

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 27 2006

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

TED HARRISON and GERALD S. GILL,

Respondents.

AC 05-08

(IEPA No. 330-04-AC)

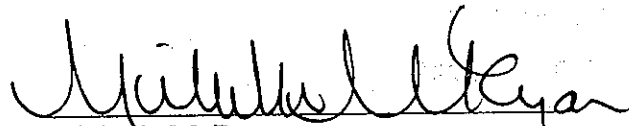
NOTICE OF FILING

To: Stephen F. Hedinger
Hedinger Law Office
2601 South Fifth Street
Springfield, IL 62703

Mark S. Cochran
Bellatti, Barton, Hamill & Cochran, LLC
Suite A
944 Clock Tower Drive
Springfield, Illinois 62704

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled COMPLAINANT'S RESPONSE TO RESPONDENT HARRISON'S MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted,



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: February 23, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 05-08
)	
v.)	(IEPA No. 330-04-AC)
)	
TED HARRISON and GERALD S. GILL,)	
)	
Respondents.)	

COMPLAINANT'S RESPONSE TO
RESPONDENT HARRISON'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Special Assistant Attorney General Michelle M. Ryan, pursuant to 35 Ill. Adm. Code 101.516(a), and respectfully requests that the Board deny Respondent Harrison's Motion for Summary Judgment for the reasons provided in support thereof below.

Summary judgment is appropriate when the record shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *People v. Poland, et al.*, PCB No. 98-148 (November 16, 2000) p.6, *citing Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 693 N.E.2d 358 (1998); 35 Ill. Adm. Code 101.516(b). Summary judgment should only be granted when the movant's right to relief is "clear and free from doubt." *Id.* (citations omitted).

A genuine issue of material fact appears in paragraph 2 of Respondent's Motion. Said paragraph claims that "Respondent Harrison did not cause or allow the deposition of waste materials alleged by the administrative citation." This statement directly contradicts the pleadings in this case, which allege that Respondent Harrison is the former owner and operator of the site, who caused or

allowed open dumping of waste in a manner resulting in litter and deposition of construction or demolition debris. Administrative Citation at 1-2. These allegations in the Citation are supported by the inspection report dated May 23, 2004, which itself is supported by affidavit. Therefore, the fact of whether Respondent Harrison caused or allowed open dumping at the site is clearly in dispute. As the ultimate fact in the case, it is unquestionably material. As such, it is apposite that the Board deny Respondent's motion on this issue alone.

Respondent's motion goes on to claim that Respondent Harrison did not own the property on May 23, 2004, the date of the inspection resulting in the Administrative Citation. Motion at ¶¶ 9, 10, 12, 15. This fact is not in dispute, as acknowledged in the May 23, 2004 inspection report attached to the Administrative Citation. However, the ownership of the property on May 23, 2004 has never been the basis for the allegations against Respondent Harrison. Rather, as indicated in the May 23, 2004 inspection report, wastes including general refuse, lumber, scrap metal, vehicles, used tires, concrete, bricks, and chemical wastes in containers were originally observed on the site on May 20, 2002, when Respondent Harrison owned the property. Inspection Report dated May 23, 2004, p. 8. Although progress had been made in removing these wastes in the two years between inspections, "much waste remain[ed] to be removed" on May 23, 2004. *Id.* at 9. Respondent Harrison admitted in the Real Estate Agreement ("Agreement") with Respondent Gill that he stored "rubber tires and junk" on the site. Motion, Exh. 1, ¶9. It is these wastes, for which Respondent Harrison originally had sole responsibility, that form the basis for the allegations against Respondent Harrison. Illinois EPA need not prove ownership of a site in order to show a violation of 415 ILCS 5/21(p). *Illinois EPA v. Coleman*, PCB No. AC 04-18 (June 17, 2004) p. 6.

Respondent Harrison further claims that the Agreement between him and Respondent Gill resolves his liability to the State. Motion at ¶¶11-13. The State was not a party to the Agreement between the Respondents, and therefore cannot be bound by said contract. *See People's Sav. & Loan Ass'n v. Brinkoetter*, 263 Ill. App. 391 (3d Dist. 1931). Nor can the parties to that contract claim any authority to either waive the State's right (and duty) to enforce the Environmental Protection Act, or to grant each other a release from liability for violating environmental laws. The fact that the Agreement restricts the buyer's future legal recourse against the seller does not make it legal for Respondent Harrison to leave open dumped waste on the site when he sold it. The fact that the Agreement states that Respondent Harrison would continue for several weeks after the closing date to remove all of the wastes indicates that the parties were aware of Respondent Harrison's liability for the wastes.

Respondent Harrison does not deny that violations existed at the site on May 23, 2004, and indeed cannot, because said violations are supported in the record by the inspection narrative, photos and affidavit included with the filing of the Administrative Citation. Rather, Respondent Harrison claims that he is not responsible for the violations, because he had no "right to do anything" on the site after September 30, 2002, and that he "would have been a criminal trespasser" if he had attempted to do so. Motion at ¶¶12 & 15. The trespassing conclusion does not necessarily follow, because Respondent Gill had every right to permit Respondent Harrison to access the site. It is a reasonable inference that Respondent Gill would have been willing to do so to allow Respondent Harrison to remove the open dumped waste he was supposed to have removed the site. In point of fact, Respondent Harrison was observed at the site removing materials from Respondent Gill's shed on November 6, 2003. *See Exhibit A*, p. 4 and supporting affidavit of David Jansen (attached). On

December 3, 2003, Respondent Harrison told Illinois EPA inspectors who again observed him on the site that he was working on cleaning up the waste and removing materials that he had left on the property now owned by Respondent Gill. *Id.* at 5 It is therefore indisputable that Respondent Harrison continued to exercise control over and manage the wastes he left on the site for more than a year after selling the property to Respondent Gill.

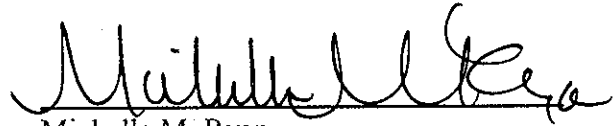
Respondent also raises the issue that “the inspector did not directly observe Mr. Harrison do anything on the date of the inspection.” Motion at ¶2. However, 415 ILCS 5/31.1(b) requires only that Illinois EPA “on the basis of direct observation, determine that any person has violated any provision of subsection (o) or (p)” prior to issuing an Administrative Citation. Illinois EPA did make such a determination regarding Respondent Harrison, based on the inspection conducted on May 23, 2004, as indicated in the Administrative Citation. There is no legal requirement that the individual be “caught in the act” of committing the offense, and the Board has often found a Respondent in violation of Section 21(p) without such evidence. *E.g., Coleman, supra; Illinois EPA v. Bencie*, PCB No. AC 04-77 (February 16, 2006); *Illinois EPA v. Groff*, PCB No. AC 05-20 (October 20, 2005); *Illinois EPA v. Brown*, PCB No. AC 04-82.

Illinois EPA has presented a factual basis that would arguably entitle it to judgment against Respondent Harrison in this matter. *See Briggs, supra* at 6 (citation omitted). Therefore, summary judgment in favor of Respondent Harrison is inapposite.

WHEREFORE, the Illinois Environmental Protection Agency requests that the Board deny Respondent Harrison's Motion for Summary Judgment.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Complainant

DATED: February 23, 2006



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

AFFIDAVIT

IN THE MATTER OF:

Ted Harrison Oil Co.

Respondent.

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)
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)
)

IEPA DOCKET NO.

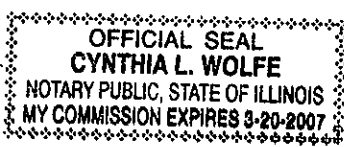
Affiant, David C. Jansen, being first duly sworn, voluntarily deposes and states as follow:

1. Affiant is a field inspector employed by the Land Pollution Control Division of the Environmental Protection Agency and has been so employed at all times pertinent hereto.
2. On November 6, 2003, between approximately 1:25 PM and 2:00 PM, Affiant conducted an inspection of a disposal site operated without an Agency permit, located in Cass County, Illinois and known as Ted Harrison Oil by the Illinois Environmental Protection Agency. Said site has been assigned site code number LPC# 0170255004 by the Agency.
3. Affiant inspected said Ted Harrison Oil open dump site by an on-site inspection which included walking and photographing the site.
4. As a result of the activities referred to in paragraph 3 above, Affiant completed the Inspection Report form attached hereto and made a part hereof, which, to the best of Affiant's knowledge and belief, is an accurate representation of Affiant's observations and factual conclusions with respect to said Ted Harrison Oil open dump.

David C. Jansen

Subscribed and Sworn To before me
This 23 day of February, 2006

Cynthia L. Wolfe



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Open Dump Inspection Checklist

X

County: CASS LPC#: 0170255004 Region: 5 - Springfield
 Location/Site Name: VIRGINIA/TED HARRISON OIL
 Date: 11/06/2003 Time: From 1:05 pm To 1:20 pm Previous Inspection Date: 06/19/2003
 Inspector(s): DAVID C. JANSEN Weather: 50 F, sunny, dry
 No. of Photos Taken: # 6 Est. Amt. of Waste: 250 yds³ Samples Taken: Yes # _____ No
 Interviewed: TED HARRISON Complaint #: _____

Responsible Party
 Mailing Address(es)
 and Phone
 Number(s):

Mr. Ted Harrison
 Box 3185
 Quincy, IL 62301

Gerald Gill
 100 Redbud Road
 Box 200
 Virginia, IL 62691

RECEIVED
 DEC 23 2003
 IEPA-DLPC

	SECTION	DESCRIPTION	VIOL
ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS			
1.	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input type="checkbox"/>
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	<input type="checkbox"/>
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE-DISPOSAL OPERATION:	
	(1)	Without a Permit	<input checked="" type="checkbox"/>
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	<input checked="" type="checkbox"/>
7.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY.	<input checked="" type="checkbox"/>
8.	21(p)	CAUSE OR ALLOW THE OPEN DUMPING OF ANY WASTE IN A MANNER WHICH RESULTS	
	(1)	Litter	<input checked="" type="checkbox"/>
	(2)	Scavenging	<input type="checkbox"/>
	(3)	Open Burning	<input type="checkbox"/>
	(4)	Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5)	Proliferation of Disease Vectors	<input type="checkbox"/>
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

Revised 06/18/2001



(Open Dump - 1)

RELEASABLE
 MAR 18 2004
REVIEWER MM

LPC # 0170255004

Inspection Date: 11/06/2003

	(7)	Deposition of General Construction or Demolition Debris; or Clean Construction or	<input checked="" type="checkbox"/>
9.	55(a)	NO PERSON SHALL:	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input checked="" type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G			
10.	812.101(a)	FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL	<input checked="" type="checkbox"/>
11.	722.111	HAZARDOUS WASTE DETERMINATION	<input type="checkbox"/>
12.	808.121	SPECIAL WASTE DETERMINATION	<input type="checkbox"/>
13.	809.302(a)	ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST	<input type="checkbox"/>
OTHER REQUIREMENTS			
14.		APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	<input type="checkbox"/>
15.	OTHER:		<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

David C. Jensen

Signature of Inspector(s)

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.

**BOL/FOS SPRINGFIELD REGION
MEMORANDUM**

DATE: December 15, 2003
TO: DLPC/Division File
FROM: David C. Jansen, BOL/FOS Springfield Region Manager
SUBJECT: LPC # 0170255004 - Cass County
Virginia/Ted Harrison Oil
FOS File

RECEIVED
DEC 23 2003
IEPA-DLPC

On November 6, 2003, I went to the above referenced Illinois EPA permitted LUST soil-treatment facility located northeast of Virginia, IL (see attached aerial photo) to briefly check on its status on the way back from an inspection near Havana. I arrived at the site at about 1:05 p.m. It was about 50°F, sunny, and dry. No one was on site.

When I arrived I walked around the entrance gate. The truck seen in previous inspections was parked outside the gate. The soil treatment cell looked as if it had been recently tilled and there were vehicle tracks down the center of the cell. I detected no petroleum odor in the air as I walked over the west border of the treatment cell. It looked like a thin layer of soil had been removed from the west edge of the treatment cell. There was no water ponded on the treatment cell (see attached digital photo # -001). The top of the leachate collection tank could be seen partially buried on the hillside sloping down from the west edge of the treatment cell. It was not leaking water out of its top, as had been seen previously. Some soil erosion was noted in the slope uphill and downhill from the leachate tank.

South of the treatment cell a John Deere towed scraper used for moving layers of soil was parked. It looked like the scraper had been moved recently. At the north entrance to the site, the same vehicles previously observed during the last inspection were still parked there. Several of the large trucks observed still contain on rim used tires, and off-rim, used tires that still have not been prevented from accumulating water (see attached digital photo # -002).

If Mr. Ted Harrison intends to keep these tires, he will have to store them in accordance with the tire regulations and provide notice to the Illinois EPA that he is operating a tire storage facility. Without his compliance with the tire storage requirements, the tires must be properly removed by an Illinois EPA registered used tire hauler and disposed at an Illinois EPA registered used tire processor.

The site owner/operator has been referred to the IAGO for enforcement action for failure to comply with the site's permit.

I then left the permitted site at about 1:20 p.m., and went to the part of the property that Ted Harrison sold to Gerald Gill (see attached aerial photo): There I met Ted Harrison, who was cleaning materials out of the large on-site maintenance shed. He told me that he wanted to use some of the used tires stored in the open on the trucks located at the

entrance to the permitted site. He said some of the used tires on those trucks would be removed and placed under cover inside a semi-truck trailer. He said Pherigo Salvage had been removing used tires from the Gill property.

He said that he had got the scraper at the permitted site to operate briefly before it broke down again, and it currently needed a hose repaired. He said while the scraper was operating, soil was removed from the west edge of the site.

At the entrance to the Gill property, there were some white goods and other debris on the ground. The waste in the ravine near the entrance southwest of the shed appeared unchanged since the last inspection. Parked further away from the entrance was a large Area Disposal roll-off box filled with refuse.

There were some tire sidewalls and used tires still dumped on the ground along the fence line northeast of the shed (see attached digital photo # -003). Most of the tires that had been previously seen along this fence line had been removed. Also northeast of the shed, were some previously observed semi-truck trailers and miscellaneous debris that apparently belong to Mr. Harrison. The materials in the semi-truck trailers are apparently in the process of being sorted and removed by Mr. Harrison.

Just northeast of the shed there was a large pit, with the excavated dirt piled off to the side (see attached digital photo # -006). Inside the pit some old lumber, burnt wood, landscape waste, and sheet metal had been discarded (see attached digital photo # -004). The pit was about 25 feet long by 10 feet wide by 10 to 12 feet deep. Mr. Harrison told me that Mr. Gill dug the pit and discarded the refuse there. In the event that Mr. Harrison talked to Mr. Gill prior to me, I told him to tell Mr. Gill that such disposal was not allowed and that the waste needed to be removed and placed in the roll-off box for proper disposal at an Illinois EPA permitted landfill. Northeast of the pit was a pile of junk metal and tires (see attached digital photo # -005).

I left the site at about 2:00 p.m.

On November 7, 2003 at about 4:00 p.m., I telephoned Mr. Gill, who resides at 100 Redbud Road, Box 200, Virginia, IL 62691, and left a message on his voice mail to remove the waste from the pit and place it in the roll-off box, and not to bury any waste on his property. He did not return my phone call.

I returned to the Gill property on December 3, 2003, accompanied by Charlie King, BOL/FOS Springfield Region, to determine if the refuse previously observed in the pit had been removed. We arrived at about 12:45 pm. It was about 40°F, cloudy and wet.

We met Mr. Harrison at the site who told us that Mr. Gill had removed the refuse from the pit, and placed it into a roll-off box for disposal at a landfill. The pit had been backfilled with soil, and there was only a mound of dirt where the pit had been. Two of the three old truck semi-trailers that had been parked northeast of the large metal shed on

site had been moved from their original position, and parked close by. There was scattered debris on the ground around where the semi-truck trailers had been previously located. Some tires had been added to the pile of junk previously shown in photo # -005- taken on November 6th. The waste discarded in the ravine southwest of the large shed appeared untouched since the November 6th inspection. The metal roof on an old house trailer parked near the adjacent entrance gate had been peeled off the top of the trailer and was on the ground.

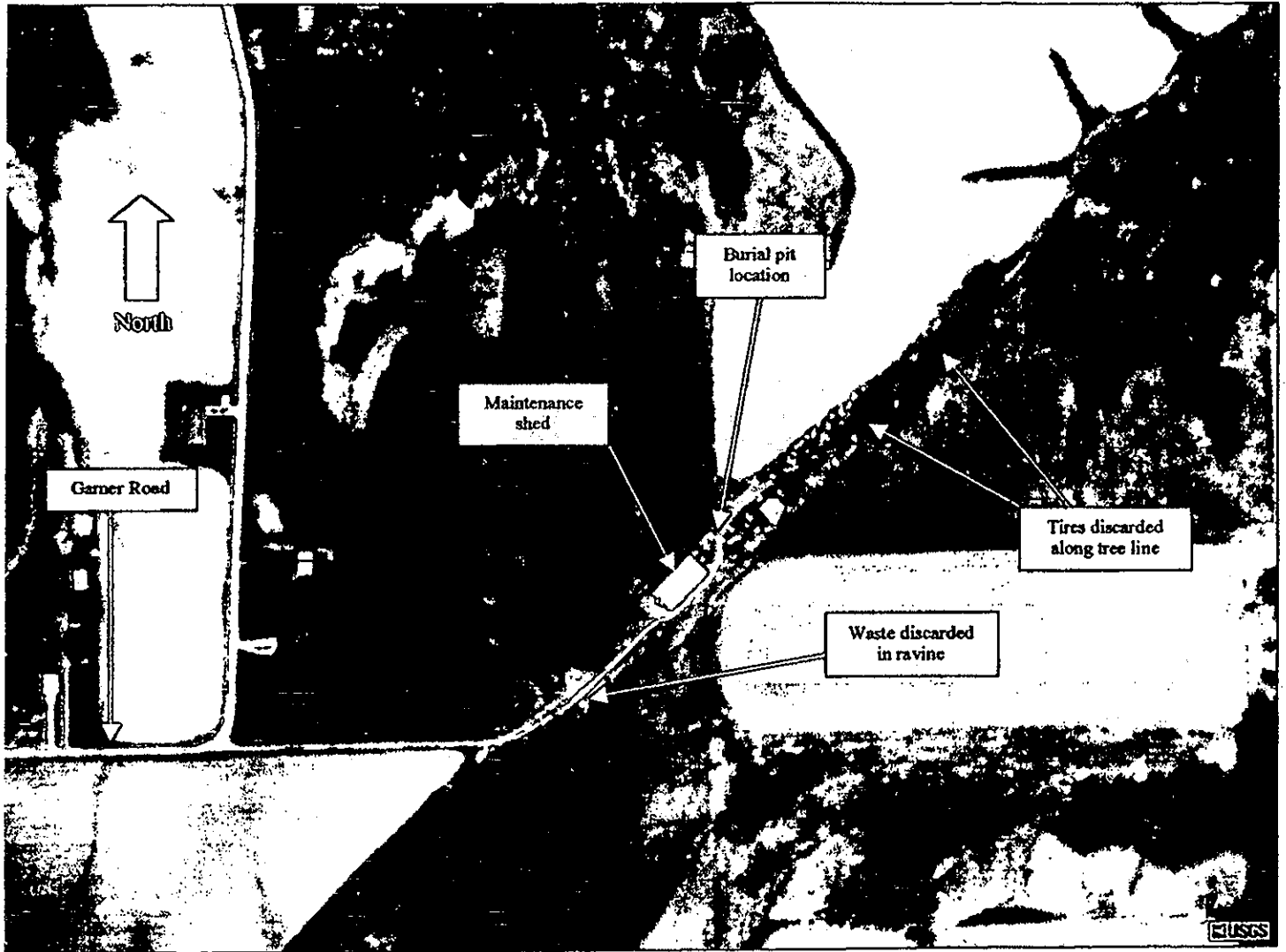
Mr. Harrison told us that he had been working on cleaning up the waste and removing materials that he had left on the property now owned by Mr. Gill. He also said he had finally gotten the scraper at the permitted site repaired, but the ground in the treatment cell was too muddy to be moving any soil with the scraper.

We left the site at about 12:55 pm.

cc: DLPC/FOS - Springfield Region
DLC, Greg Richardson
IAGO, Del Haschemeyer

PC # 0170255004 – Cass County
Virginia/Ted Harrison Oil Company
OS File

April 5, 1998 USGS aerial photo



PC # 0170255004 - Cass County
Virginia/Ted Harrison Oil Company
GIS File

April 5, 1998 USGS aerial photo





DIGITAL PHOTOGRAPHS

**LPC # 0170255004 — Cass County
Virginia/Ted Harrison Oil
FOS File**

Date: 11/06/03

Time: 1:09 pm

Direction: N

Photo by: D.C. Jansen

Photo File Name:

0170255004~11062003-001

Comments: South end of IL EPA
permitted soil treatment area, with
junk trucks at north entrance to site
in background



Date: 11/06/03

Time: 1:14 pm

Direction: W

Photo by: D.C. Jansen

Photo File Name:

0170255004~11062003-002

Comments: junk trucks filled with
used tires at north entrance to
permitted site





Illinois Environmental Protection Agency
Bureau of Land

DIGITAL PHOTOGRAPHS

LPC # 0170255004 — Cass County
Virginia/Ted Harrison Oil
FOS File

Date: 11/06/03

Time: ~1:50 pm

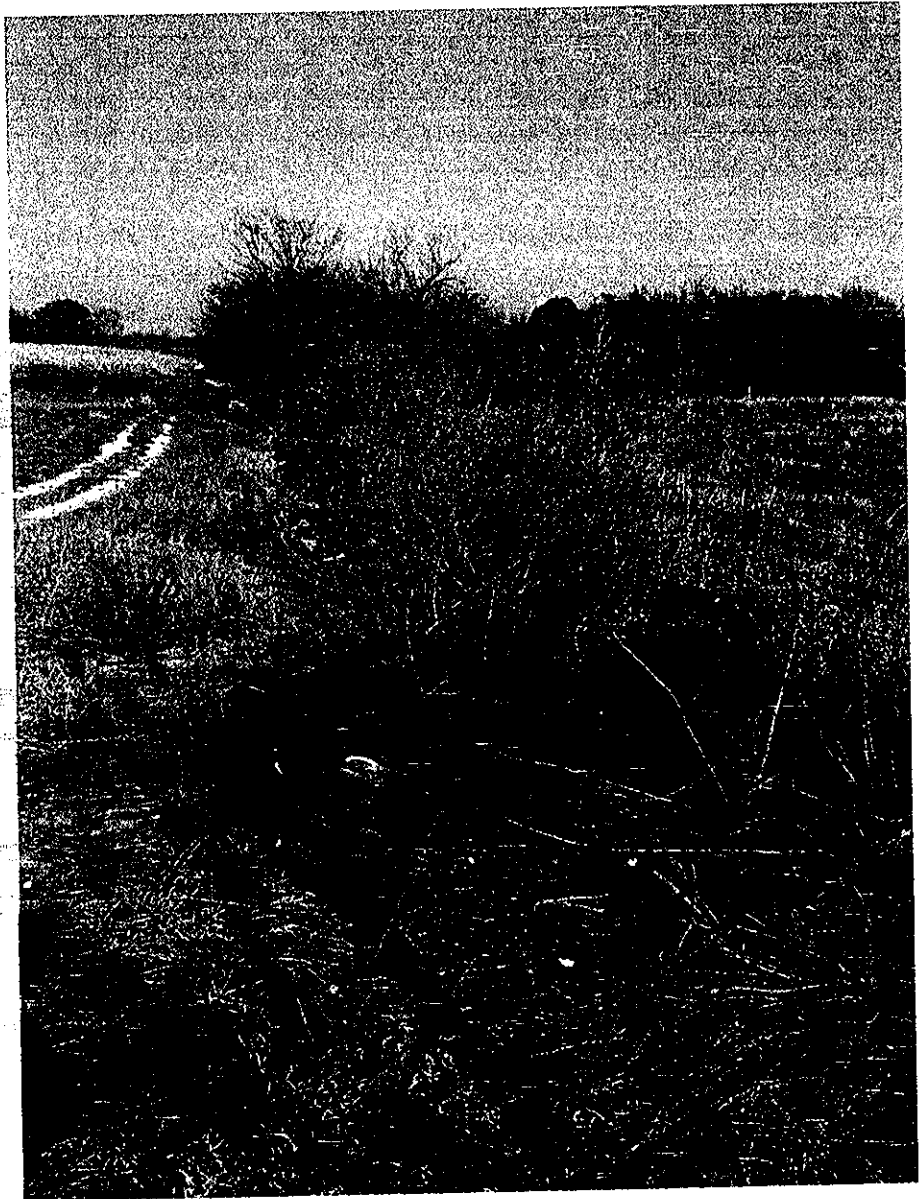
Direction: NE

Photo by: D.C. Jansen

Photo File Name:

0170255004~11062003-003

Comments: tire sidewalls
discarded along fence line on
Gerald Gill property formerly
owned by Ted Harrison

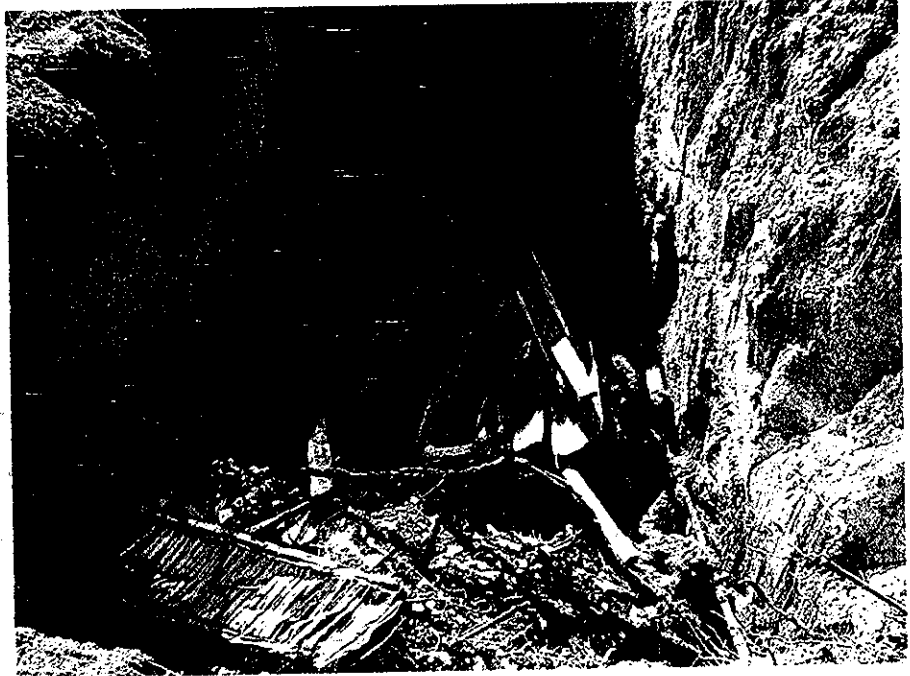




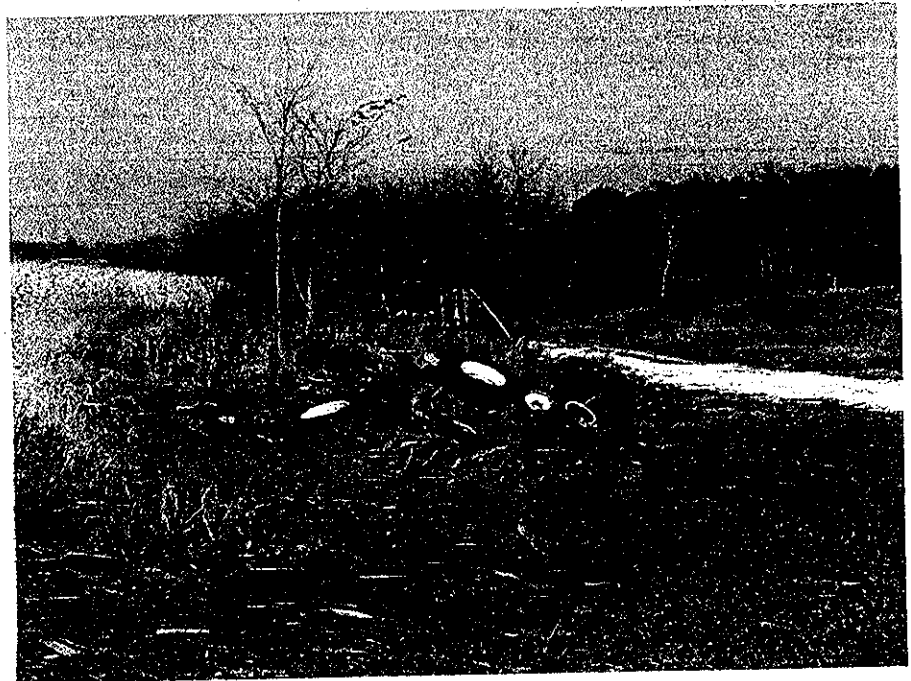
DIGITAL PHOTOGRAPHS

LPC # 0170255004 — Cass County
Virginia/Ted Harrison Oil
FOS File

Date: 11/06/03
Time: 1:53 pm
Direction: SW
Photo by: D.C. Jansen
Photo File Name:
0170255004~11062003-004
Comments: wood and metal inside
pit excavated to dispose refuse,
located NE of shed on Gerald Gill
property formerly owned by Ted
Harrison



Date: 11/06/03
Time: 1:54 pm
Direction: NE
Photo by: D.C. Jansen
Photo File Name:
0170255004~11062003-005
Comments: pile of junk metal and
tires located NE of shed on Gerald
Gill property formerly owned by
Ted Harrison





Illinois Environmental Protection Agency
Bureau of Land

DIGITAL PHOTOGRAPHS

**LPC # 0170255004 — Cass County
Virginia/Ted Harrison Oil
FOS File**

Date: 11/06/03

Time: 1:58 pm

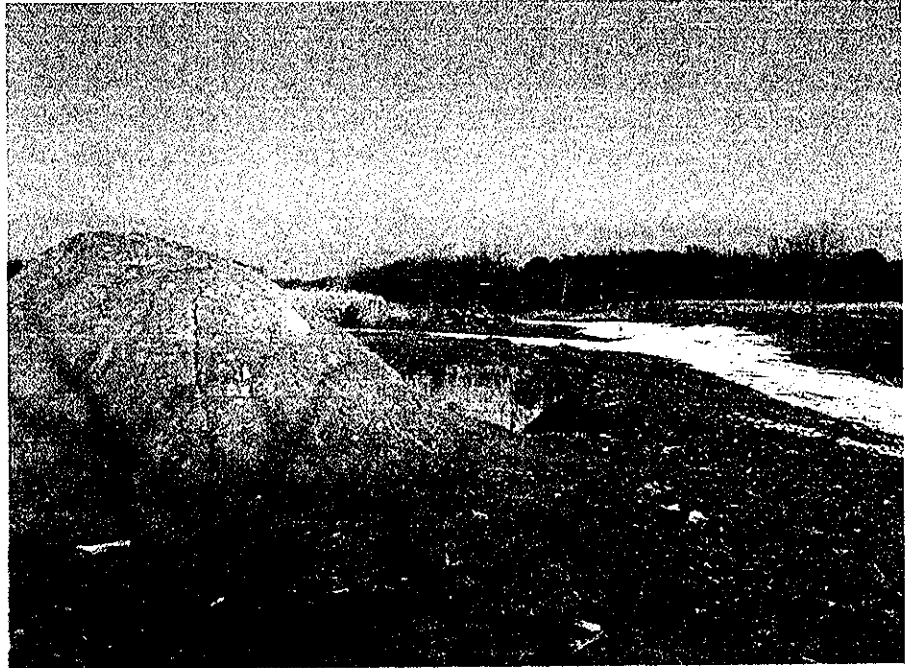
Direction: NE

Photo by: D.C. Jansen

Photo File Name:

0170255004~11062003-006

Comments: pit excavated to
dispose refuse, and pile of junk
metal and tires depicted in photo #
-005 in background



0170255004~11062003.doc

PROOF OF SERVICE

I hereby certify that I did on the 23rd day of February 2006, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled **COMPLAINANT'S RESPONSE TO RESPONDENT HARRISON'S MOTION FOR SUMMARY JUDGMENT**

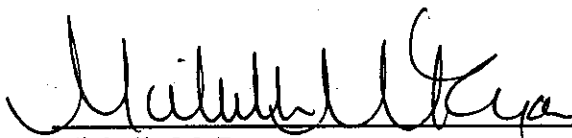
To: Stephen F. Hedinger
Hedinger Law Office
2601 South Fifth Street
Springfield, IL 62703

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

Mark S. Cochran
Bellatti, Barton, Hamill & Cochran, LLC
Suite A
944 Clock Tower Drive
Springfield, Illinois 62704

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING SUBMITTED ON RECYCLED PAPER