



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829  
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 812-6029

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED  
CLERK'S OFFICE  
JUN 07 2011  
STATE OF ILLINOIS  
Pollution Control Board

(217) 782-9817  
TDD: (217) 782-9143

June 2, 2011

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

AC11-29

ORIGINAL

Re: Illinois Environmental Protection Agency v. Whelan's Inc. & Thomas Whelan  
IEPA File No. 129-11-AC: 0312345310—Cook County

Dear Mr. Therriault:

Enclosed for filing with the Illinois Pollution Control Board, please find the original and nine true and correct copies of the Administrative Citation Package, consisting of the Administrative Citation, the inspector's Affidavit, and the inspector's Illinois Environmental Protection Agency Open Dump Inspection Checklist, issued to the above-referenced respondent(s).

On this date, a copy of the Administrative Citation Package was sent to the Respondent(s) via Certified Mail. As soon as I receive the return receipt, I will promptly file a copy with you, so that the Illinois Pollution Control Board may calculate the thirty-five (35) day appeal period for purposes of entering a default judgment in the event the Respondent(s) fails or elects not to file a petition for review contesting the Administrative Citation.

If you have any questions or concerns, please do not hesitate to contact me at the number above. Thank you for your cooperation.

Sincerely,

Michelle M. Ryan  
Assistant Counsel

Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION

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STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. )  
 )  
WHELAN'S INC. & THOMAS WHELAN, )  
 )  
Respondents. )

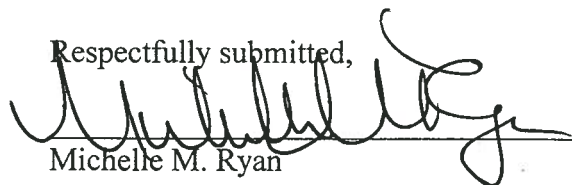
AC 11-29  
(IEPA No. 129-11-AC)

ORIGINAL

NOTICE OF FILING

To: Thomas Whelan Whelan's Inc.  
914 Lenox John Clarke & Assoc. Ltd.  
Glenview, IL 60025 120 W. Eastman St. Ste101  
Arlington Heights, IL 60004

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled ADMINISTRATIVE CITATION, AFFIDAVIT, and OPEN DUMP INSPECTION CHECKLIST.

Respectfully submitted,  
  
Michelle M. Ryan  
Assistant Counsel

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

Dated: June 2, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION

RECEIVED  
CLERK'S OFFICE  
JUN 07 2011  
STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
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Complainant, )  
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v. )  
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WHELAN'S INC. & THOMAS WHELAN, )  
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Respondents. )

AC 11-29  
(IEPA No. 129-11-AC)

ORIGINAL

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2008).

FACTS

1. That Thomas Whelan is the current owner and Whelan's Inc. is the operator ("Respondents") of a facility located at 2265 North Rand Road, Palatine, Cook County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Palatine/Whelan's Inc.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0312345310.
3. That Respondents have owned and operated said facility at all times pertinent hereto.
4. That on April 13, 2011, Tina Kovaszny of the Illinois Environmental Protection Agency's ("Illinois EPA") Springfield Regional Office inspected the above-described facility. A copy

of her inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on 6-2-11, Illinois EPA sent this Administrative Citation via Certified Mail No. 7004 2510 0001 8619 1678, - Thomas Whelan  
7004 2510 0001 8619 1685- Whelan's Inc.

#### VIOLATIONS

Based upon direct observations made by Tina Kovaszny during the course of her April 13, 2011 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondents have violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2008).
  
- (2) That Respondents caused or allowed the open dumping of waste in a manner resulting in Deposition of General Construction or Demolition Debris: or Clean Construction or Demolition Debris a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2008).

#### CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), Respondents are subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Three Thousand Dollars (\$3,000.00). If Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than June 30, 2011, unless otherwise provided by order of the Illinois

Pollution Control Board.

If Respondents elect to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2008), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the One Thousand Five Hundred Dollar (\$1,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2008), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondents shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondents from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondents in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS  
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2008). If Respondents elect to contest this Administrative Citation, then Respondents shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondents.

*Lisa Bonnett* *by SOP*

Lisa Bonnett, Interim Director  
Illinois Environmental Protection Agency

Date: *5/31/11*

Prepared by: Susan E. Konzelmann, Legal Assistant  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

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JUN 07 2011

STATE OF ILLINOIS  
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. )  
 )  
WHELAN'S INC. & THOMAS WHELAN, )  
 )  
 )  
 )  
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Respondents. )

AC 11-29  
(IEPA No. 129-11-AC)

ORIGINAL

FACILITY: Palatine/Whelan's Inc.

SITE CODE NO.: 0312345310

COUNTY: Cook

CIVIL PENALTY: \$3,000.00

DATE OF INSPECTION: April 13, 2011

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.





**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**  
**Open Dump Inspection Checklist**

CLERK'S OFFICE

JUN 07 2011

STATE OF ILLINOIS  
 Pollution Control Board

County: Cook LPC#: 0312345310 Region: 2 Des Plaines  
 Location/Site Name: Palatine/Whelan's Inc.  
 Date: 04/13/2011 Time: From 13:45 To 14:15 Previous Inspection Date: 11/17/2010  
 Inspector(s): Tina Kovaszny, James Haennicke Weather: 50 degrees  
 No. of Photos Taken: # 6 Est. Amt. of Waste: 2565 yds<sup>3</sup> Samples Taken: Yes #      No   
 Interviewed: N/A Complaint #: C11-055  
 Latitude: 42.1525N Longitude: 88.035556W Collection Point Description: Center of Site -  
 (Example: Lat.: 41.26493 Long.: -89.38294) Collection Method: Address Match -

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

Thomas Whelan  
 914 Lenox  
 Glenview, IL 60025-3124  
 (Property Owner) 847-526-0040

Thomas Whelan  
 117 S. Cook Street, #337  
 Barrington, IL 60010  
 847-875-9906 (cell)

**ORIGINAL**

SECTION	DESCRIPTION	VIOL
<b>ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS</b>		
1.	9(a) CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input type="checkbox"/>
2.	9(c) CAUSE OR ALLOW OPEN BURNING	<input type="checkbox"/>
3.	12(a) CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d) CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a) CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d) CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1) Without a Permit	<input type="checkbox"/>
	(2) In Violation of Any Regulations or Standards Adopted by the Board	<input type="checkbox"/>
7.	21(e) DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT AND REGULATIONS	<input type="checkbox"/>
8.	21(p) 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	<input checked="" type="checkbox"/>
	(2) Scavenging	<input type="checkbox"/>
	(3) Open Burning	<input type="checkbox"/>
	(4) Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5) Proliferation of Disease Vectors	<input type="checkbox"/>
	(6) Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

LPC # 0312345310

Inspection Date: 04/13/2011

	(7)	Deposition of: (i) General Construction or Demolition Debris as defined in Section 3.160(a); or (ii) Clean Construction or Demolition Debris as defined in Section 3.160(b)	<input checked="" type="checkbox"/>
9.	55(a)	<b>NO PERSON SHALL:</b>	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
10.	55(k)	<b>NO PERSON SHALL:</b>	
	(1)	Cause or Allow Water to Accumulate in Used or Waste Tires	<input type="checkbox"/>
	(4)	Transport Used or Waste Tires in Violation of the Registration and Placarding Requirements	<input type="checkbox"/>
<b>35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G</b>			
11.	812.101(a)	<b>FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL</b>	<input type="checkbox"/>
12.	722.111	<b>HAZARDOUS WASTE DETERMINATION</b>	<input type="checkbox"/>
13.	808.121	<b>SPECIAL WASTE DETERMINATION</b>	<input type="checkbox"/>
14.	809.302(a)	<b>ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST</b>	<input type="checkbox"/>
15.	815.201	<b>FAILURE TO FILE AN INITIAL FACILITY REPORT WITH THE AGENCY TO PROVIDE INFORMATION CONCERNING LOCATION AND DISPOSAL PRACTICES OF THE FACILITY.</b>	<input type="checkbox"/>
<b>OTHER REQUIREMENTS</b>			
16.		<b>APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:</b>	<input type="checkbox"/>
17.	<b>OTHER:</b>		<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 and subsection (k) of Section 55 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.

0312345310 – Cook County  
Palatine/Whelan's Inc.  
C11-055  
April 13, 2011  
Tina Kovaszny

## NARRATIVE

On October 29, 2010, an inspection was conducted at Whelan's Inc. in response to a complaint that alleged that there was a 40'x20'x100' pile of landscape waste that smelled of sewage being stored on-site. Upon arrival, there was no one on-site. A resident of the area informed me that the site office was one of the trailers on-site. I knocked and entered the trailer, but no one was there. I left my business card and a note asking the business owner, Tom Whelan, to call me. The PIN for the site is 02-02-102-030-0000. The address for the site is 2265 N. Rand Road, Palatine, IL. The house at the entrance of the property is a private residence not affiliated with Whelan Inc. Mr. Whelan pays the taxes on this property. It is possible that Mr. Whelan owns this home and rents it out. The business is operated on the lot behind the home. Whelan Inc. does not receive mail at this address. Their mailing address is a P.O. Box located in Barrington.

At the time of this inspection, I observed a large pile of waste estimated to be 100' x 6' x 10'. Upon closer inspection, the pile appeared to consist of soil, landscape waste, burnt brush, and burnt wood. Other piles of waste in the area consisted of dirt, brush, wood chips and some metal. The ground was very wet, so I could not get to the rear of the property.

I spoke to Mr. Whelan by phone the following week. According to Mr. Whelan, soil, landscape waste, and bricks generated from his landscape business are brought back to this property. Grass is periodically shipped off-site (destination was not disclosed), brick is kept for use on other jobs, and brush is stored in a pile until winter when wood chips will be made from it.

Mr. Whelan was informed that he can no longer bring landscape waste back to this property unless he obtains a permit from the Agency. He was also informed that brush can no longer be brought back to this site unless he obtains a permit, or unless there are no leaves present and it is ground into mulch. Mr. Whelan informed me that the large pile of waste is his brush pile that caught on fire. He stated that this material is now unusable, and that it would be disposed of in December.

On November 17, 2010, another inspection was conducted at the site to see the condition of the rear of the property. Upon inspection, I observed a very large pile of soil commingled with some wood and plastic. This pile is estimated to be 60' x 30' x 30' (approximately 2,000 cubic yards). I also observed some clean construction or demolition debris (CCDD) (approximately 200 cubic yards), and some wood waste.

0312345310 – Cook County  
Palatine/Whelan's Inc.  
C11-055  
April 13, 2011  
Tina Kovaszny

On December 1, 2010, I spoke to Mr. Whelan again to determine where this waste came from and if he was planning on disposing of the waste. Mr. Whelan stated that he would like to meet me at the site to discuss the matter. I agreed and he stated that he would call me the following day to set up a time. Mr. Whelan never phoned me to set up the meeting. Although I phoned Mr. Whelan several times after this and left messages, he never returned my calls.

A violation notice letter was sent to Mr. Whelan (one was sent to his home and one to a P.O. Box). Although the Agency received both green cards back showing that the letters were received on 2-22-11 and 2-24-11, Mr. Whelan never submitted a response (CCA) to the Agency.

On April 13, 2011, another follow up inspection was conducted to determine the condition of the site. During this inspection I observed all of the waste that was on-site during the two previous inspections (see above). In addition to this, I observed a 45' x 10' x 8' foot pile of general refuse consisting mostly of plastic, wood and paper. This waste was previously contained in a dumpster, but was dumped onto the ground since the last inspection. Also, there are 3 new piles of landscape waste (approximately 4' x 4' x 4' each).

### **Violations**

- 21(a) - No person shall cause or allow the open dumping of waste. Landscape waste, soil commingled with plastic and wood, bricks, concrete, wood and general refuse has been dumped on the ground at this property.
- 21(p)(1) - No person shall cause or allow the open dumping of any waste in a manner which results in litter. Landscape waste, soil commingled with plastic and wood, bricks, concrete, wood and general refuse has been dumped on the ground at this property.
- 21(p)(7) - No person shall cause or allow the open dumping of any waste in a manner which results in the deposition of clean construction or demolition debris. Approximately 200 cubic yards of CCDD have been dumped on the ground at this site.





2265 N Rand Rd, Palatine, IL

Overview of Property

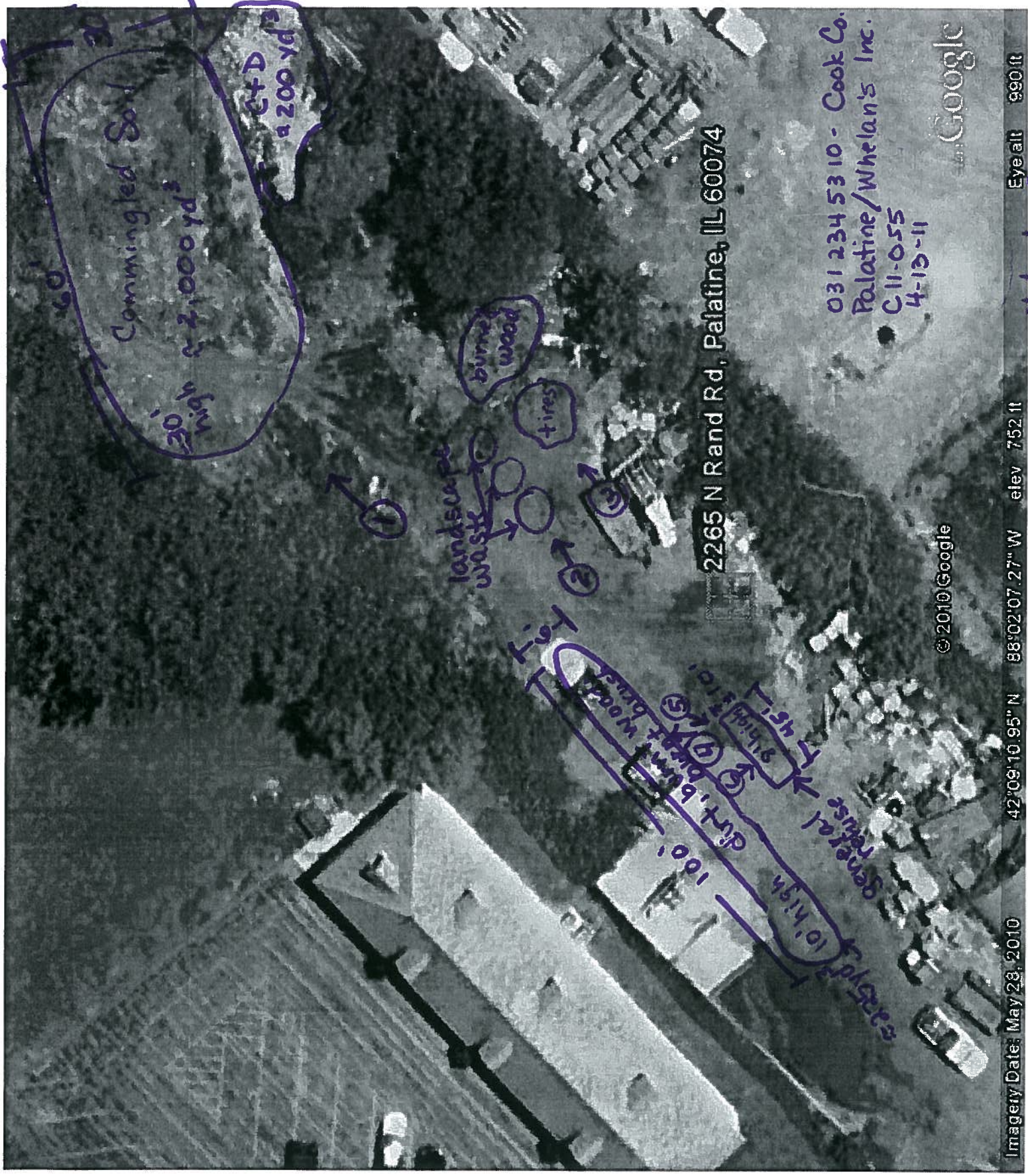
0312345310 - Cook Co  
Palatine/Whelan's Inc  
C11-055  
April 13, 2011

2265 N  
Rand Rd  
Palatine, IL

Rand Rd



N  
W+E  
S



2265 N Rand Rd, Palatine, IL 60074

031 234 5310 - Cook Co.  
Palatine/Whelan's Inc.  
C11-055  
4-13-11

Google

© 2010 Google





**DIGITAL PHOTOGRAPHS** File Names: 0312345310~04132011-[Exp. #].jpg



**Date:** 4-13-11  
**Time:** 13:45 – 14:15  
**Direction:** Northeast  
**Photo by:** Kovaszny  
**Exposure #:** 1  
**Comments:** Pile of soil commingled with plastic and wood.



**Date:** 4-13-11  
**Time:** 13:45 – 14:15  
**Direction:** Northeast  
**Photo by:** Kovaszny  
**Exposure #:** 2  
**Comments:** One of three new piles of landscape waste on-site.





**DIGITAL PHOTOGRAPHS** File Names: 0312345310~04132011-[Exp. #].jpg



Date: 4-13-11  
Time: 13:45 – 14:15  
Direction: Northeast  
Photo by: Kovasznay  
Exposure #: 3  
Comments:  
Waste/used tires  
on-site.



Date: 4-13-11  
Time: 13:45 – 14:15  
Direction: North  
Photo by: Kovasznay  
Exposure #: 4  
Comments: Pile of  
soil, landscape  
waste, burnt wood,  
and burnt brush.





**DIGITAL PHOTOGRAPHS** File Names: 0312345310~04132011-[Exp. #].jpg



Date: 4-13-11  
Time: 13:45 – 14:15  
Direction: Southwest  
Photo by: Kovaszny  
Exposure #: 5  
Comments: General refuse that used to be in a dumpster that was dumped on the ground.



Date: 4-13-11  
Time: 13:45 – 14:15  
Direction: Southeast  
Photo by: Kovaszny  
Exposure #: 6  
Comments: General refuse that used to be in a dumpster that was dumped on the ground.

**PROOF OF SERVICE**

I hereby certify that I did on the 2nd day of June 2011, send by Certified Mail, Return Receipt Requested, 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 ADMINISTRATIVE CITATION, AFFIDAVIT, and OPEN DUMP INSPECTION CHECKLIST

RECEIVED  
CLERK'S OFFICE

JUN 07 2011

STATE OF ILLINOIS  
Pollution Control Board

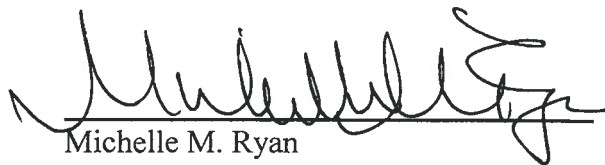
To: Thomas Whelan  
914 Lenox  
Glenview, IL 60025

Whelan's Inc.  
John Clarke & Assoc. Ltd.  
120 W. Eastman St. Ste101  
Arlington Heights, IL 60004

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid

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

ORIGINAL



Michelle M. Ryan  
Assistant Counsel

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