

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 NORTHERN ILLINOIS )  
 SERVICE COMPANY, )  
 )  
 Respondent. )

AC 2012-051  
 (IEPA No. 87-12-AC)  
 (Administrative Citation)

**NOTICE**

John T. Therriault  
 Clerk of the Board  
 Illinois Pollution Control Board  
 100 West Randolph Street, Suite 11-500  
 Chicago, Illinois 60601-3218

Peter DeBruyne  
 Peter DeBruyne, P.C.  
 838 North Main Street  
 Rockford, IL 61103

Bradley P. Halloran  
 Hearing Officer  
 Illinois Pollution Control Board  
 100 West Randolph Street, Suite 11-500  
 Chicago, Illinois 60601-3218

PLEASE TAKE NOTICE that I have today caused to be filed COMPLAINANT'S POST-HEARING BRIEF with the Illinois Pollution Control Board, a copy of which is served upon you.

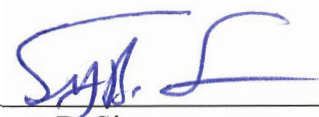
Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
 PROTECTION AGENCY,

Dated: September 19, 2014

Complainant,

Scott B. Sievers  
 Attorney Registration No. 6275924  
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BY:   
 Scott B. Sievers  
 Special Assistant Attorney General

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	)	(IEPA No. 87-12-AC)
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	)	
Respondent.	)	

**COMPLAINANT’S POST-HEARING BRIEF**

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and for Complainant’s Post-Hearing Brief states the following:

**I. INTRODUCTION**

For the reasons set forth below, Illinois EPA prays that this honorable Board find that a preponderance of the evidence presented at the hearing in this matter on July 24, 2014 proves the Respondent, Northern Illinois Service Company, caused or allowed the open dumping of waste in a manner which resulted in litter and the deposition of general construction or demolition debris or clean construction or demolition debris and caused or allowed water to accumulate in used or waste tires on March 14, 2012, in violation of Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Environmental Protection Act, 415 ILCS 5/1 *et seq.*

**II. THE PARTIES**

**A. Illinois Environmental Protection Agency**

The Complainant, Illinois Environmental Protection Agency (“Illinois EPA” or “IEPA”), is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4

(2013), and charged, *inter alia*, with the duty of enforcing the Act. *See, e.g.*, 415 ILCS 5/31.1 (2010).

**B. Northern Illinois Service Company**

The Respondent, Northern Illinois Service Company (“Northern”), is an excavation, construction, and demolition company. (Tr. at 18:5-8.) An excavation and demolition site and utility contractor which does heavy construction, road building, building demolition, and subdivision construction, Northern’s work includes about 70 percent excavating, building site work, and road construction and about 20 percent demolition. (*See* Tr. at 96:8-15, 96:23-97:6; *but see* Tr. at 117:3-17 (demolition accounts for between 25 and 50 percent of Northern’s operations).) Northern’s jobs, whether demolition, excavation, or other construction off-site of its premises, generate debris. (Tr. at 156:20-24.)

Northern employs about 30 people, and its property at 4781 Sandy Hollow Road in Rockford, Illinois is approximately 20 to 35 acres in size. (Tr. at 97:7-9, 98:4-9, 129:15-17.) Northern’s site includes storage of materials and equipment, including trucks and vehicles. (Tr. at 98:19-23.) Northern has about 40 vehicles. (Tr. at 98:24-99:2.)

**III. THE WITNESSES**

**A. William Hoff**

William Hoff is employed as Northern’s superintendent, a position he has held for approximately nine years. (Tr. at 115:14-116:1.) Hoff runs Northern’s field operations while Paul Munson runs Northern’s office. (Tr. at 116:9-14.) Hoff has a bachelor’s degree in civil engineering from Purdue University, and his duties include general management of field operations, scheduling, and field engineering. (Tr. at 116:2-8.) Hoff supervises the vast majority of Northern’s employees, including 25 core field employees and as many as 30 in the summer

when times are busy. (Tr. at 116:19-117:2.)

**B. Paul Munson**

Paul Munson is employed by Northern and works out of its office at 4781 Sandy Hollow Road in Rockford, Illinois. (Tr. at 95:22-96:7.) Munson is an office manager at Northern and has been for 16 years. (Tr. at 97:13-19.) His duties include finding bid opportunities, preparing bids for projects, and handling the administrative side such as invoicing, change orders, and project correspondence. (See Tr. at 97:20-24.) Munson is the senior employee in the office, and he does not have a direct supervisor except Northern's owner. (See Tr. at 108:22-109:1.)

**C. Donna Shehane**

Donna Shehane testified that she is an Environmental Protection Specialist III at the Illinois EPA, where she has worked for approximately six and a half years. (Tr. at 10:11-11:10.) Shehane's duties include conducting inspections of solid waste management sites, clean construction and demolition debris sites, as well as conducting Resource Conservation and Recovery Act hazardous waste inspections and inspections in response to citizens' complaints. (See Tr. at 11:11-24.) Shehane earned a bachelor's degree from the University of Illinois in chemistry and an environmental engineering master's degree from IIT. (Tr. at 13:17-14:2.)

Before she worked for Illinois EPA, Shehane worked as a solid waste manager for Kankakee County who did inspections through a delegation agreement with Illinois EPA; as an inspector and solid waste engineer with Will County; as a part-time contractor doing delegated inspections for DuPage County; and as a chemist in labs. (Tr. at 12:5-13:16.) Including her time as an inspector for various counties as well as for Illinois EPA, Shehane has conducted inspections of sites for compliance with the Environmental Protection Act for seventeen and a half years. (Tr. at 14:9-14.)

Shehane physically goes out to sites to conduct inspections. (Tr. at 16:8-10.) When she arrives on site, Shehane generally goes into the office, announces her presence and why she is there, that she would like to conduct an inspection, and gets access permission. (*See* Tr. at 16:11-16.) Shehane then walks the site, investigates and photographs it, sometimes takes notes, then comes back and prepares her inspection report. (*See* Tr. at 16:16-17:10.)

#### **IV. THE MARCH 14, 2012 INSPECTION**

On March 14, 2012, Shehane conducted an inspection of Northern's site at 4781 Sandy Hollow Road in Rockford, Illinois ("the Site"). (Tr. at 17:21-18:4.) Shehane has conducted four inspections at the Site. (Tr. at 19:14-22, 64:9-12.) Her first inspection was in September 2009 and was prompted when Shehane was driving along Route 20 adjacent to the Site and saw a pile of tires on the property. (Tr. at 20:1-9, 57:10-15.) Shehane went to investigate how many tires were there and if Northern was a tire storage site. (Tr. at 20:10-11.) Shehane later conducted a follow-up inspection to that inspection, and a third inspection because Northern had registered as a tire storage site so it was now on the list as needing to be checked periodically. (Tr. at 20:12-21.) From her four inspections in which she walked the yard at Northern, Shehane is familiar with the Site. (Tr. at 21:1-5.) The Site includes a large building with an office, a shop, and the yard, which contains various piles of concrete, gravel, asphalt, and some equipment. (Tr. at 21:6-10.)

When Shehane conducted her March 14, 2012 inspection of the Site, she entered upon Northern's property by driving through a gate and then parked. (Tr. at 21:17-18.) Shehane then entered the office and spoke to Munson, Northern's office manager. (Tr. at 21:19-22:7; *also* Tr. at 99:24-100:8.) Shehane told Munson that she was there to conduct an inspection and asked for access. (Tr. at 21:22-22:1; *see also* 100:9-11.) Munson said that Shehane was free to go ahead

and do the inspection. (Tr. at 22:10-12, 100:12-17.) Shehane then left the office and started walking and inspecting the yard area with her camera and taking photographs. (Tr. at 22:13-15, 50:20-24; *also* Tr. at 100:18-20.) While Hoff and Munson were on-site at Northern's Sandy Hollow property on March 14, 2012, neither accompanied Shehane when she conducted her inspection. (Tr. at 100:23-101:1, 118:14-119:1.) Hoff believed he observed Shehane on the Site that day, but Munson did not observe Shehane conducting her inspection. (Tr. at 101:5-7, 119:1-4.)

Immediately after the March 14, 2012 inspection at the Site, Shehane went back into the Northern office and spoke again with Munson about what she observed. (Tr. at 26:15-27:5; *see also* Tr. at 101:2-4.) Shehane told Munson that there was water in the tires and a pile of debris outside. (Tr. at 27:2-5.) In response, Munson stated that he tries to tell the demo guys not to dump the materials, but they don't always listen. (Tr. at 27:6-9.) Shehane also asked Munson about plastic buckets and landscape waste on the Site, and Munson explained the plastic buckets contained mastic that Northern was going to use and that the landscape waste had been fly-dumped. (Tr. at 27:10-28:7.) Shehane had photographed both the mastic buckets and the landscape waste and included both in her inspection report, but she understood that neither of those items was the subject of the administrative citation hearing. (Tr. at 27:15-28:18.) After she was done speaking with Munson, Shehane got back into her vehicle, left the Site, returned to the office, and started her inspection report. (Tr. at 28:23-29:6.)

Shehane identified IEPA Exhibit A as her inspection report from March 14, 2012, including a couple pages of forms, a narrative inspection report document, and six photographs at the end of the report. (Tr. at 29:21-30:15.) Shehane took the photographs, which are the ones she testified about taking during her inspection. (*See* Tr. at 30:16-22.) Shehane testified that her

observations from the March 14, 2012 inspection were still fresh in her mind when she prepared IEPA Exhibit A, her inspection report, and that she prepared it within a week or two. (Tr. at 31:5-15.) Shehane testified that IEPA Exhibit A was prepared in the ordinary course of her position as an Illinois EPA inspector, and that it was a record kept by Illinois EPA. (Tr. at 30:23-31:4.) IEPA Exhibit A was admitted into evidence. (Tr. at 31:22-23.)

**V. ARGUMENT**

**A. A PREPONDERANCE OF THE EVIDENCE SHOWS NORTHERN CAUSED OR ALLOWED OPEN DUMPING RESULTING IN LITTER AND THE DEPOSIT OF CONSTRUCTION OR DEMOLITION DEBRIS.**

In its Administrative Citation, Illinois EPA alleges that Northern violated Sections 21(p)(1) and (p)(7) of the Act on March 14, 2012, the date of Inspector Shehane's inspection.

Sections 21(p)(1) and (p)(7) 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).



At hearing, Shehane testified that she observed a pile of materials in Northern's yard during her March 14, 2012 inspection. (Tr. at 23:23-24:3.) The materials "were dumped in a haphazard fashion[,] all kind of commingled," Shehane testified. (Tr. at 24:17-18.) Shehane observed plastic, fabric, cardboard, metal, soil commingled with lumber, and concrete or stone brick. (Tr. at 24:21-25:1.) Shehane testified the materials in the pile included pallets and concrete chunks or brick, and the materials were consolidate by being piled on top of each other. (Tr. at 43:2-7.)

Shehane identified IEPA Exhibit E as a photo she took of the pile of debris she observed on-site during her March 14, 2012 inspection, and stated that the photo truly and accurately depicted her observation. (Tr. 40:21-41:12.) Shehane stated that IEPA Exhibit E also showed a pile of soil, wood, fabric, pallets, and tarps. (Tr. 61:22-62:19.) Shehane circled the soil on IEPA Exhibit E. (Tr. at 63:5-7.) Shehane testified that nothing separated the materials in the pile depicted in IEPA Exhibit E from resting directly upon the ground. (Tr. at 42:20-43:1.) Shehane confirmed that the material photographed in IEPA Exhibit E was the "pile of open dumped waste" to which she referred in her inspection report, IEPA Exhibit A. (Tr. at 41:13-19.) She testified that the debris pile depicted in IEPA Exhibit E was the sole basis for the allegations in the Administrative Citation of violations of Sections 21(p)(1) and 21(p)(7) of the Act. (*See* Tr. at 41:20-42:5.) IEPA Exhibit E was admitted into evidence. (Tr. at 48:22-49:9.)

Shehane believed that some of the materials had been generated off-site, but it was possible that some of the materials came from on-site as well. (*See* Tr. at 53:8-22, 83:17-19.) Shehane testified that she believed that the material pile comprised construction or demolition debris. (*See* Tr. at 53:24-54:10.) When she observed the debris pile, Shehane believed that some of the materials resulted from Northern acting upon some construction or demolition project off-

site and then bringing those materials, which were remnants of what Northern had been working on, and piling them up. (Tr. at 54:11-55:1, 55:22-56:8.)

Shehane said that she could not tell from looking at the materials if there was any future use intended for them. (Tr. at 25:3-6.) The materials in the pile were not covered or otherwise protected in any way from the weather, and no present or future use of the materials was apparent to Shehane. (Tr. at 43:8-13, 19-22.) The materials in the pile were not preserved in any way for future use. (Tr. at 25:7-26:13.)

In her career, Shehane has conducted solid waste inspections that include landfills and waste transfer stations, and she is familiar with what discarded materials look like from observing discarded materials during those inspections. (Tr. at 43:23-44:19.) In Shehane's experience, the material that is piled up and depicted in IEPA Exhibit E appeared to her to be discarded material. (Tr. at 44:20-45:11.) The pile of materials depicted in IEPA Exhibit E indicated to Shehane that they had been discarded by "the way it's all jumbled and haphazard like it came off the back of a truck. Some of it – this fabric here looks ripped. It's not organized in any way. Some of it is dirty." (Tr. at 45:13-20.)

Shehane testified that, when she was on site on March 14, 2012 and observed the material pile in IEPA Exhibit E, she did not observe anything of that pile or of that material indicating to her that the material was going to be disposed of imminently. (Tr. at 45:23-46:23.) Shehane said the pile of materials shown in IEPA Exhibit E was not contained in a dumpster, garbage can, or garbage bag, but was deposited or placed and resting upon the ground. (Tr. at 42:6-19.)

Immediately after Shehane conducted her March 14, 2012 inspection, she went back into Northern's office and spoke to Munson, informing him there was a pile of debris or material in the yard. (*See* Tr. at 26:15-27:5, 47:2-11, 101:8-11, 105:11-15.) Shehane told Munson that

Northern could not dump upon its ground. (Tr. at 105:18-21.) Munson admitted previously testifying truthfully under oath that he responded to Shehane by stating, "I don't know why it's there because I told the guys, don't dump it from demolition jobs." (Tr. at 101:12-104:4.) When he referred to "guys," Munson was referring to Northern employees. (Tr. at 104:5-9.) Munson told Shehane that he tries to tell the demo guys not to dump the materials, but they don't always listen. (Tr. at 27:6-9.) Munson did not say anything to Shehane about the pile of materials going to the landfill at any time, or that the materials would be disposed of in any way at all. (Tr. at 47:2-19.) After Shehane conducted her inspection, Hoff spoke to Munson, and they agreed to clean up some broken pallets and pipe in the yard. (Tr. at 119:5-14.)

Munson considers most of Northern's property and anything outside the building to be the yard. (Tr. at 99:3-15.) Munson testified that Northern has a yard full of materials like those depicted in IEPA Exhibit E, and that in the past, such materials could come from Northern's yard or from a worksite. (*See* Tr. at 106:6-18.) In the pile of materials depicted in IEPA Exhibit E, Munson identified wood pallets, boards, concrete bricks, a piece of pipe, a piece of sewer pipe, an orange traffic cone, and some plastic sheathing. (Tr. at 113:15-20.) Of the items in the pile depicted in IEPA Exhibit E, Munson testified, "The items in this pile ... are pallets and leftover materials from project sites and from our materials that we have in the yard. It looks like the standard stuff that we use." (Tr. at 110:23-111:5.)

On the date of Shehane's inspection, Hoff observed pallets and pipe materials that were piled upon in the yard, and that pile included large packaging materials and scraps of pipe and silt fence, some of which were from Northern's projects and others which came from Northern's shop. (Tr. at 120:21-121:12.) Packaging materials were in Northern's yard from its shop and from being brought back from job sites. (*See* Tr. at 119:15-120:4.) There also was some pipe that

was brought back from job sites that was on Northern's site on March 14, 2012. (*See* Tr. at 120:5-9.) The packing material and pipe subsequently were hauled to a landfill. (Tr. at 120:10-12.)

Hoff testified that he saw the pile of materials depicted in IEPA Exhibit E on March 14, 2012. (*See* Tr. at 138:6-12.) IEPA Exhibit E shows material as Hoff recalled it being at the yard at Northern on March 14, 2012. (Tr. at 123:24-124:4.) Hoff testified that the origin of the material depicted in IEPA Exhibit E is primarily the shop, the yard, and job sites. (Tr. at 124:5-9.) Some of the material depicted in IEPA Exhibit E came from Northern's shop, whereas some came from commercial excavation and underground worksites. (Tr. at 125:13-19.) "I see a piece of pipe that I'm sure came from a worksite." (Tr. at 125:19-20.)

Hoff identified IEPA Exhibit E as a picture of pallets, lumber, silt fence, pipe, a traffic cone, form boards, and Visqueen, a plastic sheeting used by Northern and placed over concrete in order to slow the curing process. (*See* Tr. at 122:24-123:23.) Hoff circled a traffic cone on IEPA Exhibit E. (Tr. at 124:12-125:3.) "I see form boards and Visqueen from a concrete pour that we had poured at our yard just prior to this date," Hoff testified. (Tr. at 124:9-11.) Hoff said that he saw concrete form boards in the pile from a concrete pour a week or two beforehand along the southern and eastern portions of Northern's site around the concrete recycling facility. (Tr. at 143:3-18.) Hoff acknowledged seeing two fence posts laying there from having cleared out an old fence line from Northern's site. (Tr. at 144:2-3.) Hoff saw pallets that he thought had wire mesh or rebar delivered on them for a concrete pour, and "Visqueen that we use to cover the concrete pour because it was still getting down below freezing at night." (Tr. at 144:4-8.) Hoff also saw a box he remembered having dowel bars, which are used to join different parts of pavement, as well as concrete brick on the bottom of the pile that is used to set wire mesh on so

that the wire mesh is in the center of a concrete slab or in the construction of concrete or storm sewers. (Tr. at 144:9-145:2.) The pallet on top in IEPA Exhibit E came from a worksite. (Tr. at 166:21-22.)

Hoff testified that materials in IEPA Exhibit E included packaging materials, PVC pipe, silt fence, wood materials, concrete forms, and concrete brick that forms are set on and used in the construction of storm sewers. (*See* Tr. at 125:21-126:3.) Some of those are types of materials they get from Northern's underground sites. (Tr. at 126:4-7.) Hoff was sure the pipe came from an underground site, but the silt fence could have come from either a project site or Northern's shop. (Tr. at 126:8-11.) "We had silt fence up along Highway 20 as we had been doing some earthwork. It could have come from there or a project site." (Tr. at 126:12-14.) Prior to the inspection, Northern had been doing some grading along its southern property line, and they placed a silt fence along the property line to control erosion. (*See* Tr. at 126:16-22.) The silt fence would have come from a project site or a project on Northern's own property. (*See* Tr. at 126:23-127:7.) The pallet may have been delivered from a site for an excavating job. (Tr. at 140:5-6.)

Hoff testified that he saw pipe in the pile, and that Northern uses piping material when it is constructing sewers. (Tr. at 145:17-146:18.) Hoff testified,

Those are pieces of pipe that came back to the site from a job site, I'm sure. Typically, we store them in our yard on the west side of our property, but if we accumulate too many small pieces of pipe that we can't use, we discard them because it's just not feasible to keep small piece[s] of pipe around. They are really not very usable or if a piece of pipe becomes cracked or damaged, we get rid of it and I'm sure that's – I can see that's a short piece here.

(Tr. at 146:1-13; *see also* Tr. at 146:14-21.)

Hoff estimated the square footage of that pile to be approximately 20 feet by 30 feet. (Tr. at 138:13-17.) Hoff testified that the materials depicted in IEPA Exhibit E were set out in the

back of a truck and into a pile so that Northern could dispose of them properly. (Tr. at 127:16-20.)

When landfills are closed, Hoff explained how Northern handles materials such as those shown in IEPA Exhibit E: "Well, if it's something like this, like packaging materials, we collect it in a pile at our shop and then when the pile is large enough to justify a load, it's removed to a landfill." (See Tr. at 166:14-168:1.) The truck Northern uses to transport material to the landfill carries loads of approximately 20 tons. (Tr. at 168:13-18.)

Shehane is familiar with the requirements of a sanitary landfill, and on March 14, 2012 Northern's Sandy Hollow site did not meet those requirements. (Tr. at 48:4-10.) Further, Shehane testified that, as of March 14, 2012, Northern's Sandy Hollow site did not have a permit to operate a sanitary landfill or a waste transfer station. (Tr. at 47:20-48:3.)

A preponderance of the evidence in this case shows that Northern caused or allowed the open dumping of waste in a manner which resulted in litter and the deposition of general construction or demolition debris or clean construction or demolition debris upon its Site as of March 14, 2012.

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). Litter includes discarded or used waste such as packaging construction material as well as discarded metal, pallets, plastics, and lumber. *Id.* In the pile depicted in IEPA Exhibit E, Shehane observed plastic, cardboard, metal, lumber and wood, and pallets. (Tr. at 24:21-25:1, 43:2-7, 61:22-62:19.) Munson identified wood pallets, boards, and plastic sheathing in IEPA Exhibit E. (Tr. at 113:15-20.) Hoff, who had previously identified IEPA Exhibit E as showing a pile of materials as he recalled it being in Northern's yard on

March 14, 2012, identified IEPA Exhibit E as a picture of materials including packaging materials, lumber, wood, form boards, plastic sheeting, and pallets, with the pallet on top of the pile specifically coming from a worksite. (Tr. at 122:24-124:9-11, 125:21-126:3, 166:21-22.)

Materials in the pile also constituted general construction or demolition debris. *See* 415 ILCS 5/3.160. Shehane testified that she observed plastic, tarps, lumber or wood, soil, and concrete chunks or brick as well as metal and cardboard. (Tr. at 24:21-25:1, 61:22-62:19.) In the pile of materials depicted in IEPA Exhibit E, Munson identified boards, concrete bricks, a piece of pipe, a piece of sewer pipe, an orange traffic cone, and plastic sheathing, which he characterized as “leftover materials from project sites and from our materials that we have in the yard.” (Tr. at 110:23-111:5, 113:15-20.) Hoff, who identified IEPA Exhibit E as showing the materials in Northern’s yard as he recalled them on March 14, 2012, testified the pile in the exhibit included lumber, a traffic cone, concrete form boards, Visqueen plastic sheeting for concrete pours, pipe, silt fence, fence posts from removed fence line, a box of dowel bars used to join pavement, and concrete brick. (*See* Tr. at 122:24-123:23, 124:9-126:3, 143:3-18, 144:2-146:21.) Hoff testified the silt fence could have come from either a project site or Northern’s shop because they had a silt fence up along the highway because they had been doing some earthwork such as grading and they used the fence to control erosion. (Tr. at 126:8-127:7.) Hoff testified that he saw a short piece of pipe in the pile, that Northern uses such pipe in constructing sewers, but that it discards short pieces because they are not very usable. (Tr. at 145:17-146:21.)

Thus, there is no doubt that the pile of materials on the Northern Site on March 14, 2012 and depicted in IEPA Exhibit E comprises the types of materials that may constitute litter and construction or demolition debris.

A preponderance of the evidence also shows that these materials constituted refuse or waste consolidated into a pile. Shehane testified the materials were not covered or otherwise protected in any way from the weather, no present or future use of the materials was apparent, the materials were not preserved in any way for future use, and nothing separated the materials from resting directly upon the ground. (Tr. at 25:3-26:13, 42:20-43:1, 43:8-22.) The materials appeared to Shehane to have been discarded by the way they were all jumbled and haphazard, unorganized, and dirty, as if it had come off the back of a truck. (Tr. at 43:23-45:20.) When Shehane told Munson that Northern could not dump on its property, Munson responded, "I don't know why it's there because I told the guys, don't dump it from demolition jobs." (Tr. at 27:6-9, 101:12-104:9.) Moreover, Hoff testified that the materials shown in IEPA Exhibit E were, in fact, set out in the back of a truck and into a pile so Northern could dispose of them. (Tr. at 127:16-20.) Hoff explained that Northern sometimes collects materials such as those depicted in IEPA Exhibit E into a pile at their shop and, when the pile is large enough to justify a load, it is removed to a landfill. (Tr. at 166:14-168:1.) Hoff testified that packing material and pipe from job sites subsequently were hauled to a landfill. (Tr. at 119:15-120:12.)

Finally, Shehane testified that the Site did not meet the requirements of a sanitary landfill, and that Northern did not have a permit as of March 14, 2012 to operate a sanitary landfill or waste transfer station at the Site. (Tr. at 47:20-48:10.)

Consequently, Illinois EPA proved by a preponderance of the evidence its allegation in the Administrative Citation that Northern caused or allowed the open dumping of waste in a manner which resulted in litter and the deposition of general construction or demolition debris or clean construction or demolition debris upon its Site as of March 14, 2012, and therefore the Board should find that Northern has again violated Sections 21(p)(1) and 21(p)(7) of the Act.



**B. A PREPONDERANCE OF THE EVIDENCE SHOWS NORTHERN ALLOWED WATER TO ACCUMULATE IN USED OR WASTE TIRES.**

In its Administrative Citation, Illinois EPA alleges that Northern violated Section 55(k)(1) of the Act on March 14, 2012, the date of Inspector Shehane's inspection. Section 55(k)(1) provides as follows:

**§ 55. Prohibited activities.**

...

(k) No person 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).

At hearing, office manager Paul Munson testified that Northern's site included storage of equipment, including vehicles. (Tr. 98:19-23). Northern Superintendent William Hoff testified that Northern used 30 or more vehicles in its operations, ranging from SUVs to semis. (Tr. at 117:18-118:1; *but see also* 98:24-99:2 (Munson testified Northern has about 40 vehicles).) Northern has a shop at its Sandy Hollow site for its vehicles and heavy equipment. (Tr. at 125:6-12.) Hoff testified that all of Northern's vehicles use tires, and the vast majority of its vehicles are serviced at Northern's on-site shop. (Tr. at 118:2-13.)

Illinois EPA Inspector Donna Shehane testified that, during her March 14, 2012 inspection, she observed tires at the Site. (Tr. at 23:6-12.) There was a stack of four large tires in the corner, and Shehane took a photograph of water in two of those tires. (Tr. at 23:20-22.) Shehane identified IEPA Exhibits B and C as blowups of two photographs that are attached to IEPA Exhibit A, her inspection report. (*See* Tr. at 33:9-17.) Shehane said that IEPA Exhibits B

and C were photographs she took that are true and accurate depictions of the tires she observed on March 14, 2012 at Northern containing water. (Tr. at 33:14-34:4, 35:1-7.) IEPA Exhibits B and C were admitted into evidence. (Tr. at 48:22-49:9.)

Shehane testified that the tires shown in IEPA Exhibits B and C were off-rim, dirty, worn, with worn treads, and contained water. (Tr. at 36:2-5; *see also* 23:6-17.) Shehane said that she did not observe anything concerning the tires in IEPA Exhibits B and C on March 14, 2012 indicating that those tires were preserved for future use on a vehicle. (Tr. at 36:13-37:2.) The tires were not mounted on a vehicle, were not covered, and were not otherwise protected in any way from the weather. (Tr. at 36:6-12.) Shehane testified that Northern is not a residential household. (Tr. at 35:23-24.)

Hoff acknowledged there were tires that were not mounted on a vehicle and not on rims that were about Northern's yard on that date. (Tr. at 122:17-23.) Hoff testified that some of the tires on site at Northern on that date were in a condition where they could not be used again, with some worn. (Tr. at 121:24-122:11.) Hoff recognized the tires depicted in IEPA Exhibits B and C as being present on the day of Shehane's March 14, 2012 inspection. (Tr. at 133:19-23.) Hoff acknowledged there were tires on the site on March 14, 2012, that were subsequently disposed. (Tr. at 120:13-20.) Hoff said there were tires that had been brought back to the yard and they were later disposed of. (Tr. at 121:20-23.)

Immediately after the March 14, 2012 inspection at the Site, Shehane went back into the Northern office and spoke again with Munson. (Tr. at 26:15-27:1.) Shehane told Munson there was water in some tires and they were not properly covered. (Tr. at 27:2-5, 104:10-16.) Afterwards, Munson took a look at the tires in the yard, and Munson testified the tires did in fact have water in them. (Tr. at 104:17-105:2.) The tires would have come from Northern's

equipment. (Tr. at 104:21-23.) Hoff observed the tires at issue in this action after the March 14, 2012 inspection. (Tr. at 121:14-16.) Hoff spoke to Munson after the inspection, and they agreed to clean up some loose tires that were on the site. (Tr. at 119:5-14.) Munson told a Northern employee in the yard to pick up the tires, shake them out, stack them, and put a cover on them. (Tr. at 105:6-10.)

Although Hoff said that Northern keeps tires for light pole bases and electrical pole bases, pouring concrete into the tires and setting a pole inside of them, (Tr. at 134:12-135:2; *also* 173:6-10), Shehane did not observe anything indicating that Northern planned on filling the tires depicted in IEPA Exhibits B and C with concrete for temporary light poles or electrical poles. (Tr. at 37:4-38:4.) No concrete or cement mix or pole materials were adjacent to the tires on March 14, 2012. (*See* Tr. at 38:5-14.) Hoff acknowledged that, on March 14, 2012, there was nothing immediately around the tires depicted in IEPA Exhibits B and C indicating that those tires were going to be filled with concrete or cement in the near future. (Tr. at 173:11-16.) There also was nothing immediately around those tires indicating that a pole or electrical light fixture would be attached to those tires. (Tr. at 173:17-21.) Further, when Shehane spoke to Paul Munson after her inspection concerning the tires that she identified as having contained water in the yard, Munson did not say anything about those tires being used in the future to contain concrete and hold up electrical or light poles. (Tr. at 38:18-22.)

Thus, a preponderance of the evidence in this case shows that Northern had used tires on its site at the time of the March 14, 2012 inspection, as both Hoff and Shehane testified that there were tires not mounted on a vehicle and not on rims and that some were worn. (Tr. at 23:6-17; 36:6-37:2; 121:24-122:23.)

Northern also had waste tires on its site during the inspection, as Shehane testified that the tires were not covered or otherwise protected in any way from the weather, which indicates Northern had no future use planned for them, and Hoff acknowledged there were tires on site that were unusable and that were subsequently disposed. (Tr. at 36:6-12, 120:13-20, 121:20-23.) Hoff recognized the tires depicted in IEPA Exhibits B and C as being present on the day of the inspection. (Tr. at 133:19-23.) In addition, while Northern apparently contends that it intended to fill the used tires on its site during the inspection with concrete for use to hold up electrical or light poles, (Tr. at 134:12-135:2; *also* 173:6-10), Shehane testified and Hoff admitted there was nothing immediately around the tires depicted in IEPA Exhibits B and C indicating they were going to be filled with concrete or cement in the near future for a pole to be attached, and Munson said nothing about using the tires in that manner when he Shehane told him about water in uncovered tires. (Tr. at 37:4-38:22, 173:11-21.)

Further, a preponderance of the evidence shows that Northern allowed water to accumulate in the used or waste tires on March 14, 2012. Shehane testified the tires depicted in IEPA Exhibits B and C were not covered or otherwise protected in any way from the weather and in fact contained water. (Tr. at 36:2-5; *see also* 23:6-17.) As previously mentioned, Hoff recognized the tires depicted in IEPA Exhibits B and C as being present on the day of Shehane's March 14, 2012 inspection. (Tr. at 133:19-23.) Munson testified that, after Shehane returned from her inspection, she told him there was water in some tires that were not properly covered, and Munson subsequently took a look at the tires in the yard and they did in fact have water in them. (Tr. at 104:10-105:2; *also* 27:2-5.) Munson ultimately told a Northern employee in the yard to pick up the tires, *shake them out*, stack them, and put a cover on them. (Tr. at 105:6-10.) Thus, the evidence clearly shows that Northern allowed used or waste tires on its site on March

14, 2012 to accumulate water, and Northern is not excepted from the requirements of Section 55(k)(1), as it is not a residential household. (Tr. at 35:23-24.)

Consequently, Illinois EPA proved by a preponderance of the evidence its allegation in the Administrative Citation that Northern caused or allowed water to accumulate in used or waste tires on March 14, 2012, and therefore the Board should find that Northern violated Section 55(k)(1) of the Act.

## VI. CONCLUSION

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays that this honorable Board find that a preponderance of the evidence proves the Respondent violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act on March 14, 2012.

Dated: September 19, 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 POST-HEARING BRIEF** upon:

John Therriault  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

Peter DeBruyne  
Peter DeBruyne, P.C.  
838 North Main Street  
Rockford, IL 61103

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on September 19, 2014.

Respectfully submitted,

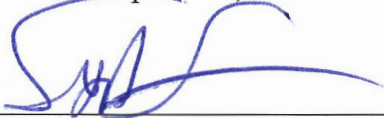
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: September 19, 2014

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