

**Electronic Filing - Received, Clerk's Office, March 6, 2008**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

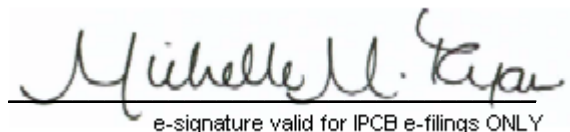
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 05-61
	)	
v.	)	(IEPA No. 59-05-AC)
	)	
TIMOTHY PEARCE,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: Timothy Pearce  
607 Birchwood  
Flora, Illinois 62839

PLEASE TAKE NOTICE that on this date I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled MOTION FOR SUMMARY JUDGMENT.

Respectfully Submitted,



e-signature valid for IPCB e-filings ONLY

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: March 6, 2008

**Electronic Filing - Received, Clerk's Office, March 6, 2008**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, ) AC 05-61  
 )  
v. ) (IEPA No. 59-05-AC)  
 )  
TIMOTHY PEARCE, )  
 )  
Respondent. )

**MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Complainant, the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to 35 Ill. Adm. Code 101.516, and hereby states as follows:

On March 24, 2005, Illinois EPA issued an administrative citation to Timothy Pearce (“Respondent”). The citation alleges a violation of Section 21(p)(1) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) & (7) (2004)), in that Respondent caused or allowed open dumping of waste resulting in litter and the deposition of clean or general construction or demolition debris. The violations occurred at a property located at 241 North Willow Road, Flora, Clay County. Open Dump Inspection Report, attached to Administrative Citation.

Respondent originally contested the allegations in the Administrative Citation in his Petition for Review filed on May 18, 2005. However, Respondent has not participated in status calls with the Hearing Officer or responded to phone calls or letters from Complainant since August 2006. *See generally* Hearing Officer Orders from September 2006 to present.

## **Electronic Filing - Received, Clerk's Office, March 6, 2008**

On August 17, 2007, Illinois EPA sent Respondent a Request to Admit Facts. No response from Respondent has been received. Therefore, pursuant to 35 Ill. Adm. Code 101.618(f), all facts contained therein are deemed admitted.

Illinois EPA has demonstrated that Respondent caused or allowed open dumping on the site. "Open dumping" means "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." 415 ILCS 5/3.305 (2004). "Refuse" means "waste," (415 ILCS 5/3.385 (2004)), and "waste" includes "any garbage . . . or other discarded material" (415 ILCS 5/3.535 (2004)). Respondent was the owner and operator of the site on which the open dumping was observed, and Respondent both caused and allowed waste to be open dumped there. Request to Admit Nos. 1-3, 5-8. Therefore, Respondent caused or allowed the open dumping of waste observed on February 16, 2005.

Respondent's causing or allowing the open dumping of these wastes resulted in "litter" under Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)). The Act does not define "litter," but in similar cases, the Board has looked to the definition of "litter" in the Litter Control Act:

"Litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS 105/3(a) (2004); see *St. Clair County v. Louis I. Mund* PCB AC 90-64, (Aug. 22, 1991) pp. 4, 6. Respondent caused and allowed open dumping of waste, which constitutes "litter" under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent also admitted that the open dumped waste included general or clean construction or demolition debris. Request to Admit No. 4. Therefore, Respondent violated Section 21(p)(7) of

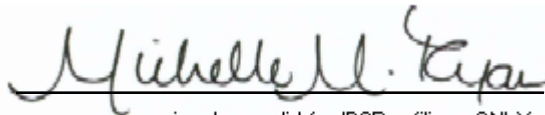
## Electronic Filing - Received, Clerk's Office, March 6, 2008

the Act, which prohibits the open dumping of waste in a manner which results in the deposition of general or clean construction or demolition debris.

The Request to Admit and the Inspection Report attached to the Administrative Citation shows that Respondent caused or allowed open dumping of waste in a manner resulting in litter and clean or general construction or demolition debris in violation of Section 21(p)(1) and 21(p)(7) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty.

Respectfully Submitted,

DATED: March 6, 2008



e-signature valid for IPCB e-filings ONLY

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

# Electronic Filing - Received, Clerk's Office, March 6, 2008

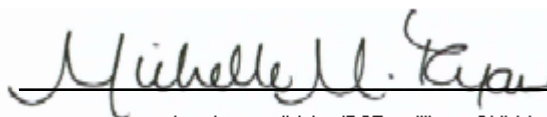
## PROOF OF SERVICE

I hereby certify that I did on the 3<sup>rd</sup> day of March, 2008, 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 MOTION FOR SUMMARY JUDGMENT

To: Timothy Pearce  
607 Birchwood  
Flora, Illinois 62839

and an electronic copy of the same foregoing instrument on the same date via electronic filing

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



e-signature valid for IPCB e-filings ONLY

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