

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

TROY CARTER,)

Respondent.)

PCB No. 13-1
(Enforcement - Land)

NOTICE OF ELECTRONIC FILING

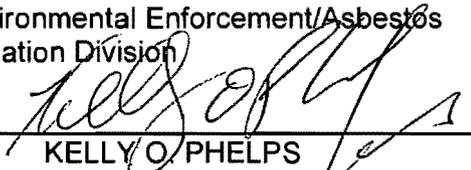
To: See Attached Service List

PLEASE TAKE NOTICE that on December 20, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO 35 ILL. ADM. CODE 101.516(b) AGAINST RESPONDENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

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

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

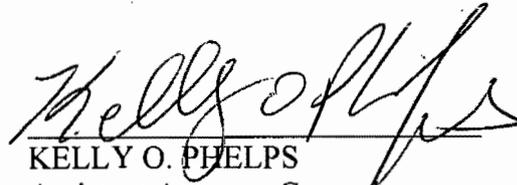
BY: 

KELLY O'PHELPS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, IL 62706
(217) 782-9031
Date: December 20, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on December 20, 2012, cause to be served by Certified Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR and MOTION FOR SUMMARY JUDGMENT PURSUANT TO 35 ILL. ADM. CODE 101.516(b) AGAINST RESPONDENT upon the persons listed on the Service List.


KELLY O. PHELPS
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Carol Webb
Hearing Officer
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

TROY CARTER
#1 Glenwood Acres #34
Salem, IL 62881

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MARION COUNTY ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

TROY CARTER,)

Respondent.)

PCB No. 13-1
(Land-Enforcement)

**COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO
35 ILL. ADM. CODE 101.516(b) AGAINST RESPONDENT**

NOW COME, The PEOPLE by their attorney, LISA MADIGAN, moves this Honorable Board for the entry of an order for summary judgment in favor of the PEOPLE and against Respondent, TROY CARTER in accordance with the provisions of Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005 (2010) and Ill S. Ct. Rule 191 (2010), requesting the Board grant the PEOPLE's Motion for Summary Judgment pursuant to the provisions of Section 101.516(b) of the Board's Rules, 35 Ill. Admin. Code 101.516(b), because the record, including pleadings, admissions on file, together with the affidavit of Kendall Couch, show that there is no genuine issue of material fact in dispute, and that the PEOPLE are entitled to judgment as a matter of law. In support of their Motion for Summary Judgment the PEOPLE state as follows:

JURISDICTION

The Pollution Control Board is an independent board created by the legislature pursuant to Section 5 of the Environmental Protection Act, 415 ILCS 5/5 (2010), and charged *inter alia* with the duties and responsibilities of enforcing and administering the Act and associated regulations.

Pursuant to Section 5(d) of the Act, 415 ILCS 5/5(d) (2010), the Board has jurisdiction and authority to conduct proceedings upon this instant Complaint which alleges Respondent has violated the Act and associated regulations.

SUMMARY JUDGMENT AUTHORITY

The Legislature has granted the Board the authority to adopt procedural rules for resolution of actions by summary judgment prior to hearing upon motion by either party (415 ILCS 5/26 (2010)) and this matter should be resolved by granting Complainant's Motion for Summary Judgment.

The Board has adopted procedural rules in 35 Ill. Adm. Code 101.516(b) which provide for resolution of this instant matter by summary judgment prior to hearing, stating in pertinent part:

b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board "will" [*emphasis added*] enter summary judgment.

A motion for summary judgment should be granted when the pleadings and affidavits reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *N. Ill. Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305, 837 N.E.2d 99, 106 (2005). Summary judgment is proper when the matter before the trial court can be decided as a question of law. *First of America Bank, Rockford N.A. v. Netsch*, 166 Ill. 2d 165, 176, 651 N.E.2d 1105, 1110 (1995). The use of summary judgment is encouraged under Illinois law as an aid to the expeditious disposition of a lawsuit. *Bolingbrook Equity I Ltd. P'ship v. Zayre of Ill., Inc.*, 252 Ill. App. 3d 753, 764, 624 N.E.2d 1287 (1st Dist. 1993). *Id.* In this instant matter there are no genuine issues of material facts and the PEOPLE are entitled to judgment as a matter of law. It is undisputed that the Respondent admits to the

allegations in the Complaint and PEOPLE's right is clear. Pursuant to Section 101.516(b) of the Board's regulations, 35 Ill. Adm. Code 101.516(b), the Board must enter an order granting the PEOPLE's Motion for Summary Judgment.

PROCEDURAL HISTORY

The PEOPLE filed their Complaint with the Clerk on July 2, 2012. Notice of Electronic Filing and the Complaint were properly served on the Respondent by certified mail and signed receipt as proof of service on Respondent was received by the Clerk on July 11, 2012. The Notice which is part of the record included the language required by Section 103.204(f) of the Board's rules, 35 Ill. Adm. Code 103.204(f) which specifically admonished Respondent that failure to answer the Complaint within 60 days would mean that all allegations in the Complaint would be taken as if admitted.

On July 17, 2012, Hearing Officer, Carol Webb ordered a status conference be held on August 13, 2012, at 10:30 A.M., which was held and in which Respondent participated *pro se*.

On September 18, 2012, a second status conference was held and again Respondent participated *pro se*.

As of the date of the filing of this Motion no attorney has entered an appearance on behalf of Respondent.

More than 60 days elapsed since Respondent had received the Complaint and Respondent failed to answer the Complaint or otherwise file a motion as required by Sections 103.204(d) and (e) of the Board's regulations, 35 Ill. Adm. Code 103.204(d) and (e).

On November 21, 2012, the PEOPLE filed a motion to the hearing officer to deem material facts in the Complaint admitted by operation of law which was properly served on the Respondent.

On December 17, 2012, the Hearing Officer granted the PEOPLE's Motion to Deem Material Facts Admitted.

STATEMENT OF UNDISPUTED FACTS

Respondent Troy Carter is the son of Judy Carter. Judy Carter is the owner of rural real property nearing one half acre in size and located at 2958 Nation Road, Salem, Marion County, Illinois ("site"). The site is the locus of violations alleged in this Complaint. (See ¶ 4, Count I of the Complaint).

At a time better known to the Respondent and prior to March 24, 2009, the Respondent resided at the site. As of March 24, 2009, the site's residence was not occupied by the Respondent; rather it was occupied by the Respondent's estranged spouse, Nicole Carter. However, Respondent still had limited access to the site pursuant to an Order of Protection. (See ¶ 5, Count I of the Complaint).

On March 24, 2009, the Illinois EPA inspected the site and found violations of the Act and Board's regulations related to open dumping of wastes. The site was not, and is not, registered or permitted as a waste storage or waste disposal facility. The March 24, 2009, violations observed at the site are the subject of the Complaint. (See ¶ 6, Count I of the Complaint).

The Illinois EPA conducted subsequent follow-up inspections of the site on March 25, 27, April 7, May 7, June 25, November 24, 2009 and February 10, 2010. (See ¶ 7, Count I of the Complaint).

The half acre rural site is essentially rectangular in shape with a mobile home residence on the northernmost front of the property. A gravel drive is situated perpendicularly and just west of

the mobile home. The gravel drive runs the length of the property north to south. Immediately behind the mobile home sits a detached garage and a shed. (See ¶ 8, Count I of the Complaint).

On March 24, 2009, 55 gallon drums that were bulging, rusted, leaking grey liquid, and otherwise in poor condition were situated contiguously behind the detached garage and covered with more than 50 waste tires. The drums had hazardous waste stickers and auto paint markings. Some of the drums were on their sides. Ten 55 gallon drums were located immediately to the south. A total of 36 drums were onsite. An open dumping area with approximately 40 to 50 cubic yards of wastes was situated immediately west of the gravel drive, as well as, an open burning area that was nearly 15 feet in diameter consisting mostly of residential trash. (See ¶ 9, Count I of the Complaint; Complaint Exhibit 1, pp .2-6, March 24, 2009, photographs #s 1-10).

The open dumping area's contents included approximately 30 waste tires, 20 pieces of oilfield metal pipe which were 15 feet in length, gas cylinders, empty drums, car parts, miscellaneous wood, steel pipe, plastic buckets, concrete, mattress springs, residential wastes, refuse. (See ¶ 10, Count I of the Complaint; Complaint Exhibit 1, p. 2, March 24, 2009, photograph # 1).

On March 25, 2009, Illinois EPA inspector Kendall Couch interviewed Respondent near the site. At that time Respondent admitted that he had transported the 55 gallon drums to the site five to six years previously and that they belonged to Respondent. Respondent also admitted ownership of the remaining wastes excepting that some of the residential wastes on the burn pile was the responsibility of his estranged spouse, Nichole Carter. Respondent denied that the owner of the property, his mother, Judy Carter, had responsibility for any of the wastes. (See ¶ 11, Count I of the Complaint).

On March 27, 2009, Illinois EPA inspectors sampled the waste from the drums for analysis and testing. The analysis and testing confirmed the waste within the drums to be hazardous waste. On that date, Illinois EPA Inspector Kendal Couch interviewed Respondent again. During the interview Respondent stated that he believed the 55 gallon drums were hazardous material because it was auto-paint mixed with solvent, and came from Rockwell International. Respondent further stated that five or six years ago he had accepted between \$9.00 and \$11.00 per drum, to remove them from an undisclosed location. (*See* ¶ 12, Count I of the Complaint).

On May 4, 2009, Respondent received Illinois EPA's Notice of Violations numbered L-2009-01085; citing violations of the Act and the Board's regulations observed during the March 27, 2009 inspection. (*See* ¶ 13, Count I of the Complaint).

Respondent discarded or deposited waste tires, oilfield metal pipe, gas cylinders, empty drums, car parts, miscellaneous wood, steel pipe, plastic buckets, concrete, mattress springs, residential wastes, and refuse at the site. (*See* ¶ 18, Count I of the Complaint).

Respondent disposed of or abandoned wastes at the site from some time prior to March 24, 2009, through January of 2010. The site did not and does not meet the requirements of Act or the Board's regulations and standards adopted thereunder that regulate waste disposal sites. (*See* ¶ 20, Count I of the Complaint).

The discarded wastes at the site resulted in litter from some time prior to March 24, 2009, through January of 2010. (*See* ¶ 22, Count I of the Complaint).

Respondent discarded more than 50 used and waste tires from some time prior to March 24, 2009, through January of 2010. (*See* ¶ 15, Count II of the Complaint).

Respondent stored, abandoned, or disposed of hazardous waste in 55 gallon drums at the site, for period in excess of five years, beginning some time prior to March 24, 2009. (See ¶ 27, Count III of the Complaint).

Respondent owned or operated a hazardous waste management site and did not obtain a RCRA permit. At no time was the Respondent in compliance with the Board's standards and regulations for hazardous waste management. (See ¶ 28, Count III of the Complaint).

Respondent did not obtain an USEPA identification number for a hazardous waste management site. (See ¶ 30, Count III of the Complaint).

Respondent did not prevent or minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the site. (See ¶ 32, Count III of the Complaint).

Respondent did not properly post signage indicating "Danger, Keep Out". (See ¶ 34, Count III of the Complaint).

Respondent did not conduct inspections of the site often enough to identify problems in time to correct them. (See ¶ 36, Count III of the Complaint).

Respondent did not design, construct, maintain and operate the site in a manner to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. (See ¶ 38, Count III of the Complaint).

Respondent did not maintain aisle space at the site in a manner to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency. (See ¶ 40, Count III of the Complaint).

Respondent did not have a written closure plan for his hazardous waste management site. (See ¶ 42, Count III of the Complaint).

Respondent did not transfer hazardous waste from 55 gallon that were: not in good condition, had severe rusting, apparent structural defects, and were leaking, to a container that was in good condition nor did he manage the waste in some other way that complied with Board regulations. (See ¶ 44, Count III of the Complaint).

Respondent did not always store the hazardous waste in closed containers nor did he store it in a manner that prevented rupture or leakage. (See ¶ 46, Count III of the Complaint).

Respondent did not inspect the site where the hazardous waste was stored at least weekly and did not inspect for deterioration and leaking caused by corrosion or other factors. (See ¶ 48, Count III of the Complaint).

Respondent did not have a hazardous waste containment system that was designed and operated in accordance with subsection (b) of Section 724.275 of the Board's regulations, 35 Ill. Admin. Code 724.275. (See ¶ 50, Count III of the Complaint).

Respondent was an owner or operator of a hazardous waste storage or disposal site and stored hazardous waste at the site beyond one year without a permissible purpose. (See ¶ 52, Count III of the Complaint).

Respondent did not obtain a detailed chemical and physical analysis of a representative sample of the wastes in the 55 gallon drums prior to storing or disposing of the wastes. (See ¶ 15, Count IV of the Complaint).

Respondent did not develop and follow a written waste analysis plan that described waste analysis procedures. (See ¶ 17, Count IV of the Complaint).

Respondent transported 55 gallon drums of hazardous waste to the site without registering and obtaining a special waste hauling permit from the Illinois EPA. (See ¶ 17, Count V of the Complaint).

Respondent transported 55 gallon drums of hazardous waste to the site in violation of regulations or standards adopted by the Board under the Act. (See ¶ 19, Count V of the Complaint).

Respondent transported 55 gallon drums of hazardous waste to the site without obtaining a requisite USEPA identification number. (See ¶ 21, Count V of the Complaint).

Respondent accepted the hazardous waste contained in the 55 gallon drums at the site from a generator without a manifest signed in accordance with the provisions of 35 Ill. Adm. Code 723.123. (See ¶ 23, Count V of the Complaint).

Respondent did not sign and date a hazardous waste manifest acknowledging acceptance of the hazardous waste that was transported to the site. (See ¶ 25, Count V of the Complaint).

ALLEGATIONS OF NON-COMPLIANCE

The allegations in the Complaint have been deemed admitted and Respondent has violated each of the following 24 provisions of the Act and Board regulations:

COUNT I

- By causing or allowing the open dumping of wastes at the site that included waste tires, oilfield metal pipe, gas cylinders, empty drums, car parts, miscellaneous wood, steel pipe, plastic buckets, concrete, mattress springs, residential wastes and refuse, Respondent, violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).

- By disposing or abandoning wastes at a site that does not meet the requirements of the Act or the Board's regulations and standards adopted thereunder, the Respondent, violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).
- By causing or allowing open dumping and discard of used substances, unconsumed substance, and wastes at the site which resulted in litter, the Respondent, violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2010).

COUNT II

- By causing or allowing the open dumping of used and waste tires, Respondent violated Section 55(a) of the Act, 415 ILCS 5/55(a) (2010).

COUNT III

- By storing, abandoning or disposing of hazardous waste in 55 gallon drums at the site for a period in excess of five years without a RCRA permit and without compliance with the Board's hazardous waste management standards and regulations, Respondent violated Section 21(f) of the Act, 415 ILCS 5/21(f) (2010) and Sections 703.121(a) and (b) of the Board's regulations, 35 Ill. Admin. Code 703.121(a) and (b).
- By owning or operating a hazardous waste management site and failing to obtain an USEPA identification number, Respondent violated Section 724.11 of the Board's regulations, 35 Ill. Admin. Code 724.111.
- By owning or operating a hazardous waste management site and failing to prevent the unknowing entry onto the site, and failing to minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the site, Respondent violated Section 724.114(a) of the Board's regulations, 35 Ill. Admin. Code 724.114(a).

- By owning or operating a hazardous waste management site and failing to demonstrate to the Illinois EPA that physical contact with the waste, or disturbance of the waste would not injure unknowing or unauthorized persons or livestock entering the site and failing to properly post signage indicating "Danger, Keep Out", Respondent violated Section 724.114(c) of the Board's regulations, 35 Ill. Admin. Code 724.114(c).
- By failing to conduct inspections of the hazardous waste management site often enough to identify problems in time to correct them; Respondent violated Section 724.115(a) of the Board's regulations, 35 Ill. Admin. Code 724.115(a).
- By failing to design, construct, maintain and operate the site in a manner to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment, Respondent violated Section 724.131 of the Board's regulations, 35 Ill. Admin. Code 724.13.
- By failing to maintain aisle space at the site in a manner to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, Respondent violated Section 724.135 of the Board's regulations, 35 Ill. Admin. Code 724.135.
- By failing to have a written closure plan for his hazardous waste management site, Respondent violated Section 724.212 of the Board's regulations, 35 Ill. Admin. Code 724.212.
- By failing to transfer the hazardous waste from 55 gallon drums holding hazardous waste that were *not* in good condition, had severe rusting, apparent structural defects, and were leaking, to a container that was in good condition or to manage the waste in some other way that complied

with Board regulations, Respondent violated Section 724.271 of the Board's regulations, 35 Ill. Admin. Code 724.271.

- By failing to always store the hazardous waste in closed containers and store it in a manner that prevented rupture or leakage, Respondent violated Section 724.273 of the Board's regulations, 35 Ill. Admin. Code 724.273.
- By failing to inspect the site where his 55 gallon drums of hazardous waste were stored at least weekly and failing to look for deterioration and leaking of his 55 gallon drums caused by corrosion or other factors, Respondent violated Section 724.274 of the Board's regulations, 35 Ill. Admin. Code 724.274.
- By failing to have a hazardous waste containment system that was designed and operated in accordance with subsection (b) of Section 724.275 of the Board's regulations, 35 Ill. Admin. Code 724.275, Respondent violated Section 724.275(a) of the Board's regulations, 35 Ill. Admin. Code 724.275(a).
- By owning or operating a hazardous waste storage or disposal site and storing hazardous waste at the site beyond one year without a permissible purpose, Respondent violated Section 728.150(c) of the Board's regulations, 35 Ill. Admin. Code 728.150(c).

COUNT IV

- By failing to obtain a detailed chemical and physical analysis of a representative sample of the wastes in the 55 gallon drums prior to storing or disposing of the wastes, Respondent violated Section 724.113(a) of the Board's regulations, 35 Ill. Admin. Code 724.113(a).
- By failing to develop and follow a written waste analysis plan that described waste analysis procedures, Respondent violated Section 724.113(b) of the Board's regulations, 35 Ill. Admin. Code 724.113(b).

COUNT V

- By transporting the 55 gallon drums of hazardous waste to the site without registering and obtaining a special waste hauling permit from the Illinois EPA, Respondent violated Section 21(g)(1) of the Act, 415 ILCS 5/21(g)(1) (2010).
- By transporting the 55 gallon drums of hazardous waste to the site without registering and obtaining a special waste hauling permit from the Illinois EPA, Respondent violated Section 21(g)(2) of the Act, 415 ILCS 5/21(g)(2) (2010).
- By transporting the 55 gallon drums of hazardous waste without having received a USEPA identification number, Respondent violated Section 723.111 of the Boards regulations, 35 Ill. Admin. Code 723.111.
- By accepting the hazardous waste contained in the 55 gallon drums at the site from a generator without a hazardous waste manifest signed in accordance with the provisions of 35 Ill. Adm. Code 723.123, Respondent violated Section 723.120(a) of the Boards regulations, 35 Ill. Admin. Code 723.120(a).
- By failing to sign and date a hazardous waste manifest acknowledging acceptance of the hazardous waste that was transported to the site, Respondent violated Section 723.120(a) of the Boards regulations, 35 Ill. Admin. Code 723.120(b).

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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, Complainant states 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. Social and economic value of the pollution source is not an issue.
3. The pollution source was not suitable for the area in which pollution occurred.
4. Reducing or eliminating emissions and/or deposits was both technically practicable and economically reasonable.
5. The site was brought in to compliance through the combination of emergency U.S. EPA intervention and the Illinois EPA's IRID program.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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 afore-mentioned factors, the Complainant states as follows:

1. Respondent openly dumped at the site for some period that began prior to March 24, 2009, running through January of 2010 and conducted an illegal hazardous waste storage or

disposal facility for a period in excess of five years.

2. Respondent was not diligent in attempting to become complaint with the Act, Board regulations and applicable federal regulations, after the Illinois EPA notified him of noncompliance. U.S. EPA and Illinois EPA IRID program intervention was necessitated to remediate the site.
3. Respondent gained economic benefits by avoiding landfill permitting cost, depositing wastes a site other than a landfill, and avoided the transportation costs, landfill use fees and other cost related to hazardous waste disposal.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of thirty-seven-thousand and eight dollars (\$37,008.00) will serve to deter the Respondent from further violations and aid in future voluntary compliance with the Act and Board regulations.
5. There is no record that the Respondent, has committed previous violations of the Act.
6. Self-disclosure is not at issue in this matter.
7. A supplemental environmental project is not an issue in this matter.

ARGUMENT

There are no genuine issues of material fact in this instant matter and PEOPLE are entitled to judgment as a matter of law. Pursuant to the provisions of Section 101.516(b) of this Honorable Board's regulations, 35 Ill. Admin. Code 101.516(b), an order granting summary judgment in the PEOPLE's favor is proper.

It is undisputed that Respondent caused or allowed littering and open dumping of wastes for a period that began some time prior to March 24, 2009, running through January of 2010. The littering and open dumping included used or waste tires, oilfield metal pipe, gas cylinders, empty drums, car parts, miscellaneous wood, steel pipe, plastic buckets, concrete, mattress springs,

residential wastes and refuse. The site did not meet the requirements of the Act or the Board's regulations and standards adopted thereunder. Respondent did the afore-mentioned without a permit granted by the Illinois EPA and without complying with the Board's waste disposal regulations. By conducting a waste disposal operation at the residential site without applying for the mandatory permit to develop and operate a landfill, Respondent violated the Act and associated regulations

Respondent transported 55 gallon drums of hazardous waste to the site without registering and obtaining a special waste hauling permit from the Illinois EPA and he failed to obtain a detailed chemical and physical analysis of a representative sample of the wastes prior to storing or disposing of the wastes. Respondent failed to develop and follow a written waste analysis plan that described waste analysis procedures.

Respondent stored abandoned or disposed of hazardous waste in 55 gallon drums at the site for a period in excess of five years without a RCRA permit and without compliance with the Board's hazardous waste management standards and regulations. By doing so the Respondent was operating a hazardous waste management site that did not have a USEPA identification number,

Respondent failed to properly post signage indicating "Danger, Keep Out". By owning or operating a hazardous waste management site and failing to prevent the unknowing entry onto the site, and failing to minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the site, Respondent violated the Board's regulations. Respondent failed to demonstrate to the Illinois EPA that physical contact with the waste, or disturbance of the waste would not injure unknowing or unauthorized persons or livestock entering the site.

Respondent failed to have a hazardous waste containment system that was designed and operated in accordance with the Board's regulations. Respondent failed to design, construct, maintain and operate the site in a manner to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. Respondent failed to maintain aisle space at the site in a manner to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency. Respondent failed to have a written closure plan.

Respondent failed to always store the hazardous waste in closed containers and store it in a manner that prevented rupture or leakage. Respondent owned a hazardous waste storage or disposal site and stored hazardous waste at the site beyond one year without a permissible purpose. Respondent failed to conduct inspections of the hazardous waste management site often enough to identify problems in time to correct them. Respondent failed to inspect the site where his 55 gallon drums of hazardous waste were stored at least weekly to look for deterioration and leaking of his 55 gallon drums caused by corrosion or other factors. Respondent failed to transfer the hazardous waste from 55 gallon drums holding hazardous waste that were *not* in good condition, had severe rusting, apparent structural defects, and were leaking, to a container that was in good condition or to manage the waste in some other way that complied with Board regulations.

Given the Respondent's violations enumerated herein and fully considering the factors outlined in Sections 33(c) and 42(h) of the Act, 415 ILCS 5/33(c) and 42(h) (2010) the relief requested in the Complaint and imposition of a thirty-seven-thousand and eight dollar

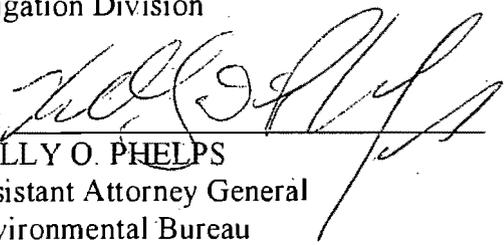
(\$37,008.00) penalty is appropriate to protect the public and deter the Respondent from future violations of the Act.

WHEREFORE, the **PEOPLE** pray that this Honorable Board grant their Motion in the **PEOPLES** favor and against Respondent TROY CARTER in accordance with the provisions of Section 101.516(b) of the Board's regulations, 35 Ill. Adm. Code 101.516(b), granting the relief requested in the Complaint and imposing a penalty of one thousand, five hundred and forty-two dollars (\$1,542.00) for each of the 24 violations alleged in Counts I through V of the Complaint, a penalty totaling thirty-seven-thousand and eight dollars (\$37,008.00) to be paid within 30 days of entry of the Board's Order and paid in accordance with Section 103.504 of the Board's regulations 35 Ill. Admin. Code Section 103.504.

Respectfully Submitted,

Illinois Environmental Protection Agency
Ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

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

By: 
KELLY O. PHELPS
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Environmental Bureau

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Dated: December 19, 2012

