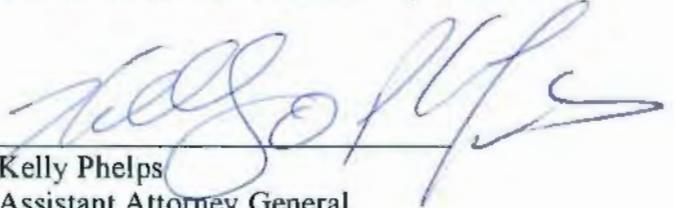


CERTIFICATE OF SERVICE

I hereby certify that I did on January 8, 2013, cause to be served by U.S. Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and MOTION FOR SUMMARY JUDGEMENT AGAINST RHONDA FISHER. Upon the persons listed on the Service List.



Kelly Phelps
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Michael Ryan Fricke
Cover, Shay & Evans, LLP
456 Fulton Street Suite 203
Peoria, Illinois 61602-1220

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 13-3
)
)
) (Enforcement-Land)
 EDWARD W. FISHER, RHONDA L. FISHER,)
 and DEM/EX GROUP, INC.,)
 (an Illinois corporation),)
)
 Respondents.)

**COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO
35 ILL. ADM. CODE 101.516(b) AGAINST RESPONDENT RHONDA L. FISHER**

NOW COME, The PEOPLE by their attorney, LISA MADIGAN, moves this Honorable Board for the entry of an order for summary judgment in favor of the PEOPLE and against Respondent, RHONDA L. FISHER, in accordance with the provisions of Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005 (2010) and Ill S. Ct. Rule 191 (2010), requesting the Board grant the PEOPLE's Motion for Summary Judgment pursuant to the provisions of Section 101.516(b) of the Board's Rules, 35 Ill. Admin. Code 101.516(b), because the record, including pleadings, admissions on file, together with the affidavit of Paul Eisenbrandt, which is attached hereto and incorporated by reference herein as Exhibit 1, show that there is no genuine issue of material fact in dispute, and that the PEOPLE are entitled to judgment as a matter of law. In support of their Motion for Summary Judgment the PEOPLE state as follows:

JURISDICTION

The Pollution Control Board is an independent board created by the legislature pursuant to Section 5 of the Environmental Protection Act, 415 ILCS 5/5 (2010), and charged *inter alia* with the duties and responsibilities of enforcing and administering the Act and associated regulations.

Pursuant to Section 5(d) of the Act, 415 ILCS 5/5(d) (2010), the Board has jurisdiction and authority to conduct proceedings upon this instant Complaint which alleges Respondent has violated the Act and associated regulations.

SUMMARY JUDGMENT AUTHORITY

The Legislature has granted the Board the authority to adopt procedural rules for resolution of actions by summary judgment prior to hearing upon motion by either party (415 ILCS 5/26 (2010)) and this matter should be resolved by granting Complainant's Motion for Summary Judgment.

The Board has adopted procedural rules in 35 Ill. Adm. Code 101.516(b) which provide for resolution of this instant matter by summary judgment prior to hearing, stating in pertinent part:

b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board "will" [*emphasis added*] enter summary judgment.

A motion for summary judgment should be granted when the pleadings and affidavits reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *N. Ill. Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305, 837 N.E.2d 99, 106 (2005). Summary judgment is proper when the matter before the trial court can be decided as a question of law. *First of America Bank, Rockford N.A. v. Netsch*, 166 Ill. 2d 165, 176, 651 N.E.2d 1105, 1110 (1995). The use of summary judgment is

encouraged under Illinois law as an aid to the expeditious disposition of a lawsuit. *Bolingbrook Equity I Ltd. P'ship v. Zayre of Ill., Inc.*, 252 Ill. App. 3d 753, 764, 624 N.E.2d 1287 (1st Dist. 1993).. *Id.* In this instant matter there are no genuine issues of material facts and the PEOPLE are entitled to judgment as a matter of law. It is undisputed that the Respondent admits to the allegations in the Complaint and PEOPLE's right is clear. Pursuant to Section 101.516(b) of the Board's regulations, 35 Ill. Adm. Code 101.516(b), the Board must enter an order granting the PEOPLE's Motion for Summary Judgment.

PROCEDURAL HISTORY

On July 13, 2012, a Complaint was filed before this Honorable Board on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against the Respondent.

Notice of Electronic Filing and the Complaint were properly served on all Respondents and their attorney, Michael R. Fricke by certified mail sent on July 13, 2012. The Notice which is part of the record included the language required by Section 103.204(f) of the Board's rules, 35 Ill. Adm. Code 103.204(f), and that language specifically admonished Respondents that failure to answer the Complaint within 60 days would mean that all allegations in the Complaint would be taken as if admitted.

On July 26, 2012, Hearing Officer, Carol Webb ordered a status conference be held on August 27, 2012, which was held and in which attorney Michael R. Fricke participated.

On August 29, 2012, Attorney Michael R. Fricke entered his appearance in this matter on behalf of Edward W. and Rhonda L. Fisher ("Fisher's").

No attorney has entered an appearance on behalf of DEM/EX.

More than 60 days elapsed after the Respondents received the Complaint and Respondents failed to answer the Complaint or otherwise file a motion as required by Sections 103.204(d) and (e) of the Board's regulations, 35 Ill. Adm. Code 103.204(d) and (e).

On October 29, 2012, Hearing Officer Carol Webb conducted a status conference wherein the Fisher's, by their attorney, stipulated that the allegations in the Complaint were admitted. No attorney appeared for DEM/EX at that time.

On October 31, 2012, the PEOPLE by their attorney, Attorney General, Lisa Madigan, filed a Motion to Deem Facts in the Complaint as Admitted by Respondent, DEM/EX. Respondent, DEM/EX, failed to appear by attorney or otherwise oppose the PEOPLE's Motion and Hearing Officer Carol Web granted the Motion on November 28, 2012.

STATEMENT UNDISPUTED OF FACTS

At the time of the allegations alleged in the Complaint, Respondents EDWARD W. FISHER and RHONDA L. FISHER were the owners of approximately two acres of residential, real-property located at 29998 East Manito Road, Manito, Mason County, Illinois (the "residential site"). (*See*, Paragraph 7, Count I of the Complaint and Eisenbrandt Affidavit).

At a time better known to the Respondent, EDWARD W. FISHER, deposited general construction or demolition debris generated by Respondent DEM/EX, at the residential site. (*See*, Paragraph 8, Count I of the Complaint and Eisenbrandt Affidavit).

At a time better known to him, Respondent deposited miscellaneous wastes at the residential site. (*See*, Paragraph 9, Count I of the Complaint and Eisenbrandt Affidavit).

On August 4, 2010, the Illinois EPA inspected the residential site and found violations of the Act and associated regulations. The violations were related to open dumping of wastes. (*See*, Paragraph 10, Count I of the Complaint and Eisenbrandt Affidavit).

On September 14, 2010, the Illinois EPA issued an Administrative Warning Notice to Respondent, requiring wastes to be removed from the residential site and properly disposed by October 30, 2010. (*See*, Paragraph 11, Count I of the Complaint).

On November 3, 2010, and February 28, 2011, Respondent stated to the Illinois EPA that the wastes had been removed from the residential site and the wastes had been disposed of properly. (*See*, Paragraph 12, Count I of the Complaint).

On March 23, 2011, the residential site was re-inspected by Illinois EPA Inspector Paul Eisenbrandt to verify any removal and proper disposal of the wastes. The inspection revealed ongoing violations of the Act and associated regulations which are enumerated in the Complaint. The violations observed on March 23, 2011, are the subject of Counts I and II of the Complaint. (*See*, Paragraph 13, Count I of the Complaint and Eisenbrandt Affidavit).

On March 23, 2011, the residential site was strewn with large amounts of "general construction or demolition debris" as defined by Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2010). The debris was intermixed with various miscellaneous wastes as enumerated in Sub-paragraphs (a) through (l) of Paragraph 14, Count I of the Complaint and resulted in "litter" as defined by Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2010). (*See*, Paragraph 14, Count I of the Complaint and Eisenbrandt Affidavit).

The Respondent, for some period prior to October 31, 2010, through sometime subsequent to March 23, 2011, deposited general construction or demolition debris at the residential site as depicted in Complaint Exhibit 1. (*See*, Eisenbrandt Affidavit)

The Respondent disposed of wastes at the residential site, as depicted in Complaint Exhibit 1 without a permit granted by the Illinois EPA. (*See*, Paragraph 17, Count II of the Complaint and Eisenbrandt Affidavit).

The Respondent disposed of wastes at the residential site, as depicted in Complaint Exhibit 1 without complying with the Boards' waste disposal regulations in Subtitle G of Title 35, 35 Ill. Admin. Code 722.183 *et seq.*, and without applying for the mandatory permit to develop and operate a landfill as required by Section 812.101(a) of the Board's regulations, 35 Ill. Admin. Code 812.101(a). (See, Paragraphs 19 and 21, Count II of the Complaint and Eisenbrandt Affidavit).

At all times relevant to the Complaint, EDWARD W. FISHER and RHONDA L. FISHER were the owners of the real property located at 805 Adams, Manito, Mason County, Illinois (the "corporate site"). (See, Paragraph 7, Count III of the Complaint and Eisenbrandt Affidavit).

On August 4, 2010, the corporate site was inspected by the Illinois EPA and the wastes enumerated in Sub-paragraphs (a) through (s) of Paragraph 12, Count III of the Complaint and depicted in Complaint Exhibit 2 had been disposed at various locations upon the corporate site. (See, Paragraph 12, Count III of the Complaint and Eisenbrandt Affidavit).

Prior to August 4, 2010 and continuing beyond March 23, Respondent deposited general construction and demolition debris, miscellaneous wastes and used or waste tires at the corporate site. (See, Paragraphs 8-10, Count III of the Complaint and Eisenbrandt Affidavit).

Prior to March 23, 2011, Respondent burned wastes at the corporate site. (See, Paragraph 11, Count III of the Complaint and Eisenbrandt Affidavit).

The corporate site was re-inspected by the Illinois EPA on March 23, 2011, and the wastes enumerated in Sub-paragraphs (a) through (f) of Paragraph 12, Count III of the Complaint and depicted in Complaint Exhibit 2 had been disposed at various locations upon the corporate site. (See, Paragraph 13, Count III of the Complaint and Eisenbrandt Affidavit).

The violations observed during the August 4, 2010, and March 23, 2011, inspections, as described in Paragraphs 12 and 13 of Count III of the Complaint are the subject of Counts III through IV of the Complaint.

The Respondent stored and disposed of wastes as depicted in Complaint Exhibit 2 and further described in Paragraphs 11 and 12 of Count IV of the Complaint. (See, Eisenbrandt Affidavit).

The Respondent conducted a waste storage or waste treatment or waste disposal operation at the corporate site. The corporate site does not meet the requirements of the Act and the regulations and standards thereunder. (See, Paragraph 18, Count III of the Complaint and Eisenbrandt Affidavit).

The Respondent stored and disposed of waste in a manner that resulted in litter, open burning, deposition of general construction or demolition debris as defined in Section 3.160(a) of the Act, and deposition of clean construction or demolition debris as defined in Section 3.160(b) of the Act. (See, Paragraph 20, Count III of the Complaint and Eisenbrandt Affidavit).

The Respondent deposited used or waste tires at the corporate site; as depicted in Complaint Exhibit 2, August 4, 2010, Exposures 3 – 5, 14, 32, 33, pp. 2, 3, 7, 16, 17, and March 23, 2011, Exposures 18, 40 and 41 pp. 27, 38 and 39. (See, Paragraph 16, Count IV of the Complaint and Eisenbrandt Affidavit).

The Respondent caused or allowed water to accumulate in used or waste tires at the corporate site as depicted in Complaint Exhibit 2, August 4, 2010, Exposures 4, 33, pp. 2, 17, and March 23, 2011, Exposures 40 and 41 pp. 38 and 39. (See, Paragraph 18, Count IV of the Complaint and Eisenbrandt Affidavit).

The Respondent burned refuse at the corporate site as depicted in Complaint Exhibit 2, Exposures 1, 2, 4, 27 and 28, pp. 19, 20 and 32 and thereby emitted contaminants into the atmosphere. . (See, Paragraphs 15 and 17, Count V of the Complaint **and Eisenbrandt Affidavit**).

ALLEGATIONS OF NON-COMPLIANCE

Respondent admits that all the allegations in the Complaint are true and Respondent has violated the following 16 provisions of the Act and Board regulations:

COUNT I

- By causing or allowing the open dumping depicted in Complaint Exhibit 1 for some period prior to October 31, 2010, through sometime subsequent to March 23, 2011, as enumerated in Paragraph 21, Count I of the Complaint, Respondent violated the Act's prohibition against open dumping in Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).
- By causing or allowing the open dumping depicted in Complaint Exhibit 1 for some period prior to October 31, 2010, through sometime subsequent to March 23, 2011, resulting in "litter" as defined by Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a), as enumerated in Paragraph 23, Count I of the Complaint, Respondent violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2010), prohibiting open dumping resulting in littering.
- By causing or allowing the open dumping depicted in Complaint Exhibit 1 for some period prior to October 31, 2010, through sometime subsequent to March 23, 2011, resulting in deposition of general construction or demolition debris, as enumerated in Paragraph 25, Count I of the Complaint, Respondent violated Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2010), prohibiting open dumping resulting in deposition of general construction or demolition debris.

COUNT II

- By disposing of wastes at the residential site without a permit granted by the Illinois EPA, as enumerated in Paragraph 16, Count II of the Complaint, Respondent violated the mandatory permit provision of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2010).
- By disposing of wastes at the residential site without complying with the Board's waste disposal regulations in Subtitle G of Title 35, 35 Ill. Admin. Code 722.183 *et seq.*, as enumerated in Paragraph 18, Count II of the Complaint, Respondent violated Section 21(d)(2) of the Act, 415 ILCS 21(d)(2) (2010), which prohibits violation of any regulations or standards adopted by the Board under the Act.
- By conducting a waste disposal operation without applying for the mandatory permit to develop and operate a landfill required by Section 812.101(a) of the Board's regulations, 35 Ill. Admin. Code 812.101(a), as enumerated in Paragraph 20, Count II of the Complaint, Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010), which requires all disposal sites to comply with the Act and associated regulations and Section 812.101(a) of the Board's regulations, 35 Ill. Admin. Code 812.101(a).

COUNT III

- By causing or allowing open dumping of wastes, as enumerated in Paragraph 17, Count III of the Complaint, Respondent violated Section 21 (a) of the Act, 415 ILCS 5/21(a) (2010).
- By conducting a waste storage or waste treatment or waste disposal operation at a site which does not meet the requirements of the Act and the regulations and standards thereunder, as enumerated in Paragraph 19, Count III of the Complaint, Respondent violated Sections 21(d)(2) and (e) of the Act, 415 ILCS 5/21(d)(2), (e) (2010).

- By causing or allowing open dumping of waste in a manner that resulted in litter, as enumerated in Paragraph 21, Count III of the Complaint, the Respondent violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2010).
- By causing or allowing open dumping of waste in a manner that resulted in open burning, as enumerated in Paragraph 22, Count III of the Complaint, the Respondent violated Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2010).
- By causing or allowing open dumping of waste in a manner that resulted in deposition of general construction or demolition debris as defined in Section 3.160(a) of the Act, as enumerated in Paragraph 23, Count III of the Complaint, the Respondent violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2010).
- By causing or allowing open dumping of waste in a manner that resulted in deposition of clean construction or demolition debris as defined in Section 3.160(b) of the Act., as enumerated in Paragraph 24, Count III of the Complaint, the Respondent violated Section 21(p)(7)(ii) of the Act, 415 ILCS 5/21(p)(7)(ii) (2010).

COUNT IV

- By causing or allowing the open dumping of used or waste tires, as enumerated in Paragraph 17, Count IV of the Complaint, the Respondent violated Section 5/55(a)(1) of the Act, 415 ILCS 55(a) (2010).
- By causing or allowing water to accumulate in used or waste tires at the corporate site, as enumerated in Paragraph 19, Count IV of the Complaint, Respondent violated Section 55(k)(1) of the Act, 415 ILCS 5/55(k)(1) (2010).

COUNT V

- By causing, threatening or allowing air pollution from open burning of refuse at the corporate site as enumerated in Paragraph 15, Count V of the Complaint, Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010).
- By causing or allowing open burning of refuse as enumerated in Paragraph 15, Count V of the Complaint, the Respondent violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2010).

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the PEOPLE;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, Complainant states the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.

2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Reducing or eliminating emissions and deposits was both technically practicable and economically reasonable.
5. On information and belief, Respondent has subsequently failed to comply with the Act and the Board Regulations related to open dumping, specifically related to debris removed from Pekin High School's West Campus in Tazewell County, Illinois and deposited at the property of Joyce Hilst d/b/a Lost Creek Storage cited in VN's L-2012-01059, -01060 and -01061.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by **the resp**ondent and to otherwise aid in enhancing voluntary compliance with this Act by the **respondent** and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these afore-mentioned factors, the Complainant states as follows:

1. The Respondent failed to obtain a permit to develop and operate a landfill prior to openly dumping general construction debris, demolition debris, and miscellaneous waste at both the corporate and residential sites. The corporate site violations included additional violations related to used and waste tire disposal and open burning. The corporate site violations began prior to August 4, 2010 and residential site violations began some time prior to October 31, 2010. Both the corporate site and residential site violations continued past March 23, 2011.
2. Respondent was not diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, after the Illinois EPA notified her of noncompliance.
3. Respondent gained economic benefits by avoiding landfill permitting cost, depositing waste a site other than a landfill, burning waste rather than paying for proper disposal, and avoided

the transportation costs, landfill use fees and other cost related to waste tire disposal. Furthermore, the Respondent used waste to shape, form and enhance terrain **features** at the residential site prior to sale.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of sixteen thousand dollars (\$16,000.00) will serve to deter the Respondent from further violations and aid in future voluntary compliance with the Act and Board regulations.
5. Respondent EDWARD W. FISHER, RHONDA L. FISHER, and DEM/EX GROUP, INC. which is controlled by the Fishers, has committed previous violations of the Act related to open dumping at the DEM/EX Group, Inc. corporate site. These violations were resolved before the Board on June 5, 2008, pursuant to AC 2008-026. A \$3,000.00 penalty was awarded by the Board in that matter. A default judgment was entered against DEM/EX in Rock Island County July 17, 2012, with a penalty of \$110,300.00 for violations of the Act related to asbestos removal at a demolition site.
6. Self-disclosure is not at issue in this matter.
7. A supplemental environmental project is not an issue in this matter.

ARGUMENT

There are no genuine issues of material fact in this instant matter and PEOPLE are entitled to judgment as a matter of law. Pursuant to the provisions of Section 101.516(b) of this Honorable Board's regulations, 35 Ill. Admin. Code 101.516(b), an order granting summary judgment in the PEOPLE's favor is proper.

It is undisputed that Respondent caused or allowed open dumping, littering and deposition of general construction or demolition debris for some period prior to October 31, 2010, through sometime subsequent to March 23, 2011 at the residential site. Respondent did the afore-

mentioned without a permit granted by the Illinois EPA and without complying with the Board's waste disposal regulations. By conducting a waste disposal operation at the residential site without applying for the mandatory permit to develop and operate a landfill, Respondent violated the Act and associated regulations

It is undisputed that Respondent caused or allowed open dumping of wastes, open dumping of used or waste tires, littering, open burning, and deposition of general construction or demolition debris at the corporate site. Respondent conducted a waste storage or waste treatment or waste disposal operation at the corporate site, which did not meet the requirements of the Act and the regulations and standards thereunder.

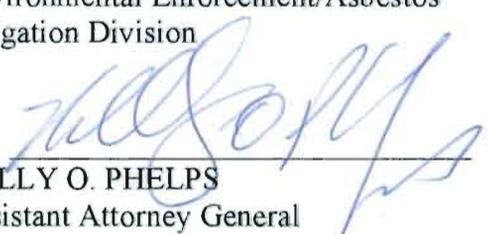
Given the Respondent's historical violations and fully considering the factors enumerated in Sections 33(c) and 42(h) of the Act, 415 ILCS 5/33(c) and 42(h) (2010) the relief requested in the Complaint and imposition of a sixteen thousand dollar (\$16,000.00) penalty is appropriate to protect the public and deter the Respondent from future violations of the Act.

WHEREFORE, the PEOPLE pray that this Honorable Board grant their Motion in the PEOPLES favor and against Respondent RHONDA L. FISHER in accordance with the provisions of Section 101.516(b) of the Board's regulations, 35 Ill. Adm. Code 101.516(b), granting the relief requested in the Complaint and imposing a penalty of one thousand dollars (\$1,000.00) for each of the 16 violations alleged in Counts I through V of the Complaint, a penalty totaling sixteen thousand dollars (\$16,000.00), to be paid within 30 days of entry of the Board's Order and paid in accordance with Section 103.504 of the Board's regulations 35 Ill. Admin. Code Section 103.504.

Respectfully Submitted,

Illinois Environmental Protection Agency
Ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

By: 
KELLY O. PHELPS
Assistant Attorney General
Environmental Bureau

Attorney Reg. No. 6275697
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031
Dated: January 7, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

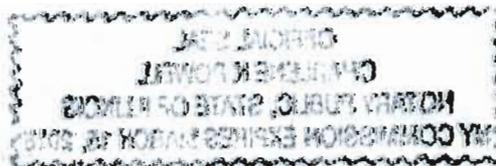
PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 13-3
)
)
) (Enforcement-Land)
 EDWARD W. FISHER, RHONDA L. FISHER,)
 and DEM/EX GROUP, INC.,)
 (an Illinois corporation),)
)
 Respondents.)

AFFIDAVIT OF PAUL EISENBRANDT

State of Illinois)
) ss
 County of Sangamon)

I, Paul Eisenbrandt being sworn on oath, state:

1. I am an Illinois EPA Division of Land Pollution Control, Field Operation Section Inspector familiar with the above-captioned cause and have personal knowledge of all matters here set out.
2. If called as a witness here, I could competently testify to all matters here set out.
3. I have read the contents of the Complaint, exhibits attached thereto and the Motions for Summary Judgment, and attest that the allegations and information therein are true and accurate.
4. My duties as an Illinois EPA Division of Land Pollution Control, Field Operation Section Inspector require me to investigate sources of pollution and suspected violations of the Environmental Protection Act which include open dumping and open burning. As such, it is my duty to know and understand provisions of the Environmental Protection Act for which my duties require me to render inspection determinations. My inspection determinations are routinely based on my observations, interviews, sampling, review of records and review of data and information generated by or for the Illinois EPA. If I determine from my inspection that violations of the Environmental Protection Act and associated regulations have occurred it is my duty to cite the responsible party, or parties, with violations of the Environmental Protection Act and/or violations of the associated regulations.



5. On August 4, 2010, I performed an inspection of property located at 29998 East Manito Road, Manito, Mason County, Illinois ("residential site") as the result of a complaint alleging white demolition debris, possibly containing asbestos, had been dumped west of a newly constructed house. It was further alleged that the waste had been generated from off-site and had been hauled to the site by DEM/EX Corporation which was believed to be owned and operated by a Mr. Edward Fisher. At the time of my inspection I took photographs of the residential site which are attached to the Complaint as Complainant's Exhibit 1 and incorporated herein by reference. Subsequent to my inspection I created a checklist and thereafter a narrative report of my inspection in order to create a public record of my inspection activities and my inspection observations which are my duty to report. The checklist and the narrative report are attached hereto and incorporated herein as exhibit (Exhibit A). The check list and narrative report describe my observations and findings in detail.

6. I reviewed Mason County Recorder's office records and determined that the residential site was owned by Edward W. Fisher and Rhonda L. Fisher, husband and wife.

7. I reviewed Secretary of State corporate records and determined that Edward W. Fisher was the registered agent; President and Secretary for DEM/EX Group, Inc. which is headquarter at 805 Adams, Manito, Mason County, Illinois ("corporate site"). The corporate site is well known to me. It is also owned by Mr. and Mrs. Fisher, and was the subject of ongoing environmental enforcement actions at the time.

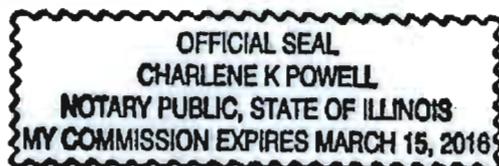
8. On August 4, 2010, immediately following my inspection of the residential site I went to perform a follow-up inspection at the corporate site. I performed another follow-up inspection of the corporate site on March 23, 2011. At the time of both my inspections I took photographs of the corporate site which are attached to the Complaint as Complainant's Exhibit 2 and incorporated herein by reference. Subsequent to my inspections I created checklists and thereafter narrative reports of my inspections in order to create a public record of my inspection activities and my inspection observations which are my duty to report. The checklist and the narrative report are attached hereto and incorporated herein as exhibit (Exhibit B). The check list and narrative report describe my observations and findings in detail.

9. THE AFFIANT STATES NOTHING FURTHER.


Paul Eisenbrandt

Subscribed and sworn to before me on the 7th day of January, 2013.


NOTARY



Electronic Filing - Received, Clerk's Office : 01/08/2013
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Open Dump Inspection Checklist

County: Mason LPC#: 1258075001 Region: 5 - Springfield
 Location/Site Name: Manito / Fisher, Edward
 Date: 08/04/2010 Time: From 10:10 am To 11:05 am Previous Inspection Date: _____
 Inspector(s): Paul Eisenbrandt & Alan Grimmett Weather: Partly Cloudy and about 90 F
 No. of Photos Taken: # 23 Est. Amt. of Waste: 100 yds³ Samples Taken: Yes # _____ No
 Interviewed: No One Complaint #: C-10-137-C
 Latitude: 40.413194 Longitude: -89.792113 Collection Point Description: Center of Site -
 (Example: Lat.: 41.26493 Long.: -89.38294) Collection Method: Photo Interpolation -

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

| | |
|---|--|
| Edward W. & Rhonda L. Fisher 7841 Warner Road Manito, Illinois 61546-8150 309-478-3366 | |
|---|--|

| | SECTION | DESCRIPTION | VIOL |
|---|---------|--|-------------------------------------|
| ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS | | | |
| 1. | 9(a) | CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS | <input checked="" type="checkbox"/> |
| 2. | 9(c) | CAUSE OR ALLOW OPEN BURNING | <input checked="" type="checkbox"/> |
| 3. | 12(a) | CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS | <input checked="" type="checkbox"/> |
| 4. | 12(d) | CREATE A WATER POLLUTION HAZARD | <input checked="" 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 checked="" type="checkbox"/> |
| | (2) | In Violation of Any Regulations or Standards Adopted by the Board | <input checked="" 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 checked="" 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 checked="" type="checkbox"/> |
| | (4) | Deposition of Waste in Standing or Flowing Waters | <input checked="" type="checkbox"/> |
| | (5) | Proliferation of Disease Vectors | <input type="checkbox"/> |
| | (6) | Standing or Flowing Liquid Discharge from the Dump Site | <input type="checkbox"/> |



LPC # 1258075001

Inspection Date: 08/04/2010

| | | | |
|--|------------|---|-------------------------------------|
| | (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) | NO PERSON SHALL: | |
| | (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) | NO PERSON SHALL: | |
| | (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"/> |
| 35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G | | | |
| 11. | 812.101(a) | FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL | <input checked="" type="checkbox"/> |
| 12. | 722.111 | HAZARDOUS WASTE DETERMINATION | <input type="checkbox"/> |
| 13. | 808.121 | SPECIAL WASTE DETERMINATION | <input type="checkbox"/> |
| 14. | 809.302(a) | ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST | <input type="checkbox"/> |
| OTHER REQUIREMENTS | | | |
| 15. | | APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON: | <input type="checkbox"/> |
| 16. | OTHER: | | <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.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: September 13, 2010
TO: DLPC / Division File
FROM: Paul Eisenbrandt, DLPC / FOS Springfield Field Office
SUBJECT: LPC #1258075001 – Mason County
Manito / Fisher, Edward
FOS File

COMPLAINT NO: C-10-137-C
INSPECTION DATE: August 4, 2010

The purpose of this memorandum is to serve as the Narrative Inspection Report Document of an August 4, 2010 complaint investigation of the above referenced site. The complaint alleged white demolition debris was dumped west of the newly constructed house and it may contain asbestos materials. The off-site generated waste was hauled to the site by Dem/Ex, a local demolition company, owned and operated by Edward W. Fisher.

The inspection took place from about 10:10 am to 11:05 am, and twenty-three (23) digital photographs were taken. The weather at the time of the inspection was partly cloudy, humid, and approximately 90° F, with a wind from the SSE at 5 mph. Mr. Alan Grimmatt, BOA/Asbestos Unit Inspector, accompanied this author. No one was interviewed during the inspection, as the house was vacant and no vehicles were observed. A copy of the Warranty Deed is attached to this narrative and was retrieved on the day of the inspection from the Mason County Recorder's Office. The Warranty Deed shows that Russell E. Barnes (and others) conveyed ownership of the land to Edward W. Fisher and Rhonda L. Fisher, husband and wife, of the Village of Manito, in June 2010. The Warranty Deed lists the tax bill to be sent to Edward W. Fisher at 7841 Warner Road, Manito, IL, 61546.

The Corporation File Detail Report (Illinois Secretary of State) shows Edward W. Fisher as the registered Agent, President, and secretary of DEM/EX Group, Inc. The registered address is 7841 Warner Road, Manito, Illinois, 61546. The Warranty Deed for the site and the Corporation File Detail Report for DEM/EX indicate Edward W. Fisher to be the same person and owner of the newly constructed home.

The site is located at 29998 E. Manito Road on the southwest side of Manito, Illinois. The site property is about 1.78 acres and is zoned R-3 (Single-Family Residential). The site contains both an older dwelling and a newer home built in 2010. The newer home is presently under construction. See the attached Site Sketch for its approximate location.

Photograph 001 shows a front elevation view of the newly constructed house from Manito Road. The numbers listed on the mailbox confirm the property address. The home from the front appears to be a stick-built single family ranch home. The home did not have a garage.

Photograph 002 shows the rear side of the house under construction. The back of the home is a walk-out basement. Sections of the ground behind (west) the home were covered with chunks of concrete, broken brick, and mortar.

Photograph 003 shows a dirty black plastic bag and a piece of yellow plastic "Caution" tape among the weeds. The inspector observed weeds growing through the demolition debris.

Photograph 004 shows a rusty unwound piece of Greenfield (flexible conduit) and pieces of brick and mortar.

Photograph 005 shows a cut-off section of a glue/lam beam, chunks of brick, concrete, scraps of rusty metal and other debris were among the off-site generated fill material.

Photograph 006 shows a piece of damaged dimensional lumber and some mortar.

Photograph 007 shows a debris pile containing landscape waste, brick, a white plastic bucket, a survey stake, and metal wire.

Photograph 008 shows a debris pile of brick and mortar, and a piece of protruding rebar on the edge of the pond. Black plastic, carpet, asphalt shingles, and broken glass were observed in the mound of unclean fill material.

Photograph 009 shows dimensional lumber scrap, metal, rusty rebar, brick, and concrete near a tree on the edge of the pond.

Photograph 010 shows a piece of rebar, scrap lumber, brick, and concrete in the pond.

Photograph 011 shows a view of the wetland west of the house.

Photograph 012 shows scrap metal and miscellaneous waste spread on the ground southwest of the house.

Photograph 013 shows rusty iron and aluminum scrap intermixed with fill material.

Photograph 014 shows an open dumped blue plastic drum. The drum appeared mostly empty with a small amount (less than a half gallon) of liquid residue. Photographs 015 and 016 show the labeling imprinted on the drum.

Photograph 017 shows cinder block, rusty scrap metal, and charred wood open dumped.

Photograph 018 shows ash and charred waste in a burn pile on the southern edge of the pond. A blue-green residue was also observed in the ashes. Photograph 019 shows the sample of the blue-green residue collected from the burn pile.

Photograph 020 shows broken glass, scrap metal, and charred waste in the burn pile. Photograph 021 shows a black plastic hose, a fan rake, broken glass, intermixed with landscape waste in the partially burnt debris pile.

Photograph 022 shows charred wire and broken porcelain among the ashes and landscape waste.

Photograph 023 shows brick, mortar, and blue debris intermixed with fill material.

During the site inspection, Mr. Grimmatt collected seven (7) samples of suspect materials that may have contained asbestos. The samples were shipped to the Glen Ellyn, Illinois laboratory on August 5, 2010. On August 10, 2010 Mr. Grimmatt emailed this author and stated all of the lab samples were negative for Asbestos Containing Material.

Apparent violations observed as a result of this inspection are indicated on the attached Open Dump Inspection Checklist. A site sketch and digital photographs accompany this narrative.

cc: BOA/Alan Grimmatt
DLPC/FOS Springfield Region



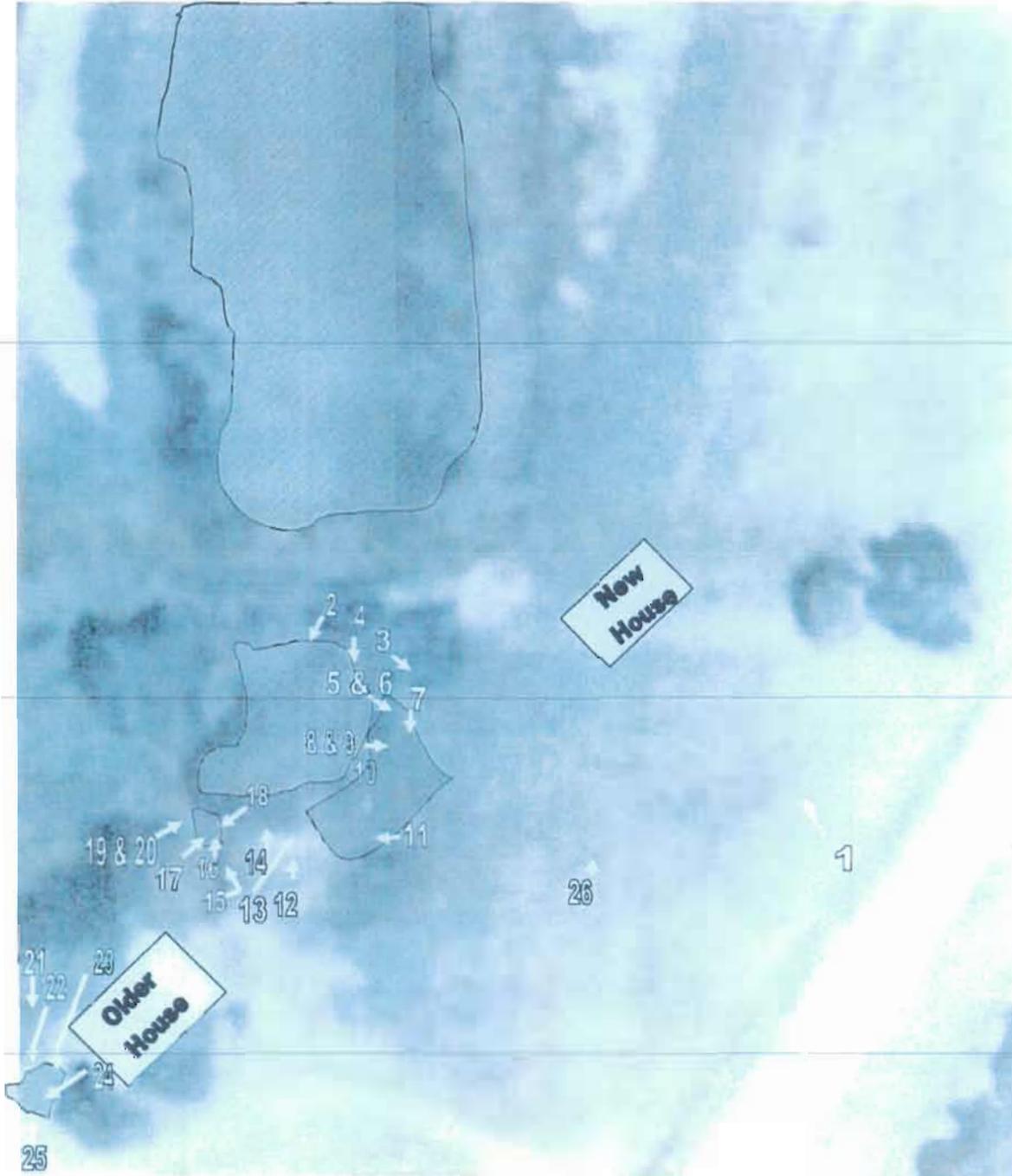
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Bureau of Land
Springfield Field Office



LPC# 1258075001 - Mason County
Manito/Fisher, Edward
FOS File
March 23, 2011 Inspection

SITE SKETCH



Measurements Approximate
Direction of Travel
Not to Scale



DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:14 AM
Direction: NW
Photo by: Eisenbrandt
Exposure #: 001
Comments: Front elevation view of house from Manito Road.



Date: August 4, 2010
Time: 10:24 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 002
Comments: Rear side of house under construction. Ground covered with broken brick and mortar.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:27 AM
Direction: W
Photo by: Eisenbrandt
Exposure #: 003
Comments: Dirty black plastic bag and a piece of plastic "Caution" tape among the weeds.



Date: August 4, 2010
Time: 10:27 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 004
Comments: A rusty unwound piece of Greenfield (flexible conduit) and pieces of brick and mortar.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:30 AM
Direction: W
Photo by: Eisenbrandt
Exposure #: 005
Comments: A cut-off section of a glue-lam beam, chunks of brick, concrete, scraps of rusty metal were observed in the fill material.



Date: August 4, 2010
Time: 10:32 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 006
Comments: Damage dimensional lumber and mortar.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:32 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 007
Comments: A debris pile containing landscape waste, brick, a white plastic bucket, a survey stake, and metal wire.



Date: August 4, 2010
Time: 10:34 AM
Direction: NW
Photo by: Eisenbrandt
Exposure #: 008
Comments: Brick and mortar, and a piece of protruding rebar on the edge of the pond. Black plastic, carpet, asphalt shingles, and broken glass were observed in the unclean fill material.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:34 AM
Direction: W
Photo by: Eisenbrandt
Exposure #: 009
Comments: Dimensional
lumber scrap, metal, rusty
rebar, brick, and concrete.



Date: August 4, 2010
Time: 10:36 AM
Direction: NW
Photo by: Eisenbrandt
Exposure #: 010
Comments: Rebar, scrap
lumber, brick, and concrete
in the pond.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:36 AM
Direction: NW
Photo by: Eisenbrandt
Exposure #: 011
Comments: View of wetland.



Date: August 4, 2010
Time: 10:46 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 012
Comments: Scrap metal visible in the foreground.

Photograph File: 1.258075001~08042010-{Exp. #}.jpg





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:47 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 013
Comments: Rusty iron and scrap aluminum intermixed with fill material.

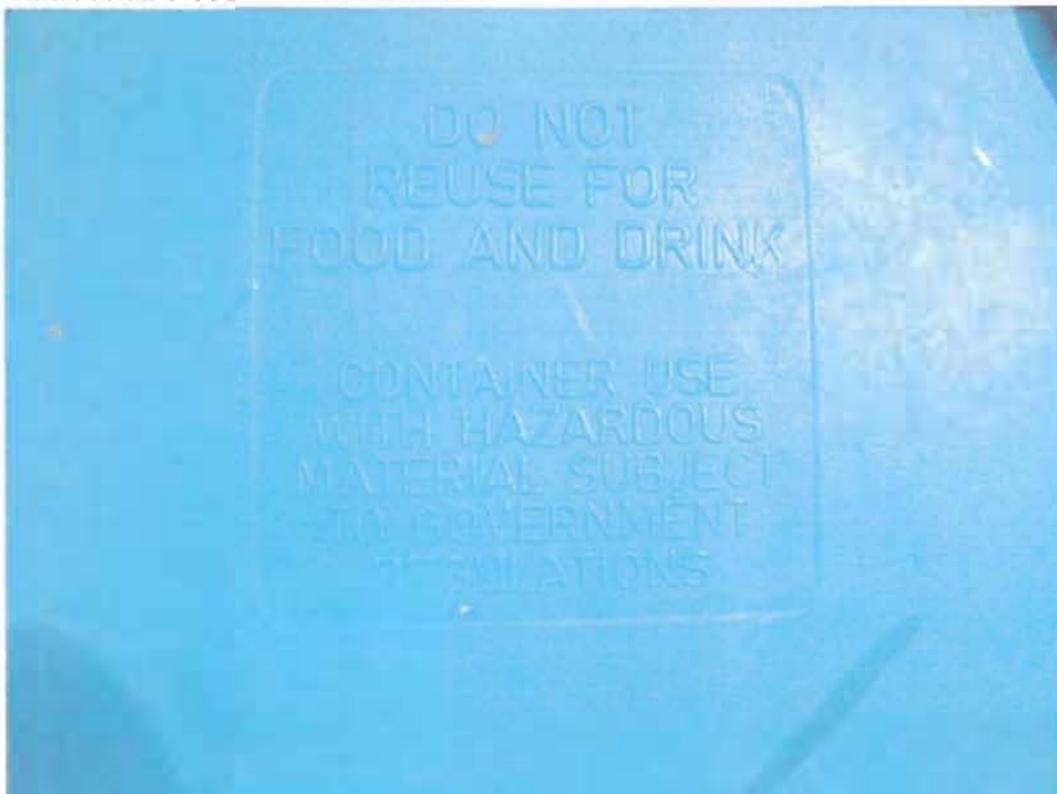


Date: August 4, 2010
Time: 10:49 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 014
Comments: An open dumped blue plastic drum. Drum appeared mostly empty with a small amount of liquid residue.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:49 AM
Direction: SW
Photo by: Eisenbrandt
Exposure #: 015
Comments: Labeling imprinted on drum.



Date: August 4, 2010
Time: 10:50 AM
Direction: SW
Photo by: Eisenbrandt
Exposure #: 016
Comments: Labeling imprinted on drum.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:52 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 017
Comments: A cinder block, rusty scrap metal, and charred wood.



Date: August 4, 2010
Time: 10:52 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 018
Comments: Ash and charred waste. A blue green residue was also observed in the ashes.

Photograph File: 1258075001~08042010-[Exp. #].jpg





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:54 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 019
Comments: Sample of the blue green residue collected from the burn pile.



Date: August 4, 2010
Time: 10:54 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 020
Comments: Broken glass, scrap metal, and charred waste.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:54 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 021
Comments: Black plastic hose, a fan rake, broken glass, intermixed with landscape waste in a partially burnt debris pile.



Date: August 4, 2010
Time: 10:56 AM
Direction: W
Photo by: Eisenbrandt
Exposure #: 022
Comments: Charred wire and broken porcelain among the ash and landscape waste.





DIGITAL PHOTOGRAPHS



Date: August 4, 2010
Time: 10:57 AM
Direction: N
Photo by: Eisenbrandt
Exposure #: 023
Comments: Brick, mortar,
and blue debris intermixed
with the fill material.



Electronic Filing - Received, Clerk's Office : 01/08/2013
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Open Dump Inspection Checklist

County: Mason LPC#: 1250305011 Region: 5 - Springfield
 Location/Site Name: Manito / DEM/EX Group Inc.
 Date: 08/04/2010 Time: From 11:15 AM To 12:00 PM Previous Inspection Date: 05/20/2010
 Inspector(s): Paul Eisenbrandt & Alan Grimmatt Weather: ~90oF & Partly Cloudy
 No. of Photos Taken: # 34 Est. Amt. of Waste: 40 yds³ Samples Taken: Yes # _____ No
 Interviewed: Mr. Gary Newlund Complaint #: C-10-137-0C
 Latitude: 40.418654 Longitude: -89.788202 Collection Point Description: Center of Site -
 (Example: Lat.: 41.26493 Long.: -89.38294) Collection Method: Photo Interpolation -

| | |
|--|--|
| Responsible Party Mailing Address(es) and Phone Number(s): Edward W. & Rhonda L. Fisher (Owner) 7841 Warner Road Manito, Illinois 60546-8150 309-478-3366 | DEM/EX Group Inc. 805 South Adams Street Manito, Illinois 61546-9300 Attn: Edward Fisher (Operator) 309-968-6345 |
|--|--|

| | SECTION | DESCRIPTION | VIOL |
|---|---------|--|-------------------------------------|
| ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS | | | |
| 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 checked="" type="checkbox"/> |
| | (2) | In Violation of Any Regulations or Standards Adopted by the Board | <input checked="" 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 checked="" 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 # 1250305011

Inspection Date: 08/04/2010

| | | | |
|--|------------|---|-------------------------------------|
| | (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) | NO PERSON SHALL: | |
| | (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) | NO PERSON SHALL: | |
| | (1) | Cause or Allow Water to Accumulate in Used or Waste Tires | <input checked="" type="checkbox"/> |
| | (4) | Transport Used or Waste Tires in Violation of the Registration and Placarding Requirements | <input type="checkbox"/> |
| 35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G | | | |
| 11. | 812.101(a) | FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL | <input checked="" type="checkbox"/> |
| 12. | 722.111 | HAZARDOUS WASTE DETERMINATION | <input checked="" type="checkbox"/> |
| 13. | 808.121 | SPECIAL WASTE DETERMINATION | <input checked="" type="checkbox"/> |
| 14. | 809.302(a) | ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST | <input type="checkbox"/> |
| OTHER REQUIREMENTS | | | |
| 15. | | APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON: | <input type="checkbox"/> |
| 16. | OTHER: | | <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.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: September 16, 2010
TO: DLPC / Division File
FROM: Paul Eisenbrandt, DLPC / FOS Springfield Field Office
SUBJECT: LPC #1250305011 – Mason County
Manito / DEM/EX Group, Inc.
FOS File

COMPLAINT NO: C-10-137-C
INSPECTION DATE: August 4, 2010

The purpose of this memorandum is to serve as the Narrative Inspection Report Document of an August 4, 2010 complaint investigation of the above referenced site. The complaint alleged white demolition debris (possibly containing asbestos) was hauled to a different site by DEM/EX. That open dump site is located at 29998 E. Manito Road and is southwest of the DEM/EX facility in Manito. That open-dump site is owned by Edward W. and Rhonda L. Fisher where they have built a new house. The Land Pollution Control number for that site is 1258075001. The DEM/EX operation site located at 805 South Adams Street was inspected as part of the investigation.

The DEM/EX facility inspection took place from about 11:15 am to 12:00 pm, and thirty-four (34) digital photographs were taken. The weather at the time of the inspection was partly cloudy, humid, and approximately 90° F, with a wind from the SSE at 5 mph. Mr. Alan Grimmett, BOA/Asbestos Unit Inspector, accompanied this author. Mr. Gary Newlund was interviewed during the inspection.

A copy of the Warranty Deed for 29998 E. Manito Road (the newly constructed house) was attached to the inspection narrative for the other site (LPC#1258075001) and was retrieved on the day of the inspection from the Mason County Recorder's Office. The Warranty Deed showed that Russell E. Barnes (and others) conveyed ownership of the land to Edward W. Fisher and Rhonda L. Fisher, husband and wife, of the Village of Manito, in June 2010. The Warranty Deed lists the tax bill to be sent to Edward W. Fisher at 7841 Warner Road, Manito, IL, 61546.

The copy of the Limited Warranty Deed (recorded in Mason County on January 30, 2006 and is in the Springfield Field Office Files) shows Edward W. Fisher and Rhonda L. Fisher are owners of the land that DEM/EX Group, Inc. operates on.

The Illinois Secretary of State Corporation File Detail Report (that was also attached to the other investigation report) shows Edward W. Fisher as the registered Agent, President, and secretary of DEM/EX Group, Inc. The registered address is 7841 Warner Road, Manito, Illinois, 61546. The Warranty Deed for the site and the Corporation File Detail Report for DEM/EX indicate Edward W. Fisher to be the same person and owner of DEM/EX Group, Inc.

The rest of this inspection report will identify open dumped waste at the DEM/EX facility. The facility has been previously inspected on July 24, 2007, February 7, 2008, May 20, 2008, April 3, 2009, and July 17, 2009. Please refer to previous inspection reports in the Division File.

After arriving at the facility and making introductions. Mr. Gary Newlund showed the inspectors a copy of a proposed "Stipulated Agreement" between the Village of Manito and DEM/EX Group, Inc. (see Photographs 001 & 002). The inspectors identified the reason for the visit and requested permission to inspect the facility. Mr. Newlund granted permission.

Photograph 003 shows a 2-yard dumpster and two used tires east of the maintenance garage. The used tire in the foreground of the picture was on-rim. The used tire leaning against the building (in the background) was off-rim. Upon a closer look, water was observed inside the off-rim used tire (see Photograph 004).

Section 55(k)(1) of the Act states no person shall cause or allow water to accumulate in used or waste tires (effective 8-28-2009).

Photograph 004 shows a pickup truck bed liner filled with waste. Two used tires (both off-rim), fiberglass insulation, damaged scrap lumber, plastic sheeting, a garden hose, and a plastic bottle were among the waste observed.

Photograph 005 shows a pile of demolition debris with the start of weedy vegetation growing. The establishment of vegetation indicates the debris pile was open dumped several months earlier.

Photographs 007 and 008 show crushed and splintered lumber, a section of pipe, brick, concrete, mortar, and copious amounts of rusty scrap metal in the demolition debris pile seen in Photograph 006. The inclusion of miscellaneous waste intermixed with the brick, cinder block, concrete, and mortar makes this waste, as defined by Section 3.160(a), General Construction or Demolition Debris. This waste does not meet the definition of Clean Construction and Demolition Debris (CCDD).

Section 3.160(a) of the Act states general construction and 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 asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to those materials.

Section 3.160(b) of the Act states clean construction and demolition debris means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or soil generated from construction or demolition activities.

Photographs 009 and 010 show a pile of general construction or demolition debris in the southwest corner of the facility. Broken shipping pallets, damaged dimensional lumber, discarded signage, metal bands, processed lumber, foam insulation, and plastic sheeting were among the waste observed.

Photograph 011 shows the contents of the plastic garbage can seen in Photographs 009 and 010. The beige can contained broken glass, plastic, a piece of rubber hose, an aluminum can, and miscellaneous waste.

Photograph 012 shows fiberglass pipe, blue plastic scrap, insulation, and scrap metal in the weeds on the south end of the facility.

Photograph 013 shows several pieces of fiberglass pipe, charred landscape debris, and miscellaneous waste.

Photograph 014 shows two on-rim used tires with weedy vegetation growing through them.

Photograph 015 shows two piles of stacked steel. Mr. Newlund later stated, the steel came from a building that DEM/EX had disassembled, brought the material to the Manito site, and they plan to erect the building onsite.

Photograph 016 shows a pile of scrap metal beside a recycling dumpster. In the past, DEM/EX has used the same recycling company (BEHR). Typically, they have empty dumpsters on site to fill with recyclable metals. The BEHR dumpster seen in the background of the photograph was less than half full.

As the inspectors walked around the site, plentiful amounts of rusty debris, porcelain fragments, crushed brick and concrete, plastic, carpet scraps, ground lumber, electrical wire and components, insulation, roofing materials, pieces of plumbing, and other general construction or demolition debris were observed.

Photograph 017 shows a rusty spring, rusty scrap metal, and plastic debris. Photograph 018 shows more pieces of rusty scrap metal. The general construction or demolition debris was easily identified on the ground throughout the southern half of the site.

Photograph 019 shows a debris pile with copious amounts of scrap metal, splinted wood, and miscellaneous waste.

Photograph 020 shows the ground surface south of the maintenance garage. Scrap metal, concrete, and brick were intermixed with miscellaneous demolition debris.

Photograph 021 and 022 show close up photographs of the ground surface. Rusty scrap metal, fiberglass, wire, splinter lumber, plastics (red, blue, and black), carpet, black rubber, and cast iron fragments were observed on the ground intermixed with concrete, mortar, and brick fragments.

Photographs 023 and 024 show more examples of demolition debris spread out across the southern portion of the site. Copper wire, scrap metal, electrical wire, foam, asphalt materials, fiberglass, rusty iron, and splintered wood were observed.

Photographs 025 and 026 show rusty scrap metal, splintered wood, fabric-like material, metal wire, and miscellaneous waste scattered on the ground surface.

Photographs 027 and 028 shows wire, blue plastic, scrap wood, rusty metal, and demolition debris on the ground surface.

Photographs 029 and 030 show more waste on the ground.

Photograph 031 shows more waste partially buried.

Photograph 032 shows used tires stored along the west wall of the maintenance building. Photograph 033 shows water in some of the used tires (seen on Photograph 032).

Photograph 034 shows six 55-gallon drums stored in the concrete containment area on the west side of the maintenance garage. Four of the drums appeared empty. One of the drums was labeled "antifreeze" and was mostly full. The drum in the foreground was labeled "Empty" yet it was full of a liquid. Since the contents of the drum marked "Empty" were not properly identified, hazardous waste and special waste determinations will have to be made.

Apparent violations observed as a result of this inspection are indicated on the attached Open Dump Inspection Checklist. A site sketch and digital photographs accompany this narrative.

cc: BOA/Alan Grimmett
DLPC/FOS Springfield Region



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

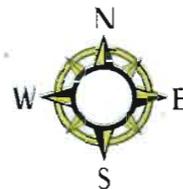
Bureau of Land

LPC#1250305011 - Mason County

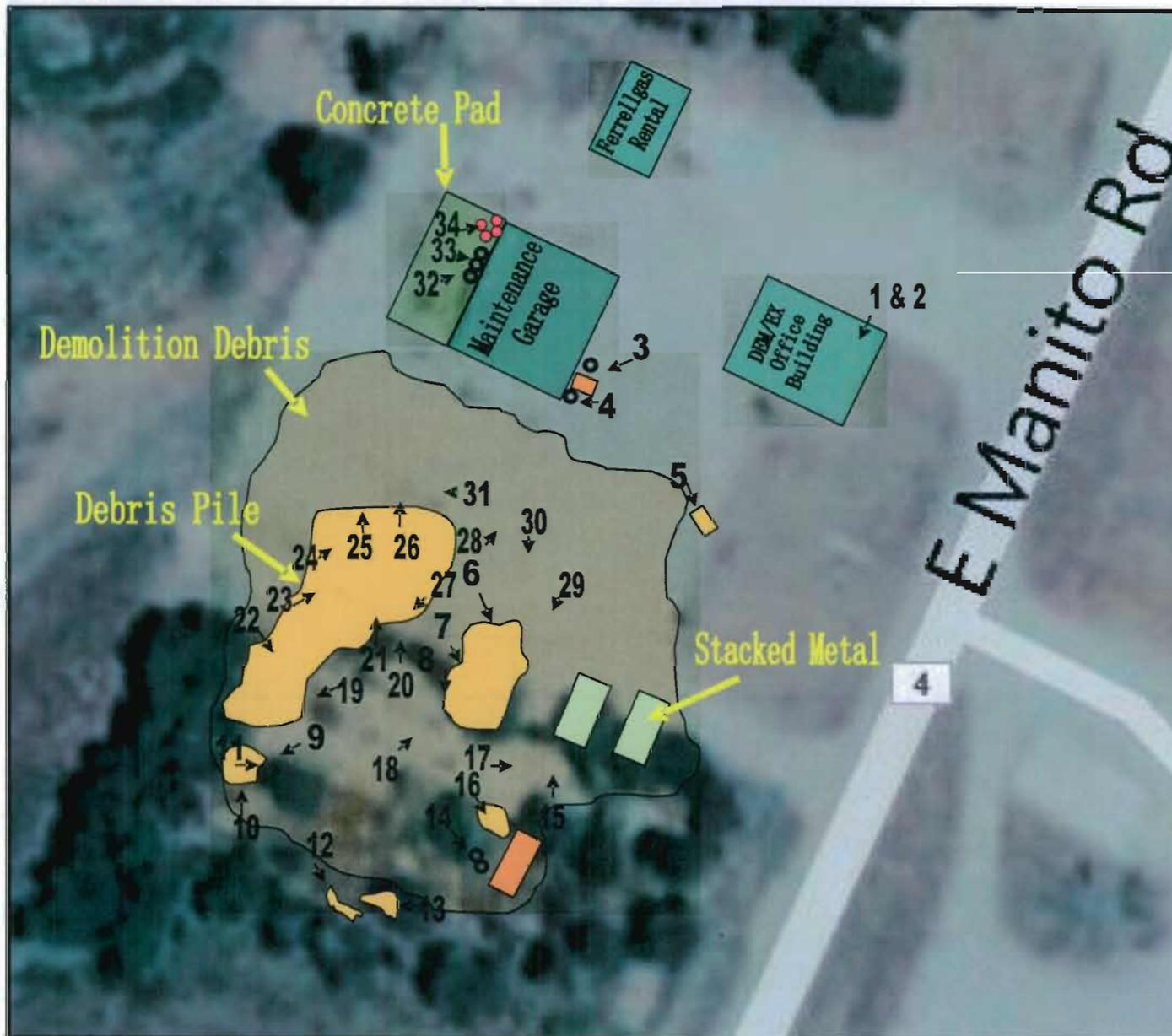
Manito / DEM/EX Group, Inc.

FOS File

August 4, 2010



SITE SKETCH



LEGEND

- | | | | | | |
|--------------|----------|--|-------------------|--------------|--------------------|
| | Building | | Dumpster/Box | | Used Tire |
| | Concrete | | Debris Pile | | 55-Gallon Drum |
| | Metal | | Demolition Debris | | Direction of Photo |
| Measurements | | | Approximate | Not to Scale | |



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:41 AM
Direction: SW
Photo by: Eisenbrandt
Exposure #: 003
Comments: Two used tires on the east side of the maintenance garage.



Date: August 4, 2010.
Time: 11:42 AM
Direction: W
Photo by: Eisenbrandt
Exposure #: 004
Comments: The used tire (seen in the photograph above) leaning against the building was off-rim and contained water.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:43 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 005
Comments: A pickup truck bed liner filled with waste. Two used tires (both off-rim), fiberglass insulation, damage scrap lumber, plastic sheeting, a garden hose, and a plastic bottle were among the waste observed.



Date: August 4, 2010.
Time: 11:45 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 006
Comments: A pile of demolition debris with the start of weedy vegetation.



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:45 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 007
Comments: Crushed splinters of lumber, a section of pipe, brick, and concrete were observed in the debris pile.



Date: August 4, 2010.
Time: 11:45 AM
Direction: S
Photo by: Eisenbrandt
Exposure #: 008
Comments: The demolition debris pile also contained copious amounts of rusty scrap metal.

Photograph File: 1250305011~08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:45 AM
Direction: SW
Photo by: Eisenbrandt
Exposure #: 009
Comments: A pile of waste. Broken pallets, damaged dimensional lumber, discarded signage, metal bands, and foam insulation were among the waste observed.



Date: August 4, 2010.
Time: 11:45 AM
Direction: N
Photo by: Eisenbrandt
Exposure #: 010
Comments: Alternate view of the pile of waste. Plywood, processed lumber, and plastic sheeting were observed.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:45 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 011
Comments: The beige plastic garbage can (on its side and seen in the previous two photographs) contained broken glass, plastic, a piece rubber hose, an aluminum can, and miscellaneous waste.



Date: August 4, 2010.
Time: 11:46 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 012
Comments: Fiberglass pipe, blue plastic scrap, insulation, and scrap metal.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:46 AM
Direction: W
Photo by: Eisenbrandt
Exposure #: 013
Comments: Fiberglass pipe, charred landscape debris, and miscellaneous waste.



Date: August 4, 2010.
Time: 11:47 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 014
Comments: Two on-rim used tires with weedy vegetation growing through them.

Photograph File: 1250305011-08042010-[Exp. #].jpg





DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:48 AM
Direction: N
Photo by: Eisenbrandt
Exposure #: 015
Comments: Stacked steel.



Date: August 4, 2010.
Time: 11:48 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 016
Comments: A pile of scrap metal beside a recycling dumpster.

Photograph File: 1250305011-08042010-Exp. #.jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:48 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 017
Comments: A rusty spring, rusty scrap metal, and plastic debris observed on the ground.



Date: August 4, 2010.
Time: 11:48 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 018
Comments: Pieces of rusty scrap metal on the ground.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:49 AM
Direction: SW
Photo by: Eisenbrandt
Exposure #: 019
Comments: A debris pile with copious amounts of scrap metal, splintered wood, and miscellaneous waste.



Date: August 4, 2010.
Time: 11:49 AM
Direction: N
Photo by: Eisenbrandt
Exposure #: 020
Comments: Ground surface south of the maintenance garage. Scrap metal, concrete, and brick were intermixed with miscellaneous demolition debris.

Photograph File : 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:49 AM
Direction: N
Photo by: Eisenbrandt
Exposure #: 021
Comments: A close up photograph of the ground surface seen in Photograph 020. Rusty scrap metal, fiberglass, wire, splintered lumber, and scraps of plastic were observed intermixed with concrete, mortar, and brick fragments.



Date: August 4, 2010.
Time: 11:49 AM
Direction: SE
Photo by: Eisenbrandt
Exposure #: 022
Comments: Red, blue, and black plastic, carpet, black rubber, cast iron, and splinters of wood were observed on the ground.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:49 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 023
Comments: Another example of the demolition debris spread across the site. Copper wire, scrap metal, electrical wire, foam, and asphalt materials were observed on the ground.



Date: August 4, 2010.
Time: 11:50 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 024
Comments: Rusty iron fragments, fiberglass, splintered wood, and malleable metal were observed on the ground surface.



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:50 AM
Direction: N
Photo by: Eisenbrandt
Exposure #: 025
Comments: Rusty scrap metal and miscellaneous waste observed on the ground surface.



Date: August 4, 2010.
Time: 11:50 AM
Direction: N
Photo by: Eisenbrandt
Exposure #: 026
Comments: Scrap metal, splintered wood, fabric-like material, and metal wire were observed on the ground.



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:50 AM
Direction: SW
Photo by: Eisenbrandt
Exposure #: 027
Comments: Wire, blue plastic, scrap wood, and rusty metal on the ground.



Date: August 4, 2010.
Time: 11:50 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 028
Comments: Rusty scrap metal intermixed with demolition debris on the ground.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:51 AM
Direction: SW
Photo by: Eisenbrandt
Exposure #: 029
Comments: More waste observed on the ground.



Date: August 4, 2010.
Time: 11:51 AM
Direction: S
Photo by: Eisenbrandt
Exposure #: 030
Comments: More waste observed on the ground.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:51 AM
Direction: W
Photo by: Eisenbrandt
Exposure #: 031
Comments: More waste partially buried.



Date: August 4, 2010.
Time: 11:52 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 032
Comments: Used tires stored along the west wall of the maintenance building.

Photograph File: 1250305011-08042010-[Exp. #].jpg



DIGITAL PHOTOGRAPHS



Date: August 4, 2010.
Time: 11:53 AM
Direction: E
Photo by: Eisenbrandt
Exposure #: 033
Comments: Water was observed in the used tires seen in Photograph 032.



Date: August 4, 2010.
Time: 11:53 AM
Direction: NE
Photo by: Eisenbrandt
Exposure #: 034
Comments: Six 55-gallon drums stored in the concrete containment area. One of the drums was labeled antifreeze and appeared full. Another drum was labeled "Empty" yet was full of liquid.

Photograph File: 1250305011-08042010-[Exp. #].jpg