

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	PCB No.
v.)	
)	
WILLIAM MUCCI and)	
DEBRA MUCCI)	
d/b/a B&M Properties, and)	
)	
JOHN KIRBY, an individual, and)	
POLLY KIRBY, an individual,)	
)	
Respondents.)	

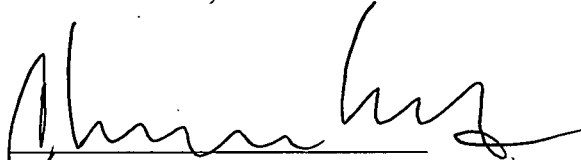
NOTICE OF FILING

PLEASE TAKE NOTICE that today, August 14, 2019, Complainant, PEOPLE OF THE STATE OF ILLINOIS, through the undersigned, filed with the Office of the Illinois Pollution Control Board ("Board") the following Complaint, a true and accurate copy is attached hereto and SERVED UPON YOU. You are hereby notified that you may be required to attend a hearing at a date set by the Board.

Failure to file an answer to this Complaint within sixty (60) days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Illinois Pollution Control Board Clerk's Office or an attorney.

PEOPLE OF THE STATE OF
ILLINOIS by KWAME RAOUL
Attorney General of the
State of Illinois,

BY:



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POLLY KIRBY, an individual,)	
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Respondents.)	

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of the Respondents, WILLIAM MUCCI and DEBRA MUCCI, doing business as (“d/b/a”) B&M Properties, JOHN KIRBY, and POLLY KIRBY, as follows:

I. VIOLATIONS ALLEGED AGAINST ALL RESPONDENTS

**COUNT I
OPEN DUMPING OF WASTE**

1. This Complaint is brought on behalf of the People of the State of Illinois by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42(d) and (e) (2018).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2018), and charged, *inter alia*, with the duty of enforcing the Act and regulations promulgated by the Illinois Pollution Control Board (“Board”).

3. Respondent William Mucci is an Illinois resident.

4. Respondent Debra Mucci is an Illinois resident.

5. Respondent John Kirby is an Illinois resident

6. Respondent Polly Kirby is an Illinois resident.

7. At all times relevant to this Complaint, William Mucci and Debra Mucci (“Mucci Respondents”) d/b/a B&M Properties, were the legal owners of property located adjacent to Illinois Route 71 north and south of N 2725 Road, Ottawa, La Salle County, Illinois (“Site”). The Site consists of three tax parcels with property index numbers (“PINs”) of 22-15-301-012, 22-15-301-016, and 22-15-408-000. The three parcels together constitute approximately three acres of land.

8. The Site has never been permitted by the Illinois EPA for the storage, treatment, or disposal of waste, for the composting of landscape waste, or as a landscape waste transfer station.

9. On January 19, 2018, the Mucci Respondents entered into a real estate installment contract (“Land Contract”) with John Kirby and Polly Kirby (“Kirby Respondents”) for the sale of the Site.

10. Pursuant to the Land Contract, the Kirby Respondents were to pay a down payment and 60 monthly payments to complete the purchase. The Kirby Respondents were

granted possession of the Site subject to specific conditions, while the Mucci Respondents retained legal title to the Site. Under the Land Contract, the Mucci Respondents required the Kirby Respondents to keep buildings in good repair, provide for liability insurance, and meet other requirements.

11. The Land Contract provided for forfeiture of the Kirby Respondents' interests in the Site in the event of non-payment or in the event of violation of the Land Contract conditions.

12. Prior to January 19, 2018, the Mucci Respondents had allowed previous tenants of the Site to bring waste trees and logs, tree trimmings, and discarded mulch material ("Landscape Debris"), used and waste tires, and construction and demolition waste to the Site, and allowed the tenants to dump these materials on the ground at the Site.

13. The Kirby Respondents did not remove the Landscape Debris, used and waste tires, or construction and demolition waste after taking possession of the site on January 19, 2018.

14. At a time better known to Respondents, but on or about April 23, 2018, the Kirby Respondents set fire to piles of Landscape Debris. Used and waste tires were intermingled with the piles of Landscape Debris.

15. The burning Landscape Debris resulted in smoke traveling off-site, creating a nuisance, threatening the health of adjacent residents, and affecting traffic on adjacent roadways. Local authorities received numerous complaints related to smoke from the burning waste at the Site.

16. The Grand Ridge Fire Department responded to the waste fire at the Site, and over a period of two weeks pumped more than one million gallons of water in an attempt to

control the fire.

17. The conditions created by the fire also required the involvement of the La Salle County Sheriff, the Illinois Emergency Management Agency, the Illinois Department of Transportation, and the Illinois EPA. Representatives of IDOT estimated the size of just one pile of combustible landscape debris at the Site as 12 feet wide, 12 feet high, and 150 feet long.

18. On April 30, 2018 an Illinois EPA inspector visited the Site. The inspector observed an estimated 2,000 cubic yards of Landscape Debris that had been dumped in various locations at the Site.

19. On April 30, 2018, piles of Landscape Debris were burning on the portion of the Site north of N 2725 Road. The inspector also observed waste tires that were burning in a pile of landscape debris.

20. On April 30, 2018, the inspector also observed at least 300 worn and discarded tires, not mounted on rims, which had been removed from the piles of Landscape Debris after April 23, 2018, and dumped on the portion of the Site south of N 2725 Road. Many of the tires contained accumulated standing water.

21. On April 30, 2018, the inspector also observed a large accumulation of construction and demolition waste, consisting of discarded wood, concrete, and other building demolition debris that had been dumped on the portion of the Site south of N 2725 Road.

22. The Illinois EPA inspector again visited the Site on May 7, 2018. Piles of Landscape Debris were still burning at the Site. The Kirby Respondents advised the inspector that 368 used or waste tires had been removed from the Site since April 30, 2018.

23. On November 9, 2018, the inspector again visited the Site and observed piles of

discarded tree stumps and waste wood remaining on the portion of the Site north of N 2725 Road.

24. Section 21(a) of the Act, 415 ILCS 5/21(a) (2018), provides, in pertinent part, as follows:

No person shall:

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

* * *

25. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides, as follows

“PERSON” is an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

26. The Mucci Respondents and the Kirby Respondents are “person[s]” as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

27. Section 3.535 of the Act, 415 ILCS 5/3.535 (2018), provides, in pertinent part, as follows:

“WASTE” means any garbage...or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities....

28. Section 3.385 of the Act, 415 ILCS 5/3.385 (2018), provides, as follows:

“REFUSE” means waste.

29. The Landscape Debris, used and waste tires, concrete and construction and demolition waste that was dumped and discarded at the Site is “waste” as that term is defined by Section 3.535 of the Act, 415 ILCS 5/3.535 (2018), and “refuse” as that term is defined by Section 3.385 of the Act, 415 ILCS 5/3.385 (2018).

30. Section 3.185 of the Act, 415 ILCS 5/3.185 (2018), provides, as follows:

“DISPOSAL” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

31. Section 3.460 of the Act, 415 ILCS 5/3.460 (2018), provides, as follows:

“SITE” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

32. Waste was deposited at the Site in a manner such that the waste entered the environment and could be emitted into the air. The Site is therefore a “disposal site” as that term is defined and used in the Act.

33. Section 3.305 of the Act, 415 ILCS 5/3.305 (2018), provides, as follows:

“OPEN DUMPING” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

34. Section 3.445 of the Act, 415 ILCS 5/3.445 (2018), provides, in pertinent part, as follows:

“SANITARY LANDFILL” means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L 94-580,....

35. At all times relevant to this Complaint, the Site was not permitted by the Illinois EPA for the storage, treatment, or disposal of waste, and thus did not fulfill the requirements of a sanitary landfill.

36. By causing and allowing the dumping and placing of Landscape Debris, used and waste tires, concrete and construction/demolition debris at the Site, and by failing to remove the waste to a facility permitted to accept such waste, the Respondents caused or allowed the open

dumping of waste. The Respondents thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count I:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(a) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 21(a) of the Act;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 21(a) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;
5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II
CAUSING AND ALLOWING LITTER

1-36. Complainant realleges and incorporates by reference herein, paragraphs 1 through 36 of Count I, as paragraphs 1 through 36 of this Count II.

37. Section 21(p) of the Act, 415 ILCS 5/21(p) (2018), provides, in pertinent part, as follows:

No person shall:

* * *

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

* * *

1. litter

* * *

38. By causing and allowing the disposal of Landscape Debris, used and waste tires, and construction/demolition debris at the Site, the Respondents caused or allowed the open dumping of waste at the Site, resulting in litter. The Respondents thereby violated Section 21(p)(1) of the Act, 415 ILCS 21(p)(1) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count II:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(p)(1) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 21(p)(1) of the Act;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 21(p)(1) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;

5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and

7. Granting such other relief as the Board deems appropriate and just.

COUNT III
OPEN DUMPING OF CONSTRUCTION OR DEMOLITION DEBRIS

1-36. Complainant realleges and incorporates by reference herein, paragraphs 1 through 36 of Count I, as paragraphs 1 through 36 of this Count III.

37. Section 21(p) of the Act, 415 ILCS 5/21(p) (2018), provides, in pertinent part, as follows:

No person shall:

* * *

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

* * *

7. Deposition of:

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

38. Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2018), provides, in pertinent part, as follows:

(a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-

asbestos insulation; roofing shingles and other roof coverings; reclaimed 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 any of those materials....

39. The waste wood, concrete, and other construction/demolition waste which was dumped on the Site south of N 2725 Road is “general construction or demolition debris” as that term is defined by Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2018).

40. The Respondents, by their actions and omissions as alleged herein, caused or allowed the open dumping of waste, resulting in the deposition of general construction and demolition debris at the Site. The Respondents thereby violated Section 21(p)(7) of the Act, 415 ILCS 21(p)(7) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count III:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(p)(7) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 21(p)(7) of the Act;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 21(p)(7) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;
5. Ordering the Respondents to pay all costs, including expert witness, consultant

and attorney fees, expended by the State in pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
OPEN DUMPING RESULTING IN OPEN BURNING

1-36. Complainant realleges and incorporates by reference herein, paragraphs 1 through 36 of Count I, as paragraphs 1 through 36 of this Count IV.

37. Section 21(p) of the Act, 415 ILCS 5/21(p) (2018), provides, in pertinent part, as follows:

No person shall:

* * *

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

* * *

3. open burning

38. Section 3.300 of the Act, 415 ILCS 5/3.300 (2018), provides, as follows:

“Open burning” is the combustion of any matter in the open or in an open dump.

39. The burning of Landscape Debris and used or waste tires at the Site from at least April 23, 2018 to at least May 7, 2018 constitutes “open burning” as that term is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2018).

40. The Respondents caused and allowed waste in the form of Landscape Debris and used and waste tires to be brought to and dumped at the Site, and to subsequently be burned at

the Site. The Respondents thereby caused and allowed the open dumping of waste, resulting in open burning, and thereby violated Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count IV:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(p)(3) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 21(p)(3) of the Act;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 21(p)(3) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;
5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT V
OPEN DUMPING OF WASTE TIRES

1-26. Complainant realleges and incorporates by reference herein, paragraphs 1 through 13, and paragraphs 20, 22, and paragraphs 25 through 35, of Count I, as paragraphs 1 through 26 of this Count V.

27. Section 55(a) of the Act, 415 ILCS 5/55(a) (2018), provides, in pertinent part, as

follows:

(a) No person shall:

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

* * *

28. Section 54.16 of the Act, 415 ILCS 5/54.16 (2018), provides, as follows:

“Waste tire” means a used tire that has been disposed of.

29. Beginning at a time better known to Respondents, but prior to April 23, 2018, the Respondents caused and allowed the dumping and disposal of more than 300 used tires at the Site. The tires are “waste tire[s]” as that term is defined in Section 54.16 of the Act, 415 ILCS 5/54.16 (2018).

30. By causing and allowing the disposal of used tires at the Site, the Respondents caused and allowed the open dumping of waste tires, and thereby violated Section 55(a)(1) of the Act, 415 ILCS 5/55(a)(1) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count V:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 55(a)(1) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 55(a)(1) of the Act;

4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 55(a)(1) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;

5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT VI
CAUSING AND ALLOWING STANDING WATER IN WASTE TIRES

1-16. Complainant realleges and incorporates by reference herein, paragraphs 1 through 13 and paragraph 20 of Count I, and paragraphs 28 through 29 of Count V, as paragraphs 1 through 16 of this Count VI.

17. Section 55(k) of the Act, 415 ILCS 5/55(k) (2018) provides, in pertinent part, as follows:

(k) No person shall:

(1) Cause or allow water to accumulate in used or waste tires....

18. On April 30, 2018, an Illinois EPA inspector observed waste tires being stored by the Respondents on the portion of the Site south of N 2725 Road, and observed that the waste tires contained standing water.

19. By causing and allowing water to accumulate in waste tires at the Site, the Respondents violated Section 55(k)(1) of the Act, 415 ILCS 5/55(k)(1) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN

MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count VI:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 55(k)(1) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 55(k)(1) of the Act;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 55(k)(1) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;
5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VII
WASTE STORAGE AND DISPOSAL AT AN IMPROPER SITE

1-28. Complainant realleges and incorporates by reference herein, paragraphs 1 through 13, paragraphs 17 through 18, paragraphs 20 through 23, paragraphs 25 through 32, and paragraph 35 of Count I, as paragraphs 1 through 28 of this Count VII.

29. Beginning on a date better known to the Respondents, but prior to January 18, 2018, the Mucci Respondents caused and allowed previous tenants to bring waste trees and logs, tree trimmings, discarded mulch material, landscape debris, used and waste tires, and construction and demolition debris to the Site, and allowed the tenants to dump these materials at the Site. As of April 30, 2018, more than 2,000 cubic yards of waste had been abandoned at the Site

30. From January 18, 2018 until at least November 9, 2018, the Kirby Respondents had the right to possess the site pursuant to the Land Contract, but failed to remove all waste from the Site.

31. Section 21(e) of the Act, 415 ILCS 5/21(e) (2018), provides, as follows:

No person shall

* * *

e. Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

32. From a date better known to Respondents through at least November 9, 2018, the Respondents stored, disposed and abandoned waste at the Site.

33. The Site has never been permitted for waste storage or waste disposal, and therefore does not meet the requirements of the Act.

34. By storing, disposing, and abandoning waste at the Site, a site not permitted for the storage or disposal of waste, the Respondents violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count VII:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(e) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section

21(e) of the Act;

4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 21(e) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;

5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and

7. Granting such other relief as the Board deems appropriate and just.

COUNT VIII
CONDUCTING A WASTE STORAGE AND WASTE TREATMENT
OPERATION WITHOUT A PERMIT

1-28. Complainant realleges and incorporates by reference herein, paragraphs 1 through 13, paragraphs 17 through 18, paragraphs 20 through 23, paragraphs 25 through 32, and paragraph 35 of Count I, as paragraphs 1 through 28 of this Count VIII.

29. The Respondents did not apply for or obtain landfill development or operating permits covering the Site at any time.

30. Section 21(d) of the Act, 415 ILCS 5/21(d) (2018), provides, in pertinent part, as follows:

No person shall:

* * *

- d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:
1. Without a permit granted by the Agency
 2. in violation of any regulations or standards adopted by the Board under this Act;....

31. Section 812.101 of the Board Waste Disposal regulations, 35 Ill. Adm. Code

812.101, provides, in pertinent part, as follows:

Section 812.101 Scope and Applicability

- a) All persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(d)) [415 ILCS 5/21(d)] shall submit to the Agency an application for a permit to develop and operate a landfill. The applications must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

32. Section 810.103 of the Board Waste Disposal regulations, 35 Ill. Adm. Code

810.103, provides the following definitions:

“Landfill” means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, landfills include waste piles, as defined in this Section.

“Operator” means the person responsible for the operation and maintenance of a solid waste disposal facility.

“Owner” means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. The “owner” is the “operator” if there is no other person who is operating and maintaining a solid waste disposal facility.

“Waste pile” means an area on which non-containerized masses of solid, non-flowing wastes are placed for disposal. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a waste pile is a landfill, unless the operator can demonstrate that the wastes are not accumulated over time for disposal. At a minimum, this demonstration must include photographs, records, or other observable or discernable information, maintained on a yearly basis, that show that within the preceding year the waste has been removed for utilization or disposal elsewhere.

33. Waste, in the form of non-containerized Landscape Debris, used and waste tires, and construction/demolition debris, was placed at the Site for disposal. The Site is a “waste pile”

and therefore a "landfill" as those terms are defined in Section 810.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 810.103.

34. The Respondents are "owner[s]" and "operator[s]" of the Site as those terms are defined in Section 810.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 810.103.

35. The Respondents stored and disposed of waste at the Site, and thereby conducted a waste storage, waste treatment, and waste disposal operation.

36. By conducting waste storage, treatment and disposal operations at the Site without a permit issued by the Illinois EPA, the Respondents violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018).

37. The Respondents developed and operated the Site as a waste storage, treatment, and disposal facility without first obtaining a development permit from the Illinois EPA.

38. By developing and operating a waste storage and waste disposal facility without a development permit, the Respondents violated Section 812.101 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 812.101, and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, WILLIAM MUCCI, SUSAN MUCCI, JOHN KIRBY, and POLLY KIRBY, on Count XIII:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Sections 21(d)(1) and 21(d)(2) of the

Act, and 35 Ill. Adm. Code 812.101;

3. Ordering the Respondents to cease and desist from future violations of Sections 21(d)(1) and 21(d)(2) of the Act, and 35 Ill. Adm. Code 812.101;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Sections 21(d)(1) and 21(d)(2) of the Act, and 35 Ill. Adm. Code 812.101, and an additional civil penalty of \$10,000.00 for each day the violations continued;
5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

**II. ADDITIONAL VIOLATIONS ALLEGED AGAINST JOHN KIRBY
AND POLLY KIRBY**

**COUNT IX
AIR POLLUTION**

1-19. Complainant realleges and incorporates by reference herein, paragraphs 1 through 7, paragraphs 9 through 16, paragraph 19, paragraph 22, and paragraphs 25 through 26 of Count I, as paragraphs 1 through 19 of this Count IX.

20. Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), provides, as follows:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

21. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides, as follows:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of

energy, from whatever source.

22. The smoke from the burning Landscape Debris and used or waste tires beginning on or about April 23, 2018 is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

23. Section 3.115 of the Act, 415 ILCS 5/3.115 (2018), provides, as follows:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

24. The smoke from the burning mulch, landscape debris, and used or waste tires, resulted in disruption of traffic on Illinois Highway 71, interfered with the enjoyment of property in the vicinity of the Site, and created a nuisance. The emission of smoke from the burning of mulch, landscape debris and used or waste tires at the Site constitutes "air pollution" as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2018).

25. By causing and allowing the burning of mulch, wood, landscape debris and used or waste tires at the Site, the Kirby Respondents caused, threatened or allowed air pollution, and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, JOHN KIRBY, and POLLY KIRBY, on Count IX:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 9(a) of the Act;

3. Ordering the Respondents to cease and desist from future violations of Section 9(a) of the Act;

4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 9(a) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;

5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT X
OPEN BURNING OF REFUSE

1-23. Complainant realleges and incorporates by reference herein, paragraphs 1 through 14, paragraph 19, paragraph 22, and paragraphs 25 through 29, of Count I, and paragraphs 38 through 39 of Count IV, as paragraphs 1 through 23 of this Count X.

24. Beginning on or about April 23, 2018, the Kirby Respondents began burning waste logs, landscape debris, and used or waste tires at the Site. The burning of waste continued until at least May 7, 2018.

25. Section 9(c) of the Act, 415 ILCS 5/9(c) (2018), provides, in pertinent part, as follows:

No person shall:

* * *

(c) cause or allow the open burning of refuse....

26. Between at least April 23, 2018 and May 7, 2018, the Kirby Respondents engaged in the open burning of refuse at the Site, and thereby violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, JOHN KIRBY, and POLLY KIRBY, on Count X:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 9(c) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 9(c) of the Act;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 9(c) of the Act, and an additional civil penalty of \$10,000.00 for each day the violations continued;
5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT XI
OPEN BURNING OF WASTE TIRES

1-26. Complainant realleges and incorporates by reference herein, paragraphs 1 through 24 of Count X, and paragraphs 28 through 29 of Count V, as paragraphs 1 through 26 of this Count XI.

27. Section 55(a) of the Act, 415 ILCS 5/55(a) (2018), provides, in pertinent part, as follows:

(a) No person shall:

* * *

(2) Cause or allow the open burning of any used or waste tire.

* * *

28. On at least April 30, 2018, the Kirby Respondents caused and allowed waste tires contained in piles of Landscape Debris at the Site to be burned. The burning of the waste tires constituted "open burning" as that term is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2018), and as that term is applied in Section 55(a) of the Act, 415 ILCS 5/55(a) (2018).

29. By causing and allowing the burning of waste tires at the Site on at least April 30, 2018, the Kirby Respondents violated Section 55(a) (2) of the Act, 415 ILCS 5/55(a)(2) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, JOHN KIRBY, and POLLY KIRBY, on Count XI:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 55(a)(2) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 55(a)(2) of the Act;
4. Assessing against the Respondents a civil penalty of \$50,000.00 for each violation of Section 55(a)(2) of the Act, and an additional civil penalty of \$10,000.00 for each day the

violations continued;

5. Ordering the Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS
by KWAME RAOUL,
Attorney General of the State of Illinois

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

BY:



ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

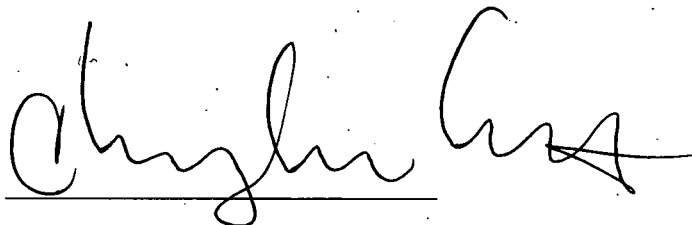
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 14th day of August, 2019, the Complaint and Notice of Filing in this matter upon the persons listed below by certified mail.

A handwritten signature in black ink, appearing to read "Christopher Grant", written over a horizontal line.

CHRISTOPHER GRANT

SERVICE LIST:

Mr. William Mucci
1908 Ottawa Avenue
Ottawa, IL 61350

Ms. Debra Mucci
1908 Ottawa Avenue
Ottawa, IL 61350

Mr. John Kirby
1522 Illinois Route 71
Ottawa, IL 61350

Ms. Polly Kirby
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