

C. Ordering Respondent to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

**COUNT III**  
**DISPOSAL OF WASTE AT A SITE NOT MEETING THE REQUIREMENTS**  
**OF THE ACT AND ASSOCIATED REGULATIONS**

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

17-23. Complainant realleges and incorporates herein by reference paragraphs 17 through 23 of Count II as paragraphs 17 through 23 of this Count III.

24. By disposing of, storing, or abandoning waste at the Disposal Site, which did not meet the requirements of the Act and of regulations and standards thereunder, Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2018).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, BUENING IMPLEMENT, INC., as follows:

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

B. Finding that Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2018);

C. Ordering Respondent to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

**COUNT IV**  
**FAILURE TO CONDUCT SPECIAL WASTE DETERMINATION**

1-16. Complainant realleges and incorporates herein by reference paragraphs 1

through 16 of Count I as paragraphs 1 through 16 of this Count IV.

17. Section 808.110 of the Board Waste Disposal Regulations, 35 Ill. Adm.

Code 808.110, provides, in pertinent part, the following definitions:

\* \* \*

"Hazardous waste" or "RCRA hazardous waste" is as defined in 35 Ill. Adm. Code 721.

\* \* \*

*"Special waste" means any hazardous waste, and any industrial process waste or pollution control waste which has not been declassified pursuant to Section 808.245. (Section 3.45 of the Act.)*

BOARD NOTE: The definition of "hazardous waste" at Section 3.15 of the Act differs from the definition of the same term as used in this Part. The Board intends that the Section 3.15 definition apply to this Part only for the purposes of this definition of special waste. The Board intends that the definition given in this Section apply to all other appearances for the term "hazardous waste" throughout this Part.

\* \* \*

18. Section 3.335 of the Act, 415 ILCS 5/3.335 (2018), provides, in pertinent part, the following definition:

"Pollution control waste" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means.

19. The petroleum-contaminated soil from the Source Site that Respondent disposed of at the Disposal Site was a "pollution control waste" and a "special waste" as defined by Section 3.335 of the Act, 415 ILCS 5/3.335 (2018), and Section 808.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.110.

20. Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), provides, in pertinent part, as follows:

**Generator Obligations**

- (a) Each person who generates waste shall determine whether the waste is a special waste.

BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste.

\* \* \*

21. Respondent generated the petroleum-stained soil through its activities at the Source Site.

22. Respondent failed to conduct a special waste determination pursuant to Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), concerning the petroleum-contaminated soil from the Source Site which Respondent disposed of at the Disposal Site.

23. By failing to conduct a special waste determination on the petroleum-contaminated soil, Respondent violated Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a).

24. By violating Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), Respondent also violated Section 21(d)(2) of the Act, 415 ILCS 21(d)(2) (2018).

**PRAYER FOR RELIEF**

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

requests that the Board enter an order against Respondent, BUENING IMPLEMENT, INC., as follows:

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

B. Finding that Respondent violated Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018);

C. Ordering Respondent to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

**COUNT V**  
**TRANSPORTING SPECIAL WASTE WITHOUT A PERMIT**

1. This Count is brought by the Attorney General on his own motion pursuant to Section 42(e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(e) (2018), against Respondent, BUENING IMPLEMENT, INC., an Illinois corporation.

2-16. Complainant realleges and incorporates herein by reference paragraphs 2 through 16 of Count I as paragraphs 2 through 16 of this Count V.

17-19. Complainant realleges and incorporates herein by reference paragraphs 17 through 19 of Count IV as paragraphs 17 through 19 of this Count V.

20. Section 809.201 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 809.201, provides, in pertinent part, as follows:

No person may haul or otherwise transport any special waste generated within Illinois or any special waste to be disposed of, stored or treated within Illinois without a current, valid special waste hauling permit issued by the Agency in accordance with the requirements of this Subpart unless the transporter is exempt from the special waste hauling permit requirements under this Subpart. These regulations do not apply to on-site transportation of special waste by generators or by owners or operators of permitted special waste management facilities.

21. Section 21(j) of the Act, 415 ILCS 5/21(j) (2018), provides, in pertinent part, as follows:

No person shall:

- (j) Conduct any special waste transportation operation in violation of any regulations, standards or permit requirements adopted by the Board under this Act.

22. Respondent neither applied for nor was granted a special waste hauling permit by Illinois EPA.

23. By transporting the petroleum-contaminated soil from the Source Site to the Disposal Site without a special waste hauling permit, Respondent violated Section 809.201 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 809.201.

24. By violating Section 809.201 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 809.201, Respondent also violated Section 21(j) of the Act, 415 ILCS 21(j) (2018).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, BUENING IMPLEMENT, INC., as follows:

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

B. Finding that Respondent violated Section 809.201 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 809.201, and Section 21(j) of the Act, 415 ILCS 5/21(j) (2018);

C. Ordering Respondent to cease and desist from further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against each Respondent a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of the Act and its regulations and up to an additional ten thousand (\$10,000) for each day that each violation continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by KWAME RAOUL, Attorney General

of the State of Illinois

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

BY: /s/ Andrew Armstrong  
ANDREW ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General  
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Dated: November 23, 2020

**CERTIFICATE OF SERVICE**

I, Raymond Callery, an Assistant Attorney General, certify that on the 23<sup>rd</sup> day of November, 2020, I caused to be served by Certified Mail the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service in Springfield, IL.

/s/Raymond Callery

Raymond Callery

Assistant Attorney General

500 S. Second Street

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Date: November 23, 2020