

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
)	
KEHRER BROTHERS CONSTRUCTION, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on June 6, 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 a COMPLAINT and ENTRY OF APPEARANCE, copies of which are attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2010), to correct the pollution alleged in the Complaint filed in this case.

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: 

RAYMOND J. CALLERY
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 6, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on June 6, 2012, cause to be served by Certified Mail, Return Receipt Requested, 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, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on the Service List.

A handwritten signature in black ink, appearing to read "Raymond J. Callery", written over a horizontal line.

RAYMOND J. CALLERY
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Kehrer Brothers Constructin, Inc.
c/o Joseph M. Kehrer, R.A.
7100 Albers Road
P.O. Box 78
Albers, IL 62215

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
)	
KEHRER BROTHERS CONSTRUCTION, INC.,)	
an Illinois corporation,)	
)	
Respondents.)	

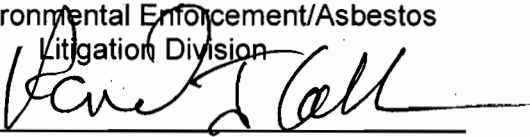
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, RAYMOND J. CALLERY, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

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: 

 RAYMOND J. CALLERY
 Environmental Bureau
 Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 6, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 KEHRER BROTHERS CONSTRUCTION, INC.,)
 an Illinois corporation,)
)
 Respondent.)

PCB NO.

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, KEHRER BROTHERS CONSTRUCTION, INC., an Illinois corporation, as follows:

COUNT I
OPEN DUMPING

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2010), and which is charged, inter alia, with the duty of enforcing the Act.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Kehrer Brothers Construction, Inc. is an Illinois corporation with its principal

place of business located at 7100 Albers Road, Albers, Clinton County, Illinois (the "Site").

5. On October 13, 2010, the Illinois EPA inspected the Site. The Illinois EPA observed 30 to 40 worn and unmounted tires, 40 fifty-five gallon drums and other containers and two large piles of waste. The waste material included demolition debris, metal, wood and plastic pallets, treated lumber, wood crates, landscape waste, lawn furniture and plastics.

6. On October 14, 2010, the Illinois EPA returned to the Site to inspect the drums. The forty drums were opened, labeled with a number and their contents inspected. The drums contained solidified roofing tar, free liquid roofing epoxies, fuel mixture, clean and used oil, solvent, gun cleaner, and I.S.O. Spray Part A and Part B, chemical components used to make spray foam roof insulation.

7. During the October 14, 2010 inspection, the Illinois EPA observed spillage on the ground around a number of the drums containing oil and around a number of the drums containing the I.S.O. Spray chemical components.

8. On May 4, 2011, the Illinois EPA re-inspected the Site. The tires and the two large piles of waste material observed during the earlier inspections had been removed. Drums containing used oil, solidified roofing tar, roofing epoxies, and spray foam roof insulation chemicals had been removed or used in Respondent's business. Remaining at the Site were three fifty-five gallon drums of fuel mixture, one container containing solvents and two containers containing gun cleaner.

9. The Site is not permitted by the Illinois EPA as a sanitary landfill and does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder.

10. Sections 3.305, 3.385 and 3.535 of the Act, 415 ILCS 5/3.305, 3.385 and 3.535

(2010), respectively, provide the following definitions:

“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.

“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 . . .

11. Section 21 of the Act, 415 ILCS 5/21 (2010), provides in pertinent part, as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

* * *

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

* * *

(2) in violation of any regulations or standards adopted by the Board under this Act;

* * *

(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 regulations and standards thereunder.

* * *

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter;

* * *

(7) deposition of:

- (i) general construction or demolition debris as defined in Section 3.160(a) of this Act;

* * *

12. By causing or allowing the open dumping of waste, Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).

13. By disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

14. By causing or allowing the open dumping of waste in a manner which resulted in litter, Respondent has violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2010).

15. By causing or allowing the open dumping of waste in a manner which resulted in general construction or demolition debris, Respondent has violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2010).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, KEHRER BROTHERS CONSTRUCTION, INC., an Illinois corporation:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent 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) (2010) imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II
DISPOSAL OF WASTE TIRES

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count II.

11. Sections 54.02, 54.04, 54.08, 54.11, 54.13 and 54.16 of the Act, 415 ILCS 5/54.02, 5/54.04, 5/54.08, 5/54.11, 5/54.13 and 5/54.16 (2010), respectively, provide, in pertinent part, as follows:

"Converted tire" means a used tire which has been manufactured into a usable commodity other than a tire. "Conversion" or "converting" means action which produces a converted tire . . .

"Disposal" means the placement of used tires into or on any land or water except as an integral part of systematic reuse or conversion in the regular course of business.

"Reused tire" means a used tire that is used again, in part or as a whole, by being employed in a particular function or application as an effective substitute for a commercial product or fuel without having been converted.

"Tire Disposal Site" means a site where used tires have been disposed of other than a sanitary landfill permitted by the Agency.

"Used tire" means a worn, damaged or defective tire which is not mounted on a vehicle wheel rim.

"Waste tire" means a used tire that has been disposed of.

12. The 30 to 40 worn and unmounted tires observed at the Site during the October 13, 2010 inspection constitute "used tires" as that term is defined in Section 54.13 of the Act, 415, ILCS 5/54.13 (2010).

13. Respondent had neither "converted" nor "reused" the used tires at the Site as these terms are defined in Sections 54.02 and 54.08 of the Act, 415 ILCS 5/54.02 and 5/54.08 (2010).

14. Respondent's failure to reuse or convert the used tires placed at the Site constitutes "disposal" of the tires as that term is defined in Section 54.04 of the Act, 415 ILCS

5/54.04 (2010).

15. Upon their disposal, the used tires constitute "refuse" and "waste tires" as these terms are defined in Sections 3.385 and 54.16 of the Act, 415 ILCS 5/3.385 and 5/54.16 (2010), respectively.

16. The accumulation of waste tires at the Site constitutes a fire hazard and a threat to clean air and water, and poses a substantial danger to the public health, safety and welfare by providing a habitat for a number of disease-spreading mosquitoes and other nuisance organisms. These diseases relate to and include the West Nile virus, meningitis, and encephalitis.

16. The waste tires observed at the site during the October 13, 2010 inspection were not stored in such a manner so as to prevent the accumulation of water.

17. Section 55(a) of the Act, 415 ILCS 5/55(a) (2010), provides, in pertinent part, as follows:

(a) No person shall:

1. Cause or allow the open dumping of any used or waste tire.

18. By causing or allowing the open dumping of used or waste tires, Respondent has violated Section 55(a)(1) of the Act, 415 ILCS 5/55(a)(1) (2010).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, KEHRER BROTHERS CONSTRUCTION, INC., an Illinois corporation:

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

B. Finding the Respondent has violated the Act and the regulations as alleged herein;

C. Ordering Respondent 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) (2010) imposing a civil penalty of not more than the statutory maximum; and

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

COUNT III
FAILURE TO MAKE WASTE DETERMINATION

1-11 Plaintiff realleges and incorporates by reference herein paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of this Count III.

12. Respondent is a "generator" as that term is defined by Section 3.205 of the Act, 415 ILCS 5/3.205 (2010), as follows:

"Generator" means any person whose act or process produces waste.

13. Section 3.220 of the Act, 415 ILCS 5/3.220 (2010), 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.

14. Section 3.470 of the Act, 415 ILCS 5/3.470 (2010), provides the following definition:

"Solid waste" means waste.

15. Section 3.475 of the Act, 415 ILCS 5/3.475 (2010), 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 . . .

14. Section 722.111 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 722.111, provides that any person who generates a solid waste shall determine if that waste is a hazardous waste.

15. Section 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 808.121, provides that any person who generates waste shall determine whether the waste is a special waste.

16. By failing to make a hazardous waste determination for the contents in the 55 gallon drums and other containers at the Site, Respondent has violated 35 Ill. Adm. Code 722.111 and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2010).

17. By failing to make a special waste determination for the contents in the 55 gallon drums and other containers at the Site, Respondent has violated 35 Ill. Adm. Code 808.121 and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2010).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, KEHRER BROTHERS CONSTRUCTION, INC., an Illinois corporation:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent 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) (2010) imposing a civil penalty of not more than the statutory maximum; and

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

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: 

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

Of Counsel

RAYMOND J. CALLERY
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: June 6, 2012.