

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 21-29
)	(Enforcement – Land)
LMS INDUSTRIES, LLC,)	
an Illinois limited liability company, and)	
TOP METAL BUYERS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

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 Pollution Control Board by electronic filing the following Notice of Filing and First Amended Complaint, copies of which are attached and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
By KWAME RAOUL, ATTORNEY GENERAL

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

BY: /s/Raymond Callery
Raymond Callery
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62701
(217)782-9031
Raymond.Callery@ilag.gov

Service List

For the Respondents

Norman Shultz
Top Metal Buyers, Inc.
808 Walnut Street
E. St. Louis, IL 62201

Lynn M. Schultz, R.A.
LMS Industries, Inc.
808 Walnut Street
E. St. Louis, IL 62201
Via certified mail

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 2021-029
)	(Enforcement – Land)
LMS INDUSTRIES, LLC,)	
an Illinois limited liability company, and)	
TOP METAL BUYERS, INC.,)	
an Illinois corporation,)	
)	
Respondents.)	

FIRST AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondents, LMS INDUSTRIES, LLC, an Illinois limited liability company, and TOP METAL BUYERS, INC., an Illinois corporation (collectively, “Respondents”), as follows:

**COUNT I:
AIR POLLUTION**

1. This Count is brought by the Attorney General of the State of Illinois, on his own motion, against LMS INDUSTRIES, LLC (“LMS”) pursuant to Section 31(d) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(d) (2020).

2. This Count is brought by the Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), against TOP METAL BUYERS, INC. (“TOP METAL”) pursuant to the terms and provisions of Section 31(a) and (b) of the Act, 415 ILCS 5/31(a) and (b) (2020).

3. The Illinois EPA is an administrative agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2020), and charged, *inter alia*, with the duty of enforcing the Act.

4. 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 (2020), and charged, *inter alia*, with the duty of determining standards and adopting regulations under the Act.

5. LMS is an Illinois limited liability company in good standing that, at all times relevant to this Complaint, owned the facility located at 808 Walnut Avenue, East St. Louis, St. Clair County, Illinois (“Facility”). LMS took ownership of the Facility on February 10, 2017.

6. TOP METAL is an Illinois corporation in good standing that, at all times relevant to this Complaint, operated the Facility, with signage identifying the Facility as “Top Metal Buyers.” At all times relevant to this Complaint, LMS and TOP METAL shared the same manager, Norman Schultz.

7. At all times relevant to this Complaint, the Facility was operated as a scrap metal recycling business. Activities at the Respondents’ Facility included the buying and processing of ferrous and non-ferrous metals for scrap metal recycling.

8. On September 7, 2018, the Illinois EPA conducted an inspection of the Facility.

9. On September 7, 2018, while driving by the Facility, Illinois EPA observed smoke from burning on-site. Upon investigation, Illinois EPA found the burning was taking place in a metal box near the Facility’s building. The metal box was approximately one cubic yard in size and contained smoldering waste and ash. Manufactured wood product, dimensional lumber, cardboard and insulated copper wire were smoldering in the box. A Facility worker had been burning the insulation off of a coil of copper wire.

10. On September 7, 2018, Illinois EPA informed a worker at the Facility that the burning of packaging and the burning of insulated copper wire was not permissible. Further, Illinois EPA advised that the ash from the burning of insulated copper wire often exhibits the characteristics of a hazardous waste for lead and cadmium, and that the ash would need to be sampled and tested for at least Toxicity Characteristic Leaching Procedure (“TCLP”) lead and cadmium prior to disposal. TCLP is a testing methodology used to determine if a waste should be characterized as hazardous.

11. On September 12, 2018, Illinois EPA was contacted by St. Louis Testing Laboratories, Inc. and informed that a sample of the ash at the Facility was of insufficient quantity for testing for TCLP lead and cadmium. Illinois EPA then advised TOP METAL that the ash sample could be tested for total lead and if the results were twenty times the TCLP limit of 5 milligrams per liter the waste would be considered a hazardous waste.

12. On October 4, 2018, Illinois EPA issued a Violation Notice to TOP METAL. By letter dated October 24, 2018, Norman Schultz responded to the VN using TOP METAL letterhead and referring to himself as “manager of TOP METAL.” Mr. Schultz’s October 4, 2018 letter on behalf of TOP METAL referred to an Illinois EPA site visit made to “our facility” on September 7, 2018.

13. On October 25, 2018, Illinois EPA received the lab analysis of Respondents’ ash sample. The total level of lead in the ash sample was 153 parts per million (“ppm”). This was more than twenty times the TCLP limit. TOP METAL then informed Illinois EPA that the ash had already been sent to the North Milam Landfill in East St. Louis as part of the Facility’s regular trash.

14. Complainant filed its Complaint in this matter on October 16, 2020.

15. On February 9, 2021, Norman Schultz provided counsel for Complainant a copy of a Receiver's Quit Claim Deed dated February 10, 2017 transferring the property known as 808 Walnut Avenue, East St. Louis, from TOP METAL to LMS.

16. Sections 3.115, 3.165, 3.300, 3.385 and 3.535 of the Act, 415 ILCS 5/3.115, 3.165, 3.300, 3.385 and 3.535 (2020), provide the following definitions:

"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.

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

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

"Refuse" means waste.

"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, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

17. The manufactured wood product, dimensional lumber, cardboard and insulated copper wire being open burned in the metal box at the Facility were "refuse" and "waste" as defined by Sections 3.385 and 3.535 of the Act, 415 ILCS 5/3.385 and 3.535 (2020).

18. Section 9(a) of the Act, 415 ILCS 5/9 (2020), provides, in pertinent part, 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.

* * *

19. By causing or allowing the open burning of refuse or waste at the Facility producing smoke and ash, Respondents caused, threatened or allowed the emission of contaminants into the environment so as to cause or tend to cause air pollution in this State.

20. By causing, threatening or allowing the emission of contaminants into the environment so as to cause or tend to cause air pollution in Illinois, Respondents violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, LMS INDUSTRIES, LLC and TOP METAL BUYERS, INC., on this Count I, as follows:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding the Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), as alleged herein;
- C. Ordering the Respondents to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2020), assessing against Respondents a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act and associated regulations and an additional civil penalty of ten thousand dollars (\$10,000) for each day during which each violation continued thereafter;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), awarding to Complainant its costs and reasonable attorney fees; and

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

COUNT II:
OPEN BURNING OF REFUSE

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count II.

18. Section 9(c) of the Act, 415 ILCS 5/9(c) (2020), 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; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning.

* * *

19. The metal box employed for the burning of the manufactured wood product, dimensional lumber, cardboard and insulated copper wire at the Facility was not a chamber approved by Illinois EPA for the open burning of refuse.

20. By causing or allowing the open burning of refuse in a chamber not approved by Illinois EPA for the open burning of refuse, Respondents violated Section 9(c) of the Act, 415 ILCS 5/9(a) (2020).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board an order against the Respondents, LMS INDUSTRIES, LLC and TOP METAL BUYERS, INC., on this Count II, as follows:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding the Respondents have violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2020);
- C. Ordering Respondents to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2020), assessing against Respondents a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act and associated regulations and an additional civil penalty of ten thousand dollars (\$10,000) for each day during which each violation continued thereafter;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

**COUNT III:
FAILURE TO PROPERLY DISPOSE OF HAZARDOUS WASTE**

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

18. Section 3.185 of the Act, 415 ILCS 5/3.185 (2020), provides 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.

19. Section 3.220 of the Act, 415 ILCS 5/3.220 (2020), provides, in pertinent part, the following definition:

“Hazardous waste” means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations.

20. Section 3.475 of the Act, 415 ILCS 5/3.475 (2020), provides, in pertinent part, the following definition:

“Special waste” means any of the following:

* * *

(b) hazardous waste, as determined in conformance with RCRA hazardous waste determination requirements set forth in Section 722.111 of Title 35 of the Illinois Administrative Code, including a residue from burning or processing hazardous waste in a boiler or industrial furnace unless the residue has been tested in accordance with Section 726.212 of Title 35 of the Illinois Administrative Code and proven to be nonhazardous;

21. Section 21 of the Act, 415 ILCS 5/21 (2020), provides, in pertinent part, 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 the regulations and standards thereunder.

* * *

22. Section 728.134(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 728.134(a), provides, in pertinent part, as follows:

- (a) The following wastes are prohibited from land disposal: the wastes specified in 35 Ill. Adm. Code 721 as USEPA hazardous waste numbers D004 through D011 that are newly identified (i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure), and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specifications at 35 Ill. Adm. Code 721.

23. Lead is a "D-List" hazardous waste with USEPA hazardous waste number D008, as identified by the Toxic Characteristic Leaching Procedure, and therefore also "special waste" as that term is defined by Section 3.475 of the Act, 415 ILCS 5/3.475 (2020).

24. By open burning the manufactured wood product, dimensional lumber, cardboard and insulated copper wire in the metal box at the Facility, Respondents were conducting a waste-disposal operation.

25. The metal box used for open burning and the Facility did not meet the requirements of the Act and of the regulations and standards thereunder for the disposal of waste.

26. By open burning the manufactured wood product, dimensional lumber, cardboard and insulated copper wire in the metal box at the Facility, Respondents disposed of waste at a site that did not meet the requirements of the Act and of the regulations and standards thereunder for the disposal of waste, and thereby violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2020).

27. The North Milam Landfill is not permitted to accept special or hazardous wastes.

28. By disposing of the ash generated by open burning insulated copper wire containing more than twenty times the TCLP limit for lead at the North Milam Landfill, Respondents violated Section 728.134(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 728.134(a).

29. By violating Section 728.134(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 728.134(a), Respondents further violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2020).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, LMS INDUSTRIES, LLC and TOP METAL BUYERS, INC., on this Count III, as follows:

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

B. Finding the Respondents have violated Section 728.134(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 728.134, and Section 21(e) of the Act, 415 ILCS 5/21(e) (2020);

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

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2020), assessing against Respondents a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act and associated regulations and an additional civil penalty of ten thousand dollars (\$10,000) for each day during which each violation continued thereafter;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), awarding to Complainant its costs and reasonable attorney 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 B. Armstrong
ANDREW B. ARMSTRONG, Chief # 6282447
Environmental Bureau
Assistant Attorney General

Of Counsel

RAYMOND J. CALLERY # 6193579
Assistant Attorney General
Environmental Bureau/Springfield
500 South Second Street
Springfield, IL 62706
Raymond.Callery@ilag.gov
Ph.: 217/782-9031

Dated: September 17, 2021

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 21-29
)	(Enforcement – Land)
TOP METAL BUYERS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I, Raymond Callery, an Assistant Attorney General, certify that on the 17th day of September, 2021, I caused to be served via regular mail and/or via certified mail, return receipt requested as indicated, the foregoing Notice of Filing, First Amended Complaint and Certificate of Service to the following:

Top Metal Buyers, Inc.
c/o Norman Shultz
808 Walnut Street
E. St. Louis, IL 62201

LMS Industries, LLC
c/o Lynn M. Schultz, R.A.
808 Walnut Street
E. St. Louis, IL 62201
Via certified mail

/s/ Raymond Callery
Raymond Callery
Assistant Attorney General
500 South Second Street
Springfield, IL 62701
(217)782-9031
Raymond.Callery@ilag.gov