

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB 2023-134
)	(Enforcement-Land)
ROBERT WIETHOLDER, an individual,)	
DESMOND JARVIS, an individual, and)	
BOB JARVIS, an individual,)	
)	
Respondents.)	

NOTICE OF FILING

To: See attached service list:

PLEASE TAKE NOTICE that I did, on May 28, 2025, file with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following NOTICE OF FILING and MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT AS TO RESPONDENTS ROBERT WIETHOLDER AND DESMOND JARVIS, copies of which are hereby served upon you.

Respectfully submitted,

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

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

By: /s/ Bridget I. Flynn

Bridget I. Flynn
Assistant Attorney General
Environmental Bureau
ARDC # 6332314
500 South Second Street
Springfield, Illinois 62701
(217) 782-9033
Bridget.Flynn@ilag.gov

Dated: May 29, 2025

SERVICE LIST

For the Respondents

Robert Wietholder
326 W. Mill Street
Mendon, IL 62351

Desmond Davis
205 S. Main Street
Coatsburg, IL 62355

Bob Jarvis
222 N. Chestnut Street
Mendon, IL 62351

For the Illinois Pollution Control Board

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, Illinois 62794
Carol.webb@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
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Complainant,)	
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v.)	PCB No. 23-134
)	(Enforcement-Land)
ROBERT WIETHOLDER, an individual)	
DESMOND JARVIS, an individual, and)	
BOB JARVIS, an individual)	
)	
Respondents.)	

**MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT
AS TO RESPONDENTS ROBERT WIETHOLDER AND DESMOND JARVIS**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Sections 103.204 and 101.516 of the Illinois Pollution Control Board's Procedural Rules, 35 Ill. Adm. Code 103.204 and 101.516, and hereby moves for the entry of an order deeming all material facts in Complainant's Complaint as admitted against Respondents, ROBERT WIETHOLDER ("Wietholder"), and DESMOND JARVIS. Further, Complainant moves this Illinois Pollution Control Board ("Board") for summary judgment of the Complaint against Respondents ROBERT WIETHOLDER and DESMOND JARVIS. In support thereof, Complainant states as follows:

1. On June 29, 2023, the Complainant filed its Complaint against Respondents, Robert Wietholder, an individual, Desmond Jarvis, an individual, and Bob Jarvis, an individual, for alleged violations that occurred at a residential property located at 326 W. Mill Street, Mendon, Adams County, Illinois (the "Site"). Complainant alleged that approximately forty (40) cubic yards of open dumped waste and approximately twelve (12) used tires were improperly disposed of at

the Site. Complainant also alleged that the Site was owned by Respondent Robert Wietholder.

2. On July 24, 2023, Complainant filed its Proof of Service of the Complaint to Respondents Robert Wietholder, Desmond Jarvis, and Bob Jarvis with the Board.

3. The Proof of Service indicated that Respondent Wietholder had been served with the Complaint on July 15, 2023, Desmond Jarvis was served with same on July 8, 2023, and Bob Jarvis was served with same on or before July 10, 2023. A true and correct copy of the Proof of Service is attached hereto as Exhibit 1.

4. As of the date of the filing of this Motion, Respondents Robert Wietholder, Desmond Jarvis, and Bob Jarvis have not filed Answers, nor otherwise pled, to the Complaint.

5. Respondent Bob Jarvis has entered into a Stipulation and Proposal for Settlement with Complainant, which was submitted to the Board on March 25, 2025. The Board entered an Order approving the Stipulation on May 1, 2025.

6. Section 103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), provides as follows:

- (d) Except as provided in subsection (e), the respondent must file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
- (e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

7. By failing to answer the Complaint on or before September 14, 2023, and by failing to file a motion staying the 60-day period in which to file an Answer as required by Section

103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), Respondents ROBERT

8. WIETHOLDER and DESMOND JARVIS have admitted the material allegations asserted in the Complaint.

9. Complainant therefore requests that the Board enter an order finding that pursuant to Section 103.204(d) and (e), 35 Ill. Adm. Code 103.204(d) and (e), Respondents ROBERT WIETHOLDER and DESMOND JARVIS, have admitted all material allegations asserted in the Complaint.

10. Complainant's Complaint sufficiently states facts establishing the following violations of the Act against Respondents ROBERT WIETHOLDER and DESMOND JARVIS:

- Count I: Open Dumping of Waste
415 ILCS 5/21(a) (2022)
- Count II: Conducting a Waste Disposal Operation Without a Permit
415 ILCS 5/21(d)(1) (2022)
- Count III: Waste Disposal at an Improper Site
415 ILCS 5/21(e) (2022)
- Count IV: Open Dumping Resulting in Litter
415 ILCS 5/21(p)(1) (2022)
- Count V: Open Burning Violations
415 ILCS 5/9(a), 9(c), and 21(p)(3) (2022)

11. Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (b) If the record, including pleadings, depositions and admission 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 enter summary judgment.

12. If the Board finds that Respondents ROBERT WIETHOLDER and DESMOND

JARVIS have admitted all material allegations in Complainant's Complaint, then the record shows that there is no issue of material fact remaining for review. Therefore, pursuant to Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), Complainant is entitled to summary judgment in its favor as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully request that the Board issue an order in favor of Complainant and against Respondents ROBERT WIETHOLDER and DESMOND JARVIS, as follows:

A. Ordering all material allegations in the Complaint admitted against Respondents ROBERT WIETHOLDER and DESMOND JARVIS;

B. Finding that Respondents ROBERT WIETHOLDER and DESMOND JARVIS violated Sections 9(a), 9(c) 21(a), (d)(1), (e), (p)(1), and (p)(3) of the Act, 415 ILCS 5/9(a), 9(c), 21(a), (d)(1), (e), (p)(1), and (p)(3) (2022); and

C. Granting summary judgment in favor of Complainant and against Respondents ROBERT WIETHOLDER and DESMOND JARVIS on Counts I, II, III, IV, and V of the Complaint;

REMEDY

The July 6, 2023 Board Order in this cause provides, in pertinent part:

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty,) and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent's economic benefit, if any, from the delayed compliance), and supporting its position with facts and argument that address any or all of the Section 42(h) factors...

Pursuant to the July 6, 2023 Board Order, Complainant is proposing that Respondents ROBERT WIETHOLDER and DESMOND JARVIS be ordered to cease and desist from further violations of the Act and Board Regulations. In addition, Complainant requests that the Respondents ROBERT WIETHOLDER and DESMOND JARVIS be ordered to pay a civil penalty.

Impact on the Public Resulting from Respondent's Alleged Non-Compliance

In determining whether a civil penalty is warranted, the Board must consider the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c). *Toyal Am., Inc. v. Illinois Pollution Control Board*, 2012 IL App (3d) 100585, ¶ 28 (3d Dist. 2012). The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation. *People v. John Prior d/b/a Prior Oil Co. and James Mezo d/b/a Mezo Oil Co.*, (PCB 02-177), Slip. Op. at 29 (May 6, 2004). Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), 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:

- i.
- ii.
- iii. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. The social and economic value of the pollution source;
- iii. 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;
- iv. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits

resulting from such pollution source; and

v. any subsequent compliance.

In response to these factors, the Complainant states the following:

1. Human health and the environment were threatened by the improper open dumping of waste and open burning violations by Respondents ROBERT WIETHOLDER and DESMOND JARVIS at the Site owned by Respondent ROBERT WIETHOLDER.

2. There is social and economic benefit to the proper disposal of waste, if conducted in a manner compliant with the Act and Board's Regulations.

3. The subject residential property was not suitable for use as a waste disposal location.

4. Proper disposal of waste is technically practicable and economically reasonable.

5. Respondents ROBERT WIETHOLDER and DESMOND JARVIS did not subsequently comply with the Act. Respondents subsequently brought the site into compliance by August 25, 2022.

In consideration of these factors, the Board should enter an order requiring each Respondent to individually pay a civil penalty of at least Seven Thousand Five Hundred Dollars (\$7,500) for violations of the Act.

Explanation of Civil Penalty Requested

Section 2(b) of the Act, 415 ILCS 5/2(b) (2022), provides:

It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.

The primary purpose of civil penalties is to aid in the enforcement of the Act. *See People*

v. McHenry Shores Water Co., 295 Ill. App. 3d 628 (2d Dist. 1998). Civil penalties should reflect the severity of the violation(s) of the Act. *Southern Illinois Asphalt Company, Inc. v. Pollution Control Board*, 60 Ill. 2d 204, 208 (5th Dist. 1975). However, the Act authorizes civil penalties regardless of whether violations resulted in actual pollution. *ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 52 (4th Dist. 1996). Moreover, the award of a civil penalty “serves the legislative purpose of aiding enforcement of the Act, for through penalties upon those who blatantly disregard applicable rules and regulations, others, who might consider cutting corners at the expense of the environment, are deterred.” *Wasteland, Inc. v. Illinois Pollution Control Board*, 118 Ill. App. 3d 1041, 1055 (3d Dist. 1983) (subsequently cited by the First District; see e.g. *Standard Scrap Metal Co. v. Pollution Control Board*, 142 Ill. App. 3d 655, 665 (1st Dist. 1986)).

Section 42 of the Act provides guidance for calculating civil penalties for violations of the Act. In particular, Section 42(a) of the Act, 415 ILCS 5/42(a) (2022), provides, in pertinent part, as follows:

- a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues...

Consideration of Section 42(h) Factors

Section 42(h) of the Act, 415 ILCS 5/42(h) (2022), provides as follows:

In determining the appropriate civil penalty to be imposed under ..., 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 the 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 Complainant states as follows:

1. Respondents ROBERT WIETHOLDER and DESMOND JARVIS allowed open dumping of waste and open burning at the Site, which Respondent ROBERT WIETHOLDER owned, and which was not permitted for the disposal of wastes on land. The site was out of compliance by September 9, 2020. Respondents brought the site into compliance by August 25, 2022.

2. Respondents ROBERT WIETHOLDER and DESMOND JARVIS failed to act diligently in this matter, in that they allowed open dumping of waste at the Site when it was not permitted for the disposal of wastes on land; and they allowed the improper disposal of the waste at the Site.

3. The civil penalty requested by Complainant in the amount of Seven Thousand Five Hundred Dollars as to Respondent ROBERT WIETHOLDER, and Seven Thousand Five Hundred Dollars as to DESMOND JARVIS, includes any economic benefit that Respondents ROBERT WIETHOLDER and DESMOND JARVIS may have accrued as a result of their respective noncompliance.

4. A civil penalty in the amount of at least Seven Thousand Five Hundred Dollars as to Respondent ROBERT WIETHOLDER, and Seven Thousand Five Hundred Dollars as to DESMOND JARVIS, will serve to deter further violations by Respondents ROBERT WIETHOLDER and DESMOND JARVIS and to otherwise aid in enhancing voluntary compliance with the Act and Board Regulations by Respondents ROBERT WIETHOLDER and DESMOND JARVIS and other persons similarly subject to the Act and Board Regulations.

5. To Complainant's knowledge, Respondents ROBERT WIETHOLDER and DESMOND JARVIS have had no previously adjudicated violations.

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

7. Respondents ROBERT WIETHOLDER and DESMOND JARVIS did not perform a supplemental environmental project.

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

In furtherance of the purposes of the Act "to assure that adverse effects upon the environment are fully considered and borne by those who cause them," 415 ILCS 5/2(b) (2022),

and based on the gravity of the violations and Respondents ROBERT WIETHOLDER'S and DESMOND JARVIS' lack of diligence to comply with the Act and Board's Regulations, the Board should assess against Respondent ROBERT WIETHOLDER a civil penalty of no less than Seven Thousand Five Hundred Dollars (\$7,500.00), and against Respondent DESMOND JARVIS a civil penalty of no less than Seven Thousand Five Hundred Dollars (\$7,500.00).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board grant its Motion to Deem Facts Admitted and for Summary Judgment against Respondents ROBERT WIETHOLDER and DESMOND JARVIS, and award the relief requested herein, and take such other action as the Board believes to be appropriate and just.

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/ Bridget I. Flynn
Bridget I. Flynn
ARDC #6332314
Assistant Attorney General
Environmental Enforcement Bureau
500 South Second Street
Springfield, Illinois 62701
Tel: 217-782-9033
bridget.flynn@ilag.gov

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326 W. Mill Street
Mendon, IL 62351



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Assistant Attorney General
Environmental Bureau
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<p>1. Article Addressed to:</p> <p>Desmond Davis 205 S. Main Street Coatsburg, IL 62355</p>		<p>B. Received by (Printed Name) D Davis</p> <p>C. Date of Delivery 7/6/23</p>	
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<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

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Bridget Lynn
 Assistant Attorney General
 Environmental Bureau
 500 South Second Street
 Springfield, IL 62701

Wiettholder, et al.

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BOB JARVIS, an individual,)	
)	
Respondents.		

CERTIFICATE OF SERVICE

I hereby certify that I did, on May 29, 2025, send by U.S. Regular mail and by email where indicated, a true and correct copy of the documents entitled NOTICE OF FILING, MOTION TO DEEM FACTS ADMITTED AND FOR FOR SUMMARY JUDGMENT AS TO RESPONDENTS ROBERT WIETHOLDER AND DESMOND JARVIS, and CERTIFICATE OF SERVICE to:

For the Respondent
Via Regular U.S. Mail
Robert Wietholder
326 W. Mill Street
Mendon, Illinois 62351

Via Regular U.S. Mail
Bob Jarvis
222 N. Chestnut Street
Mendon, Illinois 62351

For the Illinois Pollution Control Board

Via electronic mail

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Ave., E.
Springfield, Illinois 2794-9274
Carol.webb@illinois.gov

/s/ *Cathy Formigoni*

Cathy Formigoni
Environmental Bureau

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ *Cathy Formigoni*

Cathy Formigoni
Environmental Bureau