

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Complainant,)	
)	
v.)	AC 2012-051
)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

NOTICE

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PLEASE TAKE NOTICE that I have today caused to be filed COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT and MEMORANDUM OF LAW IN SUPPORT OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT with the Illinois Pollution Control Board, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: February 18, 2014

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
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Complainant,



BY:

Scott B. Sievers
Special Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and moves this honorable Board to enter summary judgment in favor of Illinois EPA and against the Respondent, Northern Illinois Service Company ("Northern"). Illinois EPA states the following in support:

1. No genuine issue of material fact exists that Northern caused or allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris at the dump site; consequently, Illinois EPA is entitled to summary judgment in its favor and against Northern for violation of Sections 21(p)(1) and 21(p)(7) of the Act as a matter of law.

2. No genuine issue of material fact exists that Northern caused or allowed water to accumulate in used or waste tires; consequently, Illinois EPA is entitled to summary judgment in its favor and against Northern for violation of Section 55(k)(1) of the Act as a matter of law.

3. A memorandum of law accompanies this motion and is incorporated herein.

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, moves this honorable Board to enter summary judgment in favor of the Complainant and against the Respondent.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

Dated: February 18, 2014

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**MEMORANDUM OF LAW IN SUPPORT
OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and for its memorandum of law in support of Complainant's Motion for Summary Judgment states the following:

I. STATEMENT OF UNDISPUTED MATERIAL FACTS

The Respondent, Northern Illinois Service Company ("Northern"), is the owner of the facility located at 4781 Sandy Hollow Road, Rockford, Winnebago County, Illinois (hereafter "the Site"). (Pet. for Review at 1 ¶ 1; Exs. A & B at Interrog. 2.) Northern has owned this facility at all times pertinent to this action. (Pet. for Review at 1 ¶ 3.)

Northern is an Illinois corporation engaged in heavy construction work. (Exs. A & B at Interrog. 2; Ex. C (Munson dep.) at 6:4.) Northern is an excavation, demolition, and site utility contractor. (Ex. C (Munson dep.) at 5:24-6:1-2.) Northern is involved in commercial excavation; commercial and residential demolition; commercial and municipal sewer, water, and drainage work; the recycling of concrete, asphalt, and masonry materials; and it owns two quarries and operates five. (Ex. D (Hoff dep.) at 21: 18-24.) Its work also includes road building, building

demolition, and subdivision construction. (Ex. C (Munson dep.) at 6:4-6.) Most of its business comprises construction and demolition. (Ex. C (Munson dep.) at 6:21-24.) For example, at the time of the October 22, 2013 depositions in this action, Northern had recently torn down a building to make way for a new parking lot, started a new roadway extension, and torn down a few single residential homes. (Ex. C (Munson dep.) at 6:11-17.)

Northern's office is approximately 80,000 square feet and situated on 20 or 30 acres. (Ex. C (Munson dep.) at 14:2-11.) Northern stores materials out in the yard on the property. (Ex. C (Munson dep.) at 17:22-18:1.) Northern's concrete recycling operation is set up on the site; other than that, the site is used only for equipment and material storage, including trucks and vehicles. (Ex. C (Munson dep.) at 14: 12-18.) Northern has an estimated 30 or more vehicles, including everything from pickup trucks to heavy semis. (Ex. D (Hoff dep.) at 26:12-18; Ex. C (Munson dep.) at 15:6-11.) All of the vehicles use tires and get serviced in Northern's shop. (Ex. D (Hoff dep.) at 26:19-22.) Northern has approximately 30 employees, although the number varies seasonally from 25 to 50. (Ex. D (Hoff dep.) at 7:5-9; Ex. C (Munson dep.) at 9:4-6.)

Donna Shehane is a field inspector employed by the Land Pollution Control Division of the Illinois EPA. (Admin. Cit. aff. ¶ 1; Ex. E (Shehane aff.) ¶ 1.) Inspector Shehane has worked for Illinois EPA for six years, and as an Illinois EPA-delegated inspector for DuPage, Kankakee, and Will counties for 11 years before that. (Ex. F (Shehane dep.) at 6:1-3, 6:6-10, 9:13-10:1.) She has been employed in the private sector as a solid waste engineer and as a chemist, having earned both a bachelor's degree in chemistry and a master's degree in environmental engineering. (Ex. E (Shehane aff.) ¶¶ 2-3.) Inspector Shehane's training has included open dumping sites, including sites that are not permitted to receive waste to store or treat or dispose of waste. (Ex. F (Shehane dep.) at 15:7-11.)

On March 14, 2012, Inspector Shehane drove onto the Northern property. (Admin. Cit. aff. ¶ 4 & inspection report; *see* Ex. C (Munson dep.) at 18:8-15.) She then entered the front door of the office and stated that she would like to do an inspection. (Ex. C (Munson dep.) at 18:8-19:18; *see also* Ex. F (Shehane dep.) at 51:14-20.) Northern's Office Manager and Project Manager Estimator, Paul Munson, authorized Inspector Shehane to inspect the facility: "I told her to go ahead and inspect." (Ex. C (Munson dep.) at 5:20-23; 9:7-10; 19:19-20:1; *see also* Ex. F (Shehane dep.) at 51:14-20.) Inspector Shehane then left the office and went out on the property, where she conducted an inspection of Northern's facility which included walking and photographing the site. (Admin. Cit. aff. ¶¶ 2-3; Pet. for Review at 1 ¶ 4; Ex. C (Munson dep.) at 18:8-12 & 21:17-22.) No one from Northern accompanied Inspector Shehane during her inspection, including Munson or Northern Superintendent Will Hoff.¹ (Ex. F (Shehane dep.) at 52:7-9; *see also* Ex. C (Munson dep.) at 21:17-22:14; Ex. D (Hoff dep.) at 5:13-18, 9:2-15.)

During her inspection, Inspector Shehane observed four large tires at the southwest corner of the site. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. E (Shehane aff.) ¶ 7.) The tires were not mounted on a vehicle or a wheel rim and appeared worn and damaged. (Ex. E (Shehane aff.) ¶ 7.) The tires also were not covered or protected from the weather. (Ex. E (Shehane aff.) ¶ 7.) No present or future use for the tires was apparent, and the tires appeared to have been disposed of on the Site. (Ex. E (Shehane aff.) ¶ 7.) She took two photographs documenting water accumulation in the tires. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. E (Shehane aff.) ¶ 7; Ex. F (Shehane dep.) at 77:13-16.) Neither Hoff nor Munson contradicted Inspector Shehane's report regarding the tires having accumulated water. (Ex. D (Hoff dep.) at 29:24-7; *see* Ex. C (Munson

¹ Hoff's duties include the general management of field operations including scheduling and field engineering. (Ex. D (Hoff dep.) at 5:23-24.) In essence, Munson runs Northern's business office while Hoff runs the field operations. (Ex. D (Hoff dep.) at 6:1-9, 19-20.)

dep.) at 44:18-45:17.)

Inspector Shehane also observed a pile of material on the ground and in the yard area of the Site. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. E (Shehane aff.) ¶ 8.) The pile included construction or demolition debris, lumber, plastic, fabric, metal, white pipe, and other miscellaneous wastes that had been open-dumped on the ground. (Admin. Cit. aff. ¶ 4 & inspection report.) Specific material in the pile included plastic sheeting, wooden pallets, and concrete chunks or brick. (Ex. E (Shehane aff.) ¶ 8.) The material was not covered or protected from the weather. (Ex. E. (Shehane aff.) ¶ 8; *see also* Ex. F (Shehane dep.) at 92:8-24.) Further, no present or future use for the material was apparent, and the material appeared to have been discarded and disposed on the Site. (Ex. E (Shehane aff.) ¶ 8; *also* Ex. F (Shehane dep.) at 65:7-9.) From her observations as well as from her conversation with Northern staff, Inspector Shehane concluded that the materials piled up were waste and included both litter and construction or demolition debris. (Admin. Cit. aff. ¶ 4 & inspection report; *see* Ex. F (Shehane dep.) at 54:18-55:16, 72:8-14, 73:4-7.)

Inspector Shehane took a photograph documenting the pile of refuse or waste, including the litter and construction or demolition debris. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. E (Shehane aff.) ¶ 8; *see* Ex. F (Shehane dep.) at 53:15-22, 69:18-70:2, 71:8-11.) The photograph depicted wood, pipes, plastics, and metals. (Ex. F (Shehane dep.) at 74:9-10, 75:8-9, 75:21-23, 76:3-4, 76:17.) Inspector Shehane then observed and photographed landscape waste and buckets/containers of construction material before returning to Northern's office. (Admin. Cit. aff. ¶ 4 & inspection report.)

After the inspection, Inspector Shehane returned to the office and spoke again to Munson. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. C (Munson dep.) at 23: 16-18.) Northern had a

stack of large tires that Inspector Shehane had mentioned were not covered. (Ex. C (Munson dep.) at 23: 22-24.) Inspector Shehane told Munson that some tires had water in them and weren't properly covered. (Ex. C (Munson dep.) at 26: 10-11.)

Inspector Shehane also told Munson that his facility was not allowed to bring off-site generated waste to the property for disposal and/or further transfer to a disposal site, as that would constitute a waste transfer station that must be permitted by Illinois EPA. (Admin. Cit. aff. ¶ 4 & inspection report.) Inspector Shehane told Munson that there was a pile of debris in the yard, and that Northern could not dump it on the ground. (Ex. C (Munson dep.) at 23:19-23; 28:6-8.) Munson said that he had told employees in the past not to dump demolition debris on the ground, "but they don't always listen." (Ex. C (Munson dep.) at 28:12-19; Admin. Cit. aff. ¶ 4 & inspection report.)

Munson was not familiar with the tires Inspector Shehane mentioned, but after their conversation, he took a look at the tires. (Ex. C (Munson dep.) at 26:12-19.) Munson observed a stack of large tires. (Ex. C (Munson dep.) at 36:23.) The tires were on Northern's property because the tires were Northern's from its equipment. (Ex. C (Munson dep.) at 37: 5-9.) Hoff characterized them as used tires which were not mounted on a vehicle, with some of the tires being worn, some being damaged, but that none of the tires on the site was brand new. (Ex. D (Hoff dep.) at 14:6-15:11.) Munson was asked, "[D]id those tires at that time have water in them?" (Ex. C (Munson dep.) at 26: 20-21.) Munson answered, "I believe they did, yes." (Ex. C (Munson dep.) at 26:22.) Munson instructed one of the guys in the yard to pick up the tires, shake them out, and stack them back up and put a cover on them. (Ex. C (Munson dep.) at 26:23-27:7.) The tires subsequently were taken to a tire disposal facility. (Ex. D (Hoff dep.) at 13:7-8.) At the time of Inspector Shehane's March 14, 2012 inspection, neither Northern nor the Site was

a tire storage or tire disposal site registered with the Illinois EPA. (Ex. E (Shehane aff.) ¶ 9.)

Munson would have no reason to disagree with Inspector Shehane testifying that Exhibits 1 and 2 were true and accurate depictions of the tires that were on Northern's property on March 14, 2012, and that she observed tires at Northern that had water accumulated in them on that date. (Ex. C (Munson dep.) at 29:15-30:16.) Shehane has so attested. (Ex. E (Shehane aff.) ¶ 7.)

In their depositions, both Hoff and Munson recognized materials depicted in the photograph taken by Inspector Shehane of a pile of material on Northern's yard. (Ex. E (Shehane aff.) ¶ 7.) Hoff testified that the photograph showed material as he recalled it being on March 14, 2012. (Ex. D (Hoff dep.) at 21:4-13.) In that photograph, Hoff identified PVC pipe; packing materials for pipe and for fittings; plastic silt fence from excavation sites for erosion control; small pieces of concrete chunks or bricks; packaging and wood materials—"the type of things we get off of our underground sites"—including pallets and dimensional lumber; plastic visqueen. (Ex. D (Hoff dep.) at 23:5-24:15; 25:10-18.) Hoff testified that the pipe and silt fence came from a project site, and the visqueen had covered poured concrete. (Ex. D (Hoff dep.) at 25:10-25:1.) Hoff also testified that the packaging materials were from Northern's shop and had been brought back from job sites. (Ex. D (Hoff dep.) at 22:7-23:13.)

Munson testified that the pile of materials depicted in Inspector Shehane's photograph included pallets, dimensional lumber, plastic, plastic piping, and concrete brick. (Ex. C (Munson dep.) at 38:24-39:18.) Asked whether he had ever seen the materials shown in Exhibit 6 before, Munson testified, "Yeah. I have seen materials like this before. We have a yard full of materials like this." (Ex. C (Munson dep.) at 38:10-14.) In the past, materials like those in Exhibit 6 came from a worksite or the Northern yard. (Ex. C (Munson dep.) at 54.) Munson did not contend that the pile of materials depicted in Exhibit 6 were not on Northern's property on March 14, 2012:

“Not at all.” (Ex. C (Munson dep.) at 38:20-23.)

Hoff testified that pallets and pipe material were thrown in a pile and basically just piled up. (Ex. D (Hoff dep.) at 13:9-15.) Hoff testified that there were multiple origins of the material in Inspector Shehane’s photograph, but the origins are “[p]rimarily from our shop and job sites.” (Ex. D (Hoff dep.) at 22:7-11.) Northern has a shop attached to its office where its vehicles and heavy equipment are repaired. (Ex. D (Hoff dep.) at 22:12-19.) Hoff testified that some of the material in Inspector Shehane’s photograph would come from that shop and some also would come from Northern’s commercial excavating and underground work sites. (Ex. D (Hoff dep.) at 22:23-23:4.) Hoff testified that it was possible that some of the materials depicted in Inspector Shehane’s photograph had been on the Northern site for at least a month. (Ex. D (Hoff dep.) at 26:23-27:12.) After reviewing the fourth paragraph of Inspector Shehane’s narrative inspection report, Hoff disputed that the materials were open-dumped waste: “I don’t think that it was dumped waste, it was not intended to be disposed of on our site. It was – um – things that were set out in the back of a truck and into a pile so that we could dispose of them properly. I don’t think it was ‘dumped’ there for disposal.” (Ex. D (Hoff dep.) at 30:9-31:4.)

After Inspector Shehane left, Hoff spoke with Munson, and the two agreed to clean up some broken pallets and pipe that were in the yard on the Site and to clean up some loose tires. (Ex. D (Hoff dep.) at 11:21-12:16.) Hoff testified that packaging material from Northern’s shop, packaging material that had been brought back from job sites, and some scrap pipe brought back from job sites were on the Site. (Ex. D (Hoff dep.) at 12:7-24.) Hoff testified that the materials were hauled to a landfill “shortly thereafter.” (Ex. D (Hoff. dep.) at 13:1-6.)

At the time of Inspector Shehane’s March 14, 2012 inspection, neither Northern nor the Site was a sanitary landfill or a waste transfer station permitted to operate by Illinois EPA. (Ex. E

(Shehane aff.) ¶¶ 10-11; *see also* Ex. F (Shehane dep.) at 77:2-7.)

II. ARGUMENT

A. NO GENUINE ISSUE EXISTS THAT NORTHERN CAUSED OR ALLOWED OPEN DUMPING RESULTING IN LITTER AND THE DEPOSIT OF CONSTRUCTION OR DEMOLITION DEBRIS, AND THUS ILLINOIS EPA IS ENTITLED TO SUMMARY JUDGMENT.

As a result of the March 14, 2012 inspection, Illinois EPA cited Northern for violating Sections 21(p)(1) and (p)(7) of the Act, which provide as follows:

§ 21. Prohibited acts. No person shall:

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

...

(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; or

(ii) clean construction or demolition debris as defined in Section 3.160(b) of this act.

415 ILCS 5/21(a), (p)(1) & (p)(7) (West 2012). Section 3.305 of the Act defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill,” while Section 3.385 defines “refuse” as meaning “waste.” 415 ILCS 5/3.305, 3.385 (West 2012).

Further, this Board has relied upon the definition in the Illinois Litter Control Act, 415 ILCS 105/1 *et seq.*, in defining “litter.” *Illinois EPA v. Northern Ill. Serv. Co.*, PCB No. AC 05-40 at 5 & 9 (Sept. 21, 2006). That act defines litter as follows:

(a) “Litter” means any **discarded, used** or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other **packaging construction** material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor

vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS 105/3 (West 2012) (emphasis added). This Board has found that “litter” comprises discarded materials such as metal, pallets, plastics, and lumber. *Illinois EPA v. Porter et al.*, PCB No. AC 2012-053 (Sept. 5, 2013).

In addition, subsections 3.160(a) and (b) of the Act provide in pertinent part as follows:

(a) “General construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials.

...

(b) “Clean construction or demolition debris” means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities.

...

415 ILCS 5/3.160 (West 2012).

In the instant action, Illinois EPA Inspector Donna Shehane received permission from Northern to conduct an inspection on its property on March 14, 2012. (Ex. C (Munson dep.) at 5:20-23; 9:7-10; 19:19-20:1; *see also* Ex. F (Shehane dep.) at 51:14-20.) Having received training on open dumping sites, including sites that are not permitted to receive waste to store or treat or dispose of it, Inspector Shehane conducted her inspection, walking about Northern’s facility and photographing the Site. (Admin. Cit. aff. ¶¶ 2-3; Pet. for Review at 1 ¶ 4; Ex. C (Munson dep.) at 18:8-12 & 21:17-22; Ex. F (Shehane dep.) at 15:7-11.)

Inspector Shehane observed a pile of material on the ground and in the yard area of the Site. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. E (Shehane aff.) ¶ 8.) Inspector Shehane took a photograph documenting the pile of refuse or waste, including the litter and construction or demolition debris. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. E (Shehane aff.) ¶ 8; *see* Ex. F (Shehane dep.) at 53:15-22, 69:18-70:2, 71:8-11.) The photograph depicted wood, pipes, plastics, and metals. (Ex. F (Shehane dep.) at 74:9-10, 75:8-9, 75:21-23, 76:3-4, 76:17.) The material was not covered or protected from the weather. (Ex. E. (Shehane aff.) ¶ 8; *see also* Ex. F (Shehane dep.) at 92:8-24.) Further, no present or future use for the material was apparent, and the material appeared to have been discarded and disposed on the Site. (Ex. E (Shehane aff.) ¶ 8; *also* Ex. F (Shehane dep.) at 65:7-9.) While Hoff disputed that the materials were open-dumped waste, contending they were not dumped on Northern's site for disposal, Hoff testified that the materials "were set out in the back of a truck and into a pile so that we could dispose of them properly." (Ex. D (Hoff dep.) at 30:9-31:4.) However, Northern could not pile waste upon its grounds with the intention of disposing it elsewhere later on, as neither Northern nor the Site was a sanitary landfill or a waste transfer station permitted to operate by Illinois EPA at the time of Inspector Shehane's March 14, 2012 inspection. (Ex. E (Shehane aff.) ¶¶ 10-11; *see also* Ex. F (Shehane dep.) at 77:2-7.)

The materials in the pile constituted litter. *See* 415 ILCS 105/3; *Illinois EPA v. Northern Ill. Serv. Co.*, PCB No. AC 05-40 at 5 & 9 (Sept. 21, 2006); *Illinois EPA v. Porter et al.*, PCB No. AC 2012-053 (Sept. 5, 2013). The pile contained lumber, plastic, and metal, including plastic sheeting and wooden pallets. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. E (Shehane aff.) ¶ 8.) Northern's Hoff testified that Inspector Shehane's photograph of the pile showed material as he recalled it being on March 14, 2012. (Ex. D (Hoff dep.) at 21:4-13.) In that

photograph, Hoff identified PVC pipe; packing materials for pipe and for fittings; plastic silt fence from excavation sites for erosion control; packaging, wood pallets, and lumber; and plastic visqueen. (Ex. D (Hoff dep.) at 23:5-24:15; 25:10-18.) Hoff testified that the packaging materials were from Northern's shop. (Ex. D (Hoff dep.) at 22:7-23:13.)

The materials in the pile also constituted general construction or demolition debris. *See* 415 ILCS 5/3.160. The materials included concrete chunks or brick. (Ex. E (Shehane aff.) ¶ 8.) In Inspector Shehane's photograph of the pile that Hoff testified showed material as he recalled it being on March 14, 2012, Hoff identified PVC pipe; plastic silt fence from excavation sites for erosion control; small pieces of concrete chunks or bricks; and wood materials including pallets and dimensional lumber. (Ex. D (Hoff dep.) at 23:5-24:15; 25:10-18.) Hoff testified that the pipe and silt fence came from a project site. (Ex. D (Hoff dep.) at 25:10-25:1.)

Northern is an excavation, demolition, and site utility contractor. (Ex. C (Munson dep.) at 5:24-6:1-2.) Most of its business comprises construction and demolition. (Ex. C (Munson dep.) at 6:21-24.) Hoff testified that there were multiple origins of the material in Inspector Shehane's photograph, but the origins are "[p]rimarily from our shop and job sites." (Ex. D (Hoff dep.) at 22:7-11.) Hoff testified that some of the material in Inspector Shehane's photograph would come from that shop and some also would come from Northern's commercial excavating and underground work sites. (Ex. D (Hoff dep.) at 22:23-23:4.) Hoff testified that it was possible that some of the materials depicted in Inspector Shehane's photograph had been on the Northern site for at least a month. (Ex. D (Hoff dep.) at 26:23-27:12.)

Thus, no genuine issue of material fact exists that Northern caused or allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris at the dump site, as the pile observed and documented by Inspector Shehane on March 14,

2012 comprised materials constituting litter and general construction or demolition debris; as the materials were not covered or protected from the weather; as no present or future use for the materials was apparent; as the material appeared to have been discarded and disposed on the Site; and as Hoff testified that the materials were piled on Northern's grounds for subsequent proper disposal but neither Northern nor the Site was permitted at the time as a sanitary landfill or a waste transfer station. As no genuine issue of material fact exists, Illinois EPA is entitled to summary judgment in its favor and against Northern for violation of Sections 21(p)(1) and 21(p)(7) of the Act as a matter of law.

**B. ILLINOIS EPA IS ENTITLED TO SUMMARY JUDGMENT,
AS NO GENUINE ISSUE EXISTS THAT NORTHERN CAUSED OR
ALLOWED WATER TO ACCUMULATE IN USED OR WASTE TIRES.**

As a result of the March 14, 2012 inspection, Illinois EPA cited Northern for violating Section 55(k)(1) of the Act, which provides as follows:

§ 55. Prohibited activities.

...
(k) No person² shall:

(1) Cause or allow water to accumulate in used or waste tires. The prohibition set forth in this paragraph (1) of subsection (k) shall not apply to used or waste tires located at a residential household, as long as not more than 12 used or waste tires are located at the site.

415 ILCS 5/55(k)(1) (West 2012). Section 54.13 of the Act defines "used tire" as meaning "a worn, damaged, or defective tire that is not mounted on a vehicle," while Section 54.16 defines a "waste tire" as "a used tire that has been disposed of." 415 ILCS 5/54.13 & 54.16 (West 2012).

In the instant action, Inspector Shehane reported observing four large tires at the southwest corner of Northern's facility. (Admin. Cit. aff. ¶ 4 & inspection report.) The tires were not mounted on a vehicle or a wheel rim and appeared worn and damaged. (Ex. E (Shehane aff.)

² Section 3.315 of the Act defines "person" as any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns." 415 ILCS 5/3.315 (West 2012).

¶ 7.) The tires also were not covered or protected from the weather. (Ex. E (Shehane aff.) ¶ 7.) No present or future use for the tires was apparent, and the tires appeared to have been disposed of on the Site. (Ex. E (Shehane aff.) ¶ 7.)

Inspector Shehane took, and reported taking, two photographs documenting water accumulation in the tires. (Admin. Cit. aff. ¶ 4 & inspection report; Ex. F (Shehane dep.) at 77:13-16.) Following the inspection, Inspector Shehane returned to the Northern office and spoke to Northern's Munson. (Shehane aff. ¶ 4 (Ex. A.) & inspection report.) Munson testified that Inspector Shehane said that Northern had a stack of large tires that were not properly covered and that some tires had water in them. (Munson dep. at 23: 22-24; 26:10-11.) Munson was not familiar with the tires Inspector Shehane mentioned, but Munson testified that, after their conversation, he took a look at the tires. (Munson dep. at 26:12-19.)

Munson observed a stack of large tires that was on Northern's property because the tires were from Northern's equipment. (Ex. C (Munson dep.) at 37:5-9; 36:23.) Hoff characterized them as used tires which were not mounted on a vehicle, with some of the tires being worn, some being damaged, but that none of the tires on the site was brand new. (Ex. D (Hoff dep.) at 14:6-15:11.) When asked, "[D]id those tires at that time have water in them?", Munson answered, "I believe they did, yes." (Ex. C (Munson dep.) 26:20-22.) Munson testified that he instructed one of the guys in the yard to pick up the tires, shake them out, and stack them back up and put a cover on them. (Ex. C (Munson dep.) at 26:23-27:7.) Northern's Hoff testified the tires subsequently were taken to a tire disposal facility. (Ex. D (Hoff dep.) at 13:7-8.)

During their deposition testimony, neither Hoff nor Munson contradicted Inspector Shehane's report regarding the tires having accumulated water. (Ex. D (Hoff dep.) at 29:24-7; *see* Ex. C (Munson dep.) at 44:18-45:17.) Further, Munson testified that he would have no

reason to disagree with Inspector Shehane testifying that Exhibits 1 and 2 were true and accurate depictions of the tires that were on Northern's property on March 14, 2012, and that she observed tires at Northern that had water accumulated in them on that date. (Ex. C (Munson dep.) at 29: 15-30:16.) Shehane has so attested. (Ex. E (Shehane aff.) ¶ 7.)

Thus, no genuine issue of material fact exists that Northern caused or allowed water to accumulate in used or waste tires, as the tires came from Northern's vehicles; were stacked in Northern's yard; were used, worn, damaged, and not mounted on a vehicle; had no apparent present or future use and appeared to have been disposed of on the Site; were not properly covered or otherwise protected from the weather so as to prevent water accumulation; did, in fact, accumulate water; and subsequently were taken to a tire disposal facility. As no genuine issue of material fact exists, Illinois EPA is entitled to summary judgment in its favor and against Northern for violation of Section 55(k)(1) of the Act as a matter of law.

III. CONCLUSION

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, moves this honorable Board to enter summary judgment in favor of the Complainant and against the Respondent.

Dated: February 18, 2014

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Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

BY:



Scott B. Sievers
Special Assistant Attorney General

Illinois Environmental Protection Agency v. Northern Illinois Service Company
Pollution Control Board No. AC 2012-051

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT** and **MEMORANDUM OF LAW IN SUPPORT OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT** upon:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
John.Therriault@Illinois.gov

Peter DeBruyne
Peter DeBruyne, P.C.
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by transmitting true copies thereof via e-mail from Springfield, Illinois to the designated e-mail address of record for the attorney or party after 3:00 p.m. on the afternoon of February 18, 2014.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: February 18, 2014

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