

SERVICE LIST

Edward M. Fisher
7841 Warner Road
Manito, IL 61546

Rhonda Fisher
7841 Warner Road
Manito, IL 61546

Demolition Excavating Group, Inc.
Rhonda Fisher, President
7841 Warner Road
Manito, IL 61546

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

21(a), 21(e), and 21(p)(7) of the Act, 415 ILCS 5/21(a), 21(e), and 21(p)(7) (2012), arising from the open dumping of general construction or demolition debris on property owned by Pekin Sand & Gravel located at 13018 Manito Road, Pekin, Tazewell County, Illinois (“Pekin S&G Site”).

2. The Board accepted the Complainant’s Complaint for hearing on July 11, 2013.

3. On July 28, 2014, the Hearing Officer directed the Respondents to answer the Complaint by September 29, 2014.

4. Respondents failed to answer the Complaint by September 29, 2014.

5. On October 6, 2014, Complainant filed a Motion to Deem Complaint Allegations Admitted.

6. Respondent failed to respond to Complainant’s Motion to Deem Complaint Allegations Admitted within the fourteen (14) days allowed by the Board’s procedural rules.

7. On November 20, 2014, the Board ordered Complainant to file proof that the Complaint was served on all Respondents.

8. On November 24, 2014, Complainant filed proof of service of the Complaint on all Respondents.

9. On December 4, 2014, the Board granted Complainant’s Motion to Deem Complaint Allegations Admitted.

II. STATEMENT OF UNDISPUTED FACTS

1. Respondent Demolition Excavating Group, Inc. (“DEG”) is a demolition and excavating contracting company with a principal place of business at 805 Adams, Manito, Mason County, Illinois. [Exhibit 1, Complaint, Count I ¶4].

2. Respondents Rhonda Fisher and Edward Fisher are the owners of DEG. [Exhibit 1, Complaint, Count I ¶4].

3. At all times relevant to the allegations in the Complaint, Rhonda Fisher was the President of DEG and Edward Fisher was an authorized agent or employee of DEG. [Exhibit 1, Complaint, Count I, ¶6-7].

4. DEG is the successor corporation to DEM/EX Group, Inc. [Exhibit 1, Complaint, Count I ¶4].

5. DEM/EX Group, Inc., an Illinois corporation not in good standing with the Secretary of State, was also a demolition and excavating contracting company with its principal place of business at 805 Adams, Manito, Mason County, Illinois. [Exhibit 1, Complaint, Count I ¶4] and ¶6].

6. Edward Fisher is the President and Secretary of DEM/EX Group, Inc. [Exhibit 1, Complaint, Count I ¶6].

7. At all times relevant to the allegations in the Complaint, Joyce Hilst and Scott Hilst were the owners of the Hilst Site. [Exhibit 1, Complaint, Count I ¶9].

8. At some point prior to May 10, 2012, Rhonda Fisher arranged for Scott Hilst to meet with Edward Fisher to discuss providing Scott Hilst with demolition materials from the Pekin West High School campus to be used as fill material at the Hilst Site. [Exhibit 1, Complaint, Count I ¶10].

9. Thereafter, Scott Hilst met with Edward Fisher and made arrangements to have excavated demolition material delivered to the Hilst Site on the condition precedent that everything was cleared with the Illinois EPA before dumping any excavated demolition material at the Hilst Site. [Exhibit 1, Complaint, Count I ¶10].

10. At some point prior to May 10, 2012, DEG, through its employee, Daniel Saal, falsely represented to Ms. Hilst that it had obtained permission from the Illinois EPA to dump

clean demolition debris at the Hilst Site. However, the excavated demolition material contained metal, wood and other waste and thus was not clean demolition debris as defined by the Act. [Exhibit 1, Complaint, Count I ¶11].

11. On May 10, 2012, the Illinois EPA inspected the Hilst Site and determined that demolition debris containing rock, dirt, brick, wood and metal had been openly dumped there. [Exhibit 1, Complaint, Count I ¶12].

12. On that same day, Rhonda Fisher and Daniel Saal admitted to the Illinois EPA inspector that DEG had dumped demolition debris from Pekin West High School campus at the Hilst Site. [Exhibit 1, Complaint, Count I ¶13].

13. On May 11, 2012, the Illinois EPA inspected the Hilst Site, observing demolition debris consisting of brick, concrete, metal, wood, plastic and cardboard openly dumped along the south edge of the west lagoon on the property. [Exhibit 1, Complaint, Count I ¶14].

14. On May 24, 2012, Edward Fisher informed the Illinois EPA that the Hilst Site was being cleaned up. Later that day, the Illinois EPA went to the Hilst Site, where Tyler Dawe, a DEG employee, was removing wood waste from the debris with a bucket. [Exhibit 1, Complaint, Count I ¶15].

15. The Illinois EPA subsequently informed Edward Fisher that all of the waste had to be removed from the Hilst Site, not just the wood waste. Edward Fisher advised the Illinois that DEG was not responsible for all of the waste and DEG would not remove all of the waste. [Exhibit 1, Complaint, Count I, ¶15].

16. On June 1, 2012, the Illinois EPA met with Edward Fisher, Rhonda Fisher, and employees of DEG at the Pekin High School West campus excavation site. During the meeting, the Illinois EPA handed out copies of Section 3.160 of the Act, 415 ILCS 5/3.160 (2012), which

includes the definitions of “general construction or demolition debris” and “clean construction or demolition debris,” and explained that the waste that had been placed on the Hilst Site was a waste and would have to be removed and properly disposed. [Exhibit 1, Complaint, Count I, ¶16].

17. At Edward Fisher’s request, the Illinois EPA looked at the accumulations of waste at the Pekin High School West campus excavation site. After looking at the accumulations of waste, the Illinois EPA advised Edward Fisher that the accumulations of waste were not clean demolition debris and that all of the waste would have to be taken to a landfill. [Exhibit 1, Complaint, Count I, ¶16].

18. On July 3, 2012, the Illinois EPA inspected the Hilst Site and approximately 12 dump-truck loads, or 200 cubic yards, of demolition debris, which had been generated at the Pekin High School West campus, had recently been dumped by Respondents at the Hilst Site and in the lagoons. The waste included two loads of asphalt and a load of wood waste. [Exhibit 1, Complaint, Count I, ¶20].

19. On July 19, 2012, the Illinois EPA inspected the Pekin S&G Site. At that time, Derrek Henry, the owner of the site, confirmed that DEG had been delivering waste from the Pekin High School West campus site to the Pekin S&G Site. [Exhibit 1, Complaint, Count II, ¶11].

20. At the time of the July 19, 2012 inspection, there were 250 cubic yards of demolition debris containing wood, protruding metal bars and other waste present at the Pekin S&G Site. [Exhibit 1, Complaint, Count II, ¶12].

21. Respondents removed the demolition debris from the Pekin S&G Site on July 23, 2012. [Exhibit 1, Complaint, Count II, ¶13].

22. On December 10, 2012, the Illinois EPA inspected the Hilst Site and two loads of stockpiled waste remained on the property. [Exhibit 1, Complaint, Count I, ¶21].

23. At all times relevant to the allegations in the Complaint, Rhonda Fisher and Edward Fisher actively and personally directed the actions that caused the violations set forth in the Complaint. [Exhibit 1, Complaint, Count I, ¶18].

III. ARGUMENT

1. Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (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 enter summary judgment.

2. Section 2-1005(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005(a) (2012), provides as follows:

Summary judgments

- (a) For [Complainant]. Any time after the opposite party has appeared or after the time which he or she is required to appear has expired, a [Complainant] may move with or without supporting affidavits for a summary judgment in his or her favor for all or part of the relief sought.

3. Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483 (1998). The purpose of summary judgment is not to try an issue of fact, but to determine whether any genuine issue of material fact exists. *Happel v. Wal-Mart*

Stores, Inc., 199 Ill.2d 179, 186 (2002). The use of summary judgment should be encouraged to aid in the expeditious disposition of litigation. *Purtill v. J.H. Hess*, 111 Ill.2d 229, 240 (1986).

4. No genuine issues of material fact exist in this case. The facts in the Complaint, all of which have been deemed admitted, and the affidavit of Gene Figge, sufficiently establish that all three Respondents are liable for violating Sections 21(a), 21(e), and 21(p)(1), (4), and (7) of the Act, 415 ILCS 5/21(a), 21(e), and 21(p)(1), (4), and (7), at the Hilst Site and Sections 21(a), 21(e), and 21(p)(7) of the Act, 415 ILCS 5/21(a), 21(e), and 21(p)(7), at the Pekin S&G Site.

5. Section 21 of the Act, 415 ILCS 5/21(2012), provides, in pertinent part, as follows:

No person shall:

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

* * *

(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.

* * *

(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;

* * *

(4) deposition of waste in standing or flowing waters;

* * *

(7) deposition of:

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

6. Section 3.315 of Act, 415 ILCS 5/3.315 (2012), provides the following definition:

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

7. Respondents Rhonda Fisher and Edward Fisher are individuals. Respondent DEG is a corporation. Each are therefore a “person” as that term is defined in Section 3.315 of Act, 415 ILCS 5/3.315 (2012).

8. Section 3.535 of the Act, 415 ILCS 5/3.535 (2012), provide the following definition:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material....

9. The demolition material from the Pekin West High School campus which Respondents dumped on the Hilst Site and the Pekin S&G site is “waste” as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2012).

10. Section 3.305 of the Act, 415 ILCS 5/3.305 (2012), provides the following definition:

“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.

11. Section 3.385 of the Act, 415 ILCS 5/3.385 (2012), provides the following definition:

“Refuse” means waste.

12. Section 3.185 of the Act, 415 ILCS 5/3.185 (2012), provides the following

definition:

“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.

13. By their own admission, Respondents took demolition debris from the Pekin West High School campus and dumped it on the Hilst Site and the Pekin S&G Site with the intention of leaving it there permanently as fill material. Respondents therefore engaged in the “open dumping” of waste on the Hilst Site and the Pekin S&G Site as that term is defined in Section 3.305 of the Act, 415 ILCS 5/3.305 (2012), and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2012).

14. Respondents began open dumping on the Hilst Site at some point prior to May 10, 2012. Waste material remained on the Hilst Site until at least December 10, 2012.

15. Respondents began open dumping on the Pekin S&G Site at some point prior to July 19, 2012. Waste material remained on the Pekin S&G Site until July 23, 2012.

16. Section 3.445 of the Act, 415 ILCS 5/3.445 (2012), provides the following definition:

“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. 94580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

17. Neither the Hilst Site nor the Pekin S&G Site is permitted by the Illinois EPA for the disposal of waste. Respondents’ open dumping of waste on those properties therefore

constituted the disposal of waste at a facility that does not meet the requirements of the Act in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2012).

18. Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2012), provides the following definition:

As used in this Act, unless the context otherwise requires:

- (a) “Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, cigarettes, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code),¹ motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

19. The waste Respondents open dumped on the Hilst Site constituted “litter” as that term is defined in Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2012). The Respondents’ open dumping on the Hilst Site therefore constituted a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2012).

20. Respondents’ open dumped waste on the Hilst Site in, among other locations, a lagoon. The Respondents’ open dumping on the Hilst Site therefore constituted a violation of Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2012).

21. Section 3.160 of the Act, 415 ILCS 5/3.160 (2012), provides the following definition:

- (a) “General construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry

materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials

22. The demolition debris from the Pekin West High School campus, which contained rock, dirt, brick, wood, metal, and other waste, is “general construction or demolition debris” as that term is defined in Section 3.160 of the Act, 415 ILCS 5/3.160 (2012).

23. By open dumping general construction or demolition debris at the Hilst Site and the Pekin S&G Site, Respondents violated Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2012).

IV. RELIEF REQUESTED

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests that that Board issue an order in favor of Complainant and against Respondents DEMOLITION EXCAVATING GROUP, RHONDA RISHER, and EDWARD FISHER as follows:

1. Finding that Respondents violated Sections 21(a), 21(e), and 21(p)(1), (4) and (7) of the Act, 415 ILCS 5/21(a), 21(e), and 21(p)(1), (4) and (7) (2012), with respect to the Hilst Site;
2. Finding that Respondents violated Sections 21(a), 21(e), and 21(p)(7) of the Act, 415 ILCS 5/21(a), 21(e), and 21(p)(7) (2012), with respect to the Pekin S&G Site; and
3. Granting summary judgment in favor of Complainant and against Respondents on Counts I and II of the Complaint.

V. REMEDY

Impact on the Public Resulting from Respondents' Alleged Non-Compliance

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), provides as follows:

- (c) 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:
 - (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 - (ii) the social and economic value of the pollution source;
 - (iii) 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;
 - (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
 - (v) any subsequent compliance.

In response to these factors, the Complainant states the following:

1. The open dumping of general construction or demolition debris threatened human health and the environment and hindered the Illinois EPA's information gathering responsibilities.
2. The demolition and proper disposal of general construction or demolition debris has social and economic value.
3. The Hilst Property and the Pekin S&G property are not suitable for the storage or disposal of general construction or demolition debris.
4. Complying with the applicable provisions of the Act was both technically practicable and economically reasonable.

5. Following the Illinois EPA's inspections of the Hilst Site on December 10, 2012, and the Pekin S&G Site on July 19, 2012, Respondents took steps to remove general construction or demolition debris from the two properties.

A civil penalty should be assessed against Respondents because they have repeatedly been found to have violated the Act, including by improperly storing and disposing of general construction or demolition debris, as explained more fully below, and because of the potential harm of unpermitted waste disposal to human health and the environment.

Explanation of Civil Penalties Requested

Section 2(b) of the Act, 415 ILCS 5/2(b) (2012), provides:

It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, *and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.* (Emphasis added.)

The primary purpose of civil penalties is to aid in the enforcement of the Act. *See People v. McHenry Shores Water Co.*, 295 Ill. App. 3d 628, 638 (2d Dist. 1998). Civil penalties should reflect the severity of the violation(s) of the Act. *Southern Illinois Asphalt Company, Inc. v. Pollution Control Board*, 60 Ill. 2d 204, 208 (5th Dist. 1975). But the Act authorizes civil penalties regardless of whether violations resulted in actual pollution. *ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 52 (4th Dist. 1996). Moreover, the award of a civil penalty “serves the legislative purpose of aiding enforcement of the Act, for through penalties upon those who blatantly disregard applicable rules and regulations, others, who might consider cutting corners at the expense of the environment, are deterred.” *Wasteland, Inc. v. Illinois Pollution Control Board*, 118 Ill. App. 3d 1041, 1055 (3d Dist. 1983) (subsequently cited by the

First District; *see e.g. Standard Scrap Metal Co. v. Pollution Control Board*, 142 Ill. App 3d 655, 665 (1st Dist.1986)).

Section 42 of the Act provides guidance for calculating civil penalties for violations of the Act. The statutory maximums provided in the Act have been used as “a natural, or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts.” *Illinois EPA v. Allen Barry, Individually and d/b/a Allen Barry Livestock*, PCB No. 88-71, p. 72 (May 10, 1990).

Section 42(a) of the Act, 415 ILCS 5/42(a) (2012), provides, in pertinent part, as follows:

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues;

Based on the facts alleged in the Complaint, which have been deemed admitted, the maximum statutory penalty that Section 42(a) of the Act, 415 ILCS 5/42(a) (2012), authorizes for Respondents’ violations is \$11,250,000.00, including the penalty for continuing violations of \$10,000 per day.

Penalties for violations of the Act are calculated according to the formula contained in Section 42(a), 415 ILCS 5/42(a) (2012). The statutory maximum is calculated as follows:

Count I

1 violation of Section 21(a)	\$ 50,000.00
1 violation of Section 21(e)	\$ 50,000.00
1 violation of Section 21(p)(1)	\$ 50,000.00
1 violation of Section 21(p)(4)	\$ 50,000.00
1 violation of Section 21(p)(7)	\$ 50,000.00
5 violations continuing 214 days	\$ 10,700,000.00

Count II

1 violation of Section 21(a)	\$ 50,000.00
1 violation of Section 21(e)	\$ 50,000.00
1 violation of Section 21(p)(7)	\$ 50,000.00
3 violations continuing for 5 days	\$ 150,000.00

Total \$ 11,250,000.00

Consideration of Section 42(h) Factors

Section 42(h) of the Act, 415 ILCS 5/42(h) (2012), provides as follows:

In determining the appropriate civil penalty to be imposed...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 respondent and to otherwise aid in enhancing voluntary compliance with this Act by the violator 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 violator.
6. whether the respondent voluntarily self-disclosed, in accordance with Subsection (i) of this Section, the non-compliance to the Agency; and
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.

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

1. The violations that are the subject of Count I of the Complaint began on or before May 10, 2012 and continued through at least December 10, 2012. The violations that are the subject of Count II of the Complaint began on or before July 19, 2012 and continued through at least July 23, 2012.

2. Respondents failed to act diligently in this matter. Respondents were informed by the Illinois EPA on May 10, 2012 that the material they had dumped at the Hilst Site was general construction or demolition debris, that the open dumping of general construction or demolition debris at a site other than a permitted Illinois EPA landfill is a violation of the Act, and they should remove all general construction or demolition debris from the Hilst Site immediately. [Exhibit 2, Affidavit of Gene Figge ¶]. Respondents nevertheless failed to remove all of the general construction or demolition debris from the Hilst Site before at least December 10, 2012.

3. Respondents accrued a nominal economic benefit by delaying proper disposal of the general construction or demolition debris they dumped at the Hilst Site and Pekin S&G Site. The civil penalty requested by Complainant would include any economic benefit that Respondents may have accrued as a result of the delay in compliance.

4. Complainant states that a civil penalty payment of Seventy Five Thousand Dollars (\$75,000.00) will serve to deter further violations by Respondents and to otherwise aid in enhancing voluntary compliance with the Act by Respondents and other persons similarly subject to the Act.

5. Respondents Rhonda Fisher and Edward Fisher, and Demolition Excavating Group Inc.'s predecessor corporation, DEX/EX Group, Inc., have been found by the Board to have violated the Act on several recent occasions. On June 5, 2008, the Board issued an Order in *Illinois Environmental Protection Agency v. Edward W. Fisher, et al.*, AC 08-26, finding that Rhonda Fisher, Edward Fisher, and DEM/EX Group, Inc. violated Sections 21(p)(1) and (7) of the Act, 415 ILCS 5/21(p)(1) and 21(p)(7) (2006), by causing or allowing the open dumping of waste in a manner that resulted in litter and the deposition of general or clean construction or demolition debris, as alleged by the Illinois EPA in an administrative citation. [Exhibit 3, AC 08-26]. Those violations carried a \$3,000 civil penalty. On May 16, 2013, the Board issued an Order in *People of the State of Illinois v. Edward W. Fisher, et al.*, PCB 13-03, against Rhonda Fisher, Edward Fisher, and DEM/EX Group, Inc. finding that they had each violated the Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) of the Act, 415 ILCS 5/9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) (2010), and Section 812.101(a) of the Board regulations, 35 Ill. Adm. Code 812.101(a). [Exhibit 4, PCB 13-03]. The Board imposed a civil penalty of \$16,000 on each Respondent, for a total civil penalty of \$48,000, for those violations. Additionally, on July 2, 2012, the Rock Island Circuit Court issued an order against DEM/EX Group, Inc., imposing a \$110,300.00 penalty for failure to comply with the Act's asbestos demolition notifications, emission control and removal requirements. [Exhibit 5, 11-CH-413].

6. Respondents did not disclose to the Illinois EPA the violations alleged in the Complaint.

7. Respondents did not offer to perform a supplemental environmental project.

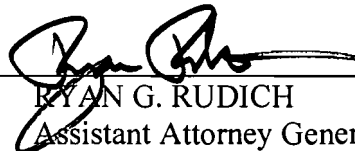
These aggravating and mitigating factors provide guidance to the Board in determining the appropriate amount of a civil penalty in an environmental enforcement case. Accordingly, the Complainant brings these factors to the Board's attention.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests that the Board grant its Motion for Summary Judgment against Respondents, DEMOLITION EXCAVATING GROUP, INC., RHONDA FISHER, and EDWARD FISHER, award the relief requested herein, and take such other action as the Board believes to be appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN
Attorney General of the State of Illinois

BY:



RYAN G. RUDICH
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Tel: (312) 814-1511
rrudich@atg.state.il.us

Exhibit 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN,)
Attorney General of the State of Illinois,)**

Complainant,)

v.)

**PCB No. 13-)
(Enforcement-Land)**

**DEMOLITION EXCAVATING GROUP,)
INC., an Illinois Corporation,)
RHONDA FISHER, and EDWARD)
FISHER,)**

Respondents.)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondents, DEMOLITION EXCAVATING GROUP, INC., RHONDA FISHER and EDWARD FISHER as follows:

COUNT I
OPEN DUMPING / HILST SITE

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

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 (2010), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. The Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondents with notice and opportunity for a meeting with the Illinois EPA.

4. Respondent, Demolition Excavating Group, Inc. ("DEG"), is a closely held Illinois corporation, properly registered and in good standing with the Secretary of State. Respondent, DEG is a demolition and excavating contracting company. Likewise, DEM/EX Group Inc. was a demolition and excavating contracting company which is a closely held Illinois corporation. DEM/EX Group Inc. is not in good standing with the Secretary of State. Both corporations are closely held by Rhonda and Edward Fisher and both corporations share a principal place of business at 805 Adams, Manito, Mason County, Illinois.

5. The Respondent DEG is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

6. At all times relevant to this Complaint, Respondent, Rhonda Fisher, was the President of Respondent DEG. Respondent Edward Fisher is an authorized agent or employee of Respondent DEG and Edward Fisher is the President and Secretary of the predecessor corporation DEM/EX Group, Inc.

7. At all times relevant to this Complaint, Respondent, Edward Fisher, was the husband of Respondent Rhonda Fisher and was the authorized agent of Respondent DEG.

8. The Board issued orders against Respondent Rhonda Fisher, Respondent Edward Fisher, and DEM/EX Group, Inc. for open dumping violations related to demolition debris wastes cited in AC-2008-026 and PCB 2013-003 on June 5, 2008 and May 16, 2013, respectively. Likewise, the Rock Island Circuit Court issued an order against DEM/EX Group, Inc. in July 2012 for Clean Air Act violations cited in Case No. 11-CH-413.

9. At all times relevant to this Complaint, Joyce Hilst, and Scott Hilst were the owners of the real property located at 13000 block of East Manito Road, Pekin, Tazewell County, Illinois which has two lagoons upon it ("Hilst Site").

10. At some time prior to May 10, 2012, Scott Hilst met with Respondent, Rhonda Fisher at the West Pekin High School campus to inquire about obtaining free excavated demolition material from the West Pekin High School campus to be used as fill at the Hilst Site. Based on Scott Hilst's inquiry, Respondent Rhonda Fisher arranged for Scott Hilst to meet with Respondent Edward Fisher at DEG's corporate office in Manito, Illinois. Thereafter, Scott Hilst met with Respondent Edward Fisher and made arrangements to have excavated demolition material delivered to the Hilst Site for fill on the condition precedent that everything was cleared with the Illinois EPA before dumping any excavated demolition material at the Hilst Site.

11. At some time prior to May 10, 2012, DEG, through its employee, Daniel Saal, falsely represented to Ms. Hilst that it had obtained permission from the Illinois EPA to dump clean demolition debris at the Hilst Site; however, the excavated demolition material contained metal, wood and other waste and thus was not clean demolition debris as defined by the Act.

12. On May 10, 2012, Illinois EPA inspector, Gene Figge, inspected the Hilst Site and determined that demolition debris containing rock, dirt, brick, wood and metal had been openly dumped. At that time, Inspector Figge took photographs of the Hilst Site which are attached hereto and incorporated herein as Complainant's Exhibit 1 [CX1].

13. Later that day, Inspector Figge contacted DEG's Project Coordinator Daniel Saal and DEG's President, Rhonda Fisher, and both admitted that DEG had been removing the demolition debris from an excavation project at Pekin High School West Campus and dumping it at the Hilst Site with purported permission of the owner.

14. On May 11, 2012, another inspection was conducted at the Hilst Site by Illinois EPA Inspectors Jason Thorp, Jeb McGhee and Illinois EPA, Land Field Operations Section, Peoria Regional Manager, John Tripses. At that time, demolition debris from the Pekin High School West Campus excavation was openly dumped along the south edge of the Hilst Site's west lagoon and contained a mixture of brick, concrete, metal, wood, plastic and cardboard.

15. On May 24, Inspector Figge contacted Ed Fisher of DEG by telephone and Mr. Fisher informed Inspector Figge that the Hilst Site was being cleaned up. Later that day, Inspector Figge went to the Hilst Site and DEG employee Tyler Dawe was removing wood waste from the debris with a bucket. Subsequently Inspector Figge called Mr. Fisher and informed him that all wastes had to be removed from the Hilst Site, not just the wood wastes. Mr. Fisher advised Inspector Figge that DEG was not responsible for all of the waste and DEG would not remove all of the waste.

16. On June 1, 2012, Inspector Figge met with Ed Fisher, Rhonda Fisher, Tyler Dawe, Daniel Saal, and Seth Rice of Demolition Excavating Group, Inc. at the Pekin High School West Campus excavation site. During the meeting, Inspector Figge handed out copies of Section 3.160 of the Act and explained that the waste that had been placed on the Hilst Site was a waste and would have to be removed and properly disposed. At Mr. Fisher's request, Inspector Figge looked at the accumulations of wastes at the Pekin High School West Campus excavation site. After looking at the accumulations of wastes with Mr. Fisher, Inspector Figge advised Mr. Fisher that the accumulations of wastes were not clean demolition debris and that all of the wastes would have to be taken to a landfill.

17. On June 4, 2012, Ed Fisher of DEG called Inspector Figge to inform him that DEG was removing all of the wastes from the Hilst Site and taking it to a landfill.

18. At all times relevant to this Complaint, Edward and Rhonda Fisher were actively and personally in directing the violations set forth and alleged in this Complaint.

19. On June 5, 2012, the Illinois EPA issued a violation notice to DEG pursuant to Section 31(a) of the Act, 415 ILCS 5/31(a) (2010).

20. On July 3, 2012, Inspector Figge conducted an inspection of the Hilst Site and approximately 12 dump-truck loads, or 200 cubic yards, of demolition debris, which had been generated at the Pekin High School West Campus, had recently been dumped by Respondents at the Hilst Site and in the lagoons. The wastes included two loads of asphalt and a load of wood wastes.

21. On December 10, 2012, Inspector Figge conducted an inspection of the Hilst Site and most of the wastes had been removed from the lagoons, but for two loads of stockpiled waste which had been prepared for transport.

22. On March 12, 2013, Inspector Figge conducted an inspection of the Hilst Site and all wastes had been removed.

23. Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2010) defines general demolition debris and provides in pertinent part:

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

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities,

structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

To the extent allowed by federal law, uncontaminated concrete with protruding rebar shall be considered clean construction or demolition debris and shall not be considered "waste" if it is separated or processed and returned to the economic mainstream in the form of raw materials or products within 4 years of its generation, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i) in subsection (b) of this Section.

24. Section 21 of the Act, 415 ILCS 5/21 (2010), provides in pertinent part:

No person shall:

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

* * *

(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.

* * *

(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;

* * *

(4) deposition of waste in standing or flowing waters;

* * *

(7) deposition of:

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

25. Respondents had caused or allowed the open dumping of wastes at the Hilst Site.

26. By causing or allowing open dumping of wastes at the Hilst Site, Respondents violated Section 21(a) of the Act.

27. Respondents had disposed of wastes at the Hilst Site which did not meet the requirements of the Act or the regulations and standards thereunder.

28. By disposing of wastes at the Hilst Site which did not meet the requirements of the Act or the regulations and standards thereunder, Respondents violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

29. Respondents had caused or allowed open dumping of wastes at the Hilst Site in a manner which resulted in litter and deposition of waste in standing water.

30. By causing or allowing the open dumping of wastes at the Hilst Site in a manner which resulted in litter and deposition of waste in standing water, Respondents violated Section 21(p)(1) and (p)(4) of the Act, 415 ILCS 5/21(p)(1) and (p)(4) (2010).

31. Respondents had caused or allowed open dumping of wastes at the Hilst Site in a manner which resulted in deposition of general construction or demolition debris as defined in Section 3.160(a) of this Act.

32. By causing or allowing open dumping of wastes at the Hilst Site in a manner which resulted in deposition of general construction or demolition debris as defined in Section 3.160(a) of this Act, Respondents violated Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN respectfully requests that the Board enter an order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II
OPEN DUMPING / PEKIN S & G SITE

1-8. The Complainant hereby adopts and incorporates by reference herein, Paragraphs 1 through 8 of Count I of this Complaint as Paragraphs 1 through 8 of this Count II.

9-10. The Complainant hereby adopts and incorporates by reference herein, Paragraphs 23 and 24 of Count I of this Complaint as Paragraphs 9 and 10 of this Count II.

11. On July 19, 2012, Inspector Figge conducted an inspection of a property located at 13018 Manito Road, Tazewell County, Pekin, Illinois owned by Pekin Sand & Gravel ("Pekin S & G Site) in response to a complaint that DEG had been dumping wastes from the Pekin High School West Campus site at the Pekin S & G Site. At that time, Inspector Figge met with the owner, Derrek Henry, who confirmed that DEG had been delivering wastes from the Pekin High School West Campus site to the Pekin S & G site.

12. During Inspector Figge's July 19, 2012, inspection there was 250 cubic yards of demolition debris wastes present which had come from the Pekin High School West Campus site. The demolition debris waste contained wood, protruding metal bars and other wastes. At that time, Inspector Figge informed Derrek Henry that all of the wastes would have to be removed. During the conversation between Inspector Figge and Derrek Henry, a DEG dumptruck arrived and Inspector Figge and Derrek Henry told the driver that no more loads of demolition debris waste would be accepted from the Pekin High School West Campus site.

13. On July 20, 2012, Derrek Henry contacted DEG and requested that DEG remove the wastes from the Pekin S & G Site. On July 23, DEG removed the wastes and returned it to the Pekin High School West Campus site.

14. Respondents had caused or allowed the open dumping of wastes at the Pekin S & G Site.

15. By causing or allowing open dumping of wastes at the Pekin S & G Site, Respondents violated Section 21(a) of the Act.

16. Respondents had disposed of wastes at the Pekin S & G Site which did not meet the requirements of the Act or the regulations and standards thereunder.

17. By disposing of wastes at the Pekin S & G Site which did not meet the requirements of the Act or the regulations and standards thereunder, Respondents violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

18. Respondents had caused or allowed open dumping of wastes at the Pekin S & G Site in a manner which resulted in deposition of general construction or demolition debris as defined in Section 3.160(a) of this Act.

19. By causing or allowing open dumping of wastes at the Pekin S & G Site in a manner which resulted in deposition of general construction or demolition debris as defined in Section 3.160(a) of this Act, Respondents violated Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN respectfully requests that the Board enter an order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), awarding to Complainant its costs and reasonable attorney fees; and

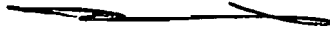
People v. Demolition Excavating Group, Inc., et al.

F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the State
of Illinois

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau

OF COUNSEL:

Kelly O. Phelps ARDC # 6275697
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031
Dated: 7/02/13

Exhibit 2

STATE OF ILLINOIS)
)
COUNTY OF PEORIA) SS.

AFFIDAVIT OF GENE FIGGE

I, GENE FIGGE, after being duly sworn on oath, state that if called upon to testify in this matter, I would competently testify as follows:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as an Environmental Specialist 3. I have been employed by the Illinois EPA since 1990.

2. As an Environmental Specialist 3, my duties include but are not limited to conducting complaint investigations and routine inspections of solid waste facilities.

3. On May 10, 2012, I conducted an inspection of property owned by Joyce and Scott Hilst located on the 13000 block of East Manito Road, Pekin, Tazewell County, Illinois ("Hilst Site").

4. Following my inspection of the Hilst Site on May 10, 2012, I spoke with Rhonda Fisher, president of Demolition Excavating Group, Inc. ("DEG"), and Daniel Saal, DEG's Project Coordinator.

5. During my conversation with Rhonda Fisher and Daniel Saal I informed them both that the material they had open dumped on the Hilst Site was general construction or demolition debris, that the open dumping of general construction or demolition debris at a site other than an Illinois EPA permitted landfill is a violation of the Illinois Environmental Protection Act, and that they should remove all general construction or demolition debris from the Hilst Site immediately.

Gene Figge

GENE FIGGE

Subscribed and sworn to before me
this 13 day of January, 2015.

Melodee L Campbell

NOTARY PUBLIC

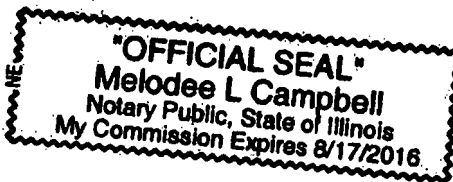


Exhibit 3

ILLINOIS POLLUTION CONTROL BOARD

June 5, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-26
)	(IEPA No. 29-08-AC)
EDWARD W. FISHER, RHONDA L.)	(Administrative Citation)
FISHER and DEM/EX GROUP, INC.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by G.T. Girard):

On March 21, 2008, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Edward W. Fisher, Rhonda L. Fisher, and DEM/EX Group, Inc. (collectively respondents). See 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located at the Northwest 1/4 of Section 28, Township 23 North, Range 6 West, Third Meridian, Manito, Mason County, designated with Site Code No. 1250305011, and commonly known to the Agency as "Manito/DEM/EX Group, Inc." For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and orders respondents to pay \$3,000 in civil penalties.

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. See 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents violated Sections 21(p)(1) and (p) (7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris. According to the administrative citation, Edward W. Fisher and Rhonda L. Fisher are the current owners and DEM/EX Group, Inc. is the current operator of the facility. The Agency asks the Board to impose a \$3,000 civil penalty on respondents. As required, the Agency served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); see also 35 Ill. Adm. Code 101.300(c), 108.202(b).

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the

corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due on April 24, 2008. All respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Sections 21(p)(1) and (p) (7) of the Act.

The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and no allegations of any second or subsequent adjudicated violations, the total civil penalty is \$3,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

This opinion constitutes the Board's finding of fact and conclusions of law.

ORDER

1. The Board finds that respondents violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2006)).
2. Respondents must pay a civil penalty of \$3,000 no later than July 7, 2008, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case number, case name, and each respondent's respective social security number or federal employer identification number must be included on the certified check or money order.
3. Respondents must send the certified check or money order and the remittance form to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 5, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
EDWARD W. FISHER & RHONDA L.)
FISHER and DEM/EX GROUP INC.,)
)
Respondents.)

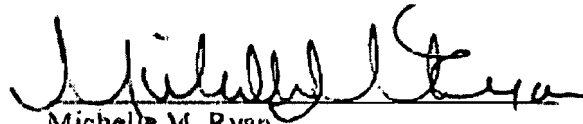
RECEIVED
CLERK'S OFFICE
MAR 21 2008
STATE OF ILLINOIS
Pollution Control Board
08-24
AC
(IEPA No. 29-08-AC)

NOTICE OF FILING

To: Edward W. Fisher & Rhonda L. Fisher DEM/EX Group, Inc.
7841 Warner Road 805 South Adams Street
Manito, IL 61546 Manito, IL 61546-9300

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

Respectfully submitted,


Michelle M. Ryan
Assistant Counsel

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

Dated: March 19, 2008

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

VIOLATIONS

Based upon direct observations made by Paul Eisenbrandt during the course of his February 7, 2008 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondents have violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2006),

- (2) That Respondents caused or allowed the open dumping of waste in a manner resulting in deposition of general construction or demolition debris; or clean construction or demolition debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2006).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), Respondents are subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Three Thousand Dollars (\$3,000.00). If Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than April 30, 2008, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondents elect to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2006), and if the Illinois

Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the One Thousand Five Hundred Dollar (\$1,500.00) statutory civil penalty for each violation.


Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2006), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

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

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

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2006). If Respondents elect to contest this Administrative Citation, then Respondents shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondents.


Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 3/19/08

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

Exhibit 4

ILLINOIS POLLUTION CONTROL BOARD

May 16, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 13-3
)	(Enforcement - Land)
EDWARD W. FISHER, RHONDA L.)	
FISHER, and DEM/EX GROUP, INC., an)	
Illinois corporation,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On July 13, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Edward W. Fisher, Rhonda L. Fisher, and DEM/EX Group Inc. (DEM/EX Group) (collectively, "respondents"). The complaint concerns Edward Fisher's and Rhonda Fisher's residential site at 29998 East Manito Road, Manito, Mason County (residential site), as well as DEM/EX Group's principal place of business at 805 Adams, Manito, Mason County (corporate site).

On October 29, 2012, the respondents Edward Fisher and Rhonda Fisher, represented by legal counsel, agreed to the facts in the complaint during a telephone status conference. Edward Fisher and Rhonda Fisher did not file an answer to the complaint. On October 31, 2012, the People filed a motion to deem admitted allegations in the complaint against respondent DEM/EX Group. No response was filed, and that motion was granted and facts deemed admitted on November 28, 2012. On January 8, 2013, the People filed motions for summary judgment against respondents Edward Fisher and Rhonda Fisher. On January 22, 2013, the People filed a motion for summary judgment against DEM/EX Group. None of the respondents filed a response to the People's motions for summary judgment.

For reasons set out below, the Board grants the People's motions for summary judgment. The Board finds that respondents violated Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) of the Environmental Protection Act (Act), and Section 812.101(a) of Title 35 of the Illinois Administrative Code (Board regulations). 415 ILCS 5/9(a), (c), 21(a), (d)(1)-(2), (e), (p)(1), (p)(3), (p)(7)(i)-(ii), 55(a)(1), (k)(1) (2010); 35 Ill. Adm. Code 812.101(a). The Board orders respondents to cease and desist from violating the Act and associated regulations and orders each respondent to pay a civil penalty in the amount of \$16,000, for a total civil penalty of \$48,000.

In this opinion and order, the Board first reviews the procedural history of this case. The Board next summarizes the People's complaint and the uncontested facts. The Board then sets forth the relevant statutory and regulatory provisions and describes the standard of review applied by the Board in considering motions for summary judgment. After summarizing the People's motions for summary judgment, the Board provides a discussion and ruling on the People's motions. Finally, the Board discusses the appropriate remedy after considering the 33(c) and 42(h) factors of the Act (415 ILCS 5/33(c) and 42(h) (2010)).

PROCEDURAL HISTORY

On July 16, 2012, the People filed a five-count Complaint (Comp.) against respondents Edward Fisher, Rhonda Fisher, and DEM/EX Group. On or about July 16, 2012, the People served respondents with the complaint. The People filed the certified mail receipt on July 20, 2012 bearing the signatures of Rhonda Fisher (for both herself and Edward), and a representative of Cover, Shay & Evans, LLP for DEM/EX Group.¹ On July 26, 2012, the Board accepted the complaint for hearing.

On October 29, 2012, respondents Edward Fisher and Rhonda Fisher agreed to the facts in the complaint and stated their intent to not file an answer to the People's complaint. Hearing Officer Order Oct. 29, 2012. On October 31, 2012, the People filed a motion seeking to admit the allegations of the complaint against DEM/EX Group. On November 28, 2012, the Board granted the People's motion and deemed the allegations in the complaint admitted against DEM/EX Group. Hearing Officer Order Nov. 28, 2012. The People filed Motions for Summary Judgment against respondents Edward Fisher and Rhonda Fisher on January 8, 2013. The People filed a Motion for Summary Judgment against respondent DEM/EX Group on January 22, 2013. The separate motions (collectively "Motions") are substantively identical and share the same pagination. None of the respondents have filed a response to the People's motions.

THE PEOPLE'S COMPLAINT

The People's five-count complaint is based on observations made by the Illinois Environmental Protection Agency (Agency) during inspections of both the corporate site and the residential site on August 4, 2010, and similar inspections on March 23, 2011. Comp. at 3 and 14. The complaint states that respondent Edward Fisher is the registered agent, president and secretary of respondent DEM/EX Group. Respondents Edward Fisher and Rhonda Fisher are married. *Id.* at 2. Respondent DEM/EX Group is an Illinois corporation that operates as a demolition and excavating contractor. Comp. at 2.

Count I of the complaint alleges open dumping activities at the residential site. Specifically, count I states, "The residential site was strewn with large amount of 'general construction or demolition debris' . . . intermixed with various miscellaneous wastes." Comp. at 3-4. Count I includes an extensive list of waste and debris observed by the Agency at the residential site. *Id.* Count I alleges that respondents violated Section 21(a) of the Act by causing or allowing open dumping, as observed by the Agency, "for some period prior to October 31,

¹ Both Rhonda Fisher and Edward Fisher failed to date the certified mail receipt.

2010 through sometime subsequent to March 23, 2011.” 415 ILCS 5/21(a) (2010). Comp. at 7. Count I also alleges that respondents violated Sections 21(p)(1) and 21(p)(7) of the Act by causing or allowing open dumping at the residential site that resulted in both litter and the deposition of general construction or demolition debris. 415 ILCS 5/21(p)(1), (p)(7) (2010). Comp. at 7-8.

Count II alleges violations relating to respondents’ failure to obtain a permit for the activities observed at the residential site. Specifically, count II alleges that by disposing of wastes at the residential site without a permit granted by the Agency, and in violation of Board regulations, respondents violated Section 21(d)(1) and 21(d)(2) of the Act. 415 ILCS 5/21(d)(1), (d)(2) (2010). Comp. at 9. In addition, as a part of count II, the People allege that, by conducting a waste disposal operation without applying for the mandatory permit to develop and operate a landfill, respondents violated Section 21(e) of the Act (415 ILCS 5/21(e) (2010)). *Id.*

Count III of the complaint alleges open dumping violations at the corporate site. Count III includes an extensive list of waste and debris observed by the Agency at the corporate site. Comp. at 11-14. Count III alleges open dumping in violation of Section 21(a) of the Act at the corporate site. Comp. at 15. In addition, count III alleges violations of Sections 21(d)(2) and (e) of the Act arising from respondents conducting a waste storage or waste treatment or waste disposal operation while not meeting the Board’s regulations. 415 ILCS 5/21(d)(2), (e) (2010). *Id.* Count III also alleges that respondents violated Sections 21(p)(1) and 21(p)(7) of the Act by causing or allowing open dumping at the corporate site that resulted in: litter, the deposition of general construction or demolition debris, and the deposition of clean construction or demolition debris. 415 ILCS 5/21(p)(1), (p)(7)(i)-(ii) (2010). *Id.* at 15-16. Finally, count III alleges that respondents violated Section 21(p)(3) of the Act by causing or allowing open dumping of waste in a manner that resulted in open burning. 415 ILCS 5/21(p)(3) (2010). *Id.* at 15.

The People allege open dumping of used or waste tires in count IV of the complaint. Specifically, count IV alleges violations of Sections 55(a) and 55(k)(1) of the Act resulting from respondents causing or allowing water to accumulate in used or waste tires that were openly dumped at the corporate site. 415 ILCS 5/55(a), (k)(1) (2010). Comp. at 17.

Finally, count V alleges open burning violations at the corporate site. The People allege that by causing, threatening, or allowing air pollution from open burning of refuse at the corporate site, and by causing or allowing open burning of refuse at the corporate site, respondents violated Sections 9(a) and (c) of the Act. 415 ILCS 5/9(a), (c) (2010). Comp. at 19.

FACTS DEEMED ADMITTED

None of the respondents filed an answer to the People’s complaint. Respondents Edward Fisher and Rhonda Fisher agreed, through their attorney, to the facts in the complaint and stated, before the Board, their intent to not file an answer. Hearing Officer Order Oct. 29, 2012. On November 28, 2012, the Board granted the People’s motion and deemed the allegations in the complaint admitted against DEM/EX Group. Hearing Officer Order Nov. 28, 2012. Therefore, the facts included in the People’s complaint are deemed admitted against all respondents.

STATUTORY AND REGULATORY PROVISIONS

Section 101.516(b) of the Board's procedural regulations, 35 Ill. Adm. Code 101.516(b), provides the following regarding when summary judgment is appropriate:

- (b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, show 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 enter summary judgment.

Section 9 of the Act provides:

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.

- (c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; 415 ILCS 5/9(a), (c) (2010).

Section 3.115 of the Act, "Air pollution," provides:

"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. 415 ILCS 5/3.115 (2010).

Section 3.300 of the Act, "Open burning," provides:

"Open burning" is the combustion of any matter in the open or in an open dump. 415 ILCS 5/3.300 (2010).

Section 3.535 of the Act, "Waste," provides, in pertinent part:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . ." 415 ILCS 5/3.535 (2010).

Section 3.385 of the Act, "Refuse," provides:

"Refuse" means waste. 415 ILCS 5/3.385 (2010).

Section 21 of the Act provides:

No person shall:

(a) Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2010).

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit . . .

(2) in violation of any regulations or standards adopted by the Board under this Act;

(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.

(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;

(3) open burning;

- (7) deposition of:
- (i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or
 - (ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act. 415 ILCS 5/21(a), (d)(1)-(2), (e), (p)(1), (3), (7)(i)-(ii) (2010).

Section 3.305 of the Act, "Open dumping," provides:

"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. 415 ILCS 5/3.305 (2010).

Section 3 of the Litter Control Act provides:

As used in this Act, unless the context otherwise requires:

- (a) "Litter" means any discarded, used or unconsumed substance or waste . . . 415 ILCS 105/3(a) (2010).

Section 3.160 of the Act, "Construction or demolition debris," provides, in pertinent part:

- (a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials.
- (b) "Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities. 415 ILCS 5/3.160(a)-(b) (2010).

Section 812.101 of Title 35 of the Board's regulations provides:

- (a) All persons, except those specifically exempted by Section 21(d) of the Act shall submit to the Agency an application for a permit to develop and operate a landfill. 35 Ill. Adm. Code 812.101(a).

Section 55 of the Act provides:

- (a) No person shall:
 - (1) Cause or allow the open dumping of any used or waste tire.

- (k) No person shall:
 - (1) Cause or allow water to accumulate in used or waste tires. 415 ILCS 5/55(a)(1), (k)(1) (2010).

Section 54.13 of the Act provides:

"Used tire" means a worn, damaged, or defective tire that is not mounted on a vehicle. 415 ILCS 5/54.13 (2010).

Section 54.16 of the Act provides:

"Waste tire" means a used tire that has been disposed of. 415 ILCS 5/54.16 (2010).

STANDARD OF REVIEW FOR MOTIONS OF SUMMARY JUDGMENT

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. V. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." *Id.* Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to relief "is clear and free from doubt." Dowd & Dowd, Ltd., 181 Ill. 2d at 483, 693 N.E. 2d at 370, *citing Purtil v. Hess*, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on the pleadings, but must "present a factual basis which would arguably entitle [it] to judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

PEOPLE'S MOTION FOR SUMMARY JUDGMENT

In their five-count complaint, the People have alleged twelve violations of the Act, specifically Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1), and Section 812.101(a) of the Board's regulations. 415 ILCS 5/9(a), (c), 21(a), (d)(1)-(2), (e), (p)(1), (p)(3), (p)(7)(i)-(ii), 55(a)(1), (k)(1) (2010); 35 Ill. Adm. Code 812.101(a). The People argue that, "[t]here are no genuine issues of material fact in this instant matter and People are entitled to judgment as a matter of law." Motions at 14. The People further state, "[i]t is undisputed that Respondent[s] 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[s] did the aforementioned without a permit granted by the Agency 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[s] violated the Act and associated regulations." *Id.* at 14-15. The People make the same argument regarding the corporate site. The People request entry of a cease and desist order and imposition of a \$16,000 penalty against each respondent as a remedy in this matter. *Id.* at 15.

RESPONDENTS' FAILURE TO RESPOND TO THE MOTION FOR SUMMARY JUDGMENT

None of the respondents in this action have filed a response to the People's Motions for Summary Judgment. On February 5, 2013, the respondents told the hearing officer that they did not intend to file a response to the People's motion. Hearing Officer Order Feb. 5, 2013. The Board's procedural rules provide that, "within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion." 35 Ill. Adm. Code 101.500(d); People v. Env't'l Health and Safety Svcs., Inc., PCB 05-51, slip op. at 13 (Jul. 23, 2009). The Board finds that by failing to respond to the People's motion for summary judgment, the respondents have waived any objection to the Board granting the motion for summary judgment. *See id.*

DISCUSSION

As previously stated, the Board found all facts included in the People's complaint are deemed admitted against all respondents. The Board next examines whether the People are entitled to summary judgment as a matter of law. In the five-count complaint, the People allege that the respondents violated twelve sections of the Act, Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1), and Section 812.101(a) of the Board's regulations. 415 ILCS 5/9(a), (c), 21(a), (d)(1)-(2), (e), (p)(1), (p)(3), (p)(7)(i)-(ii), 55(a)(1), (k)(1) (2010); 35 Ill. Adm. Code 812.101(a). As discussed below, the Board finds that no genuine issues of material fact remain. Each alleged violation is discussed separately.

Section 9(a)

The record indicates evidence of burning of waste on the corporate site. Specifically, photographs in Complainant's Exhibit 2 to the complaint (Exh. 2) depict charred refuse at various locations at the corporate site. Exh. 2 at 19, 20, and 32. Such burning would necessarily emit contaminants into the air in violation of the Act. (415 ILCS 5/9(a) (2010)).

By causing or allowing the burning of waste at the corporate site, the respondents "caus[ed] or . . . allow[ed] the discharge or emission of [a] contaminant into the environment . . . so as to cause or tend to cause air pollution." 415 ILCS 5/9(a) (2010). Therefore, the Board finds that respondents caused or allowed the emission of a contaminant into the environment so as to cause or tend to cause air pollution in violation of Section 9(a) of the Act(415 ILCS 5/9(a) (2010)). *Id.*

Section 9(c)

Section 9(c) of the Act prohibits the respondents from causing or allowing the open burning of refuse . . . "in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board." 415 ILCS 5/9(c) (2010). The record shows that respondents burned refuse at the corporate site. Respondents did not burn the refuse in a chamber or pursuant to regulations adopted by the Board. Therefore the Board finds that respondents violated Section 9(c) of the Act (415 ILCS 5/9(c) (2010)) by open burning refuse on the corporate site.

Section 21(a)

The record demonstrates that the respondents caused or allowed the open dumping of waste at both the residential site and the corporate site. Specifically, the evidence included in the record, and deemed admitted by respondents, indicates that respondents caused or allowed open dumping of miscellaneous wastes at the residential site, including, but not limited to: twisted rebar, dimensional lumber with bent-over nails, cut ends, and splintered sides, protruding rebar, rusty steel pipe and flexible electrical conduit, metal wire intermixed with muddy dredged material, black plastic pipe and a partially crushed blue plastic drum. Comp. at 3-4.

Likewise, the evidence included in the record, and deemed admitted by respondents, indicates that respondents caused or allowed open dumping of miscellaneous wastes at the corporate site, including, but not limited to: used tires, a pickup truck bed liner filled with waste, a demolition debris pile, crushed splinters of lumber, a section of pipe, rusty scrap metal, and broken pallets. Comp. at 11-12.

Section 21(a) of the Act prohibits causing or allowing open dumping of waste. 415 ILCS 5/21(a) (2010). "Open dumping" means the consolidation of refuse (defined, by the Act, as "waste") from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill. 415 ILCS 5/3.305 (2010). Neither the residential nor the corporate sites fulfill the requirements of a sanitary landfill, and the aforementioned miscellaneous waste found and

photographed at the corporate site on August 4, 2010, and March 23, 2011 and the residential site on March 23, 2011 meets the definition of "refuse" in the Act. 415 ILCS 5/3.385 (2010).

By causing and allowing the disposal of the miscellaneous wastes at the residential and corporate sites, the respondents caused and allowed the consolidation of refuse at a disposal site that does not fulfill the requirements of a sanitary landfill. Therefore, the Board finds that respondents caused and allowed the open dumping of waste in violation of Section 21(a) of the Act. 415 ILCS 5/21(a) (2010).

Section 21(d)

Section 21(d) of the Act prohibits conducting a waste-storage, waste-treatment, or waste-disposal operation without proper authorization by the Agency. 415 ILCS 5/12(d) (2010). By disposing of wastes at the residential site without a permit granted by the Agency, respondents conducted a waste-storage or waste-disposal operation without a permit granted by the Agency in violation of Section 21(d)(1) of the Act. 415 ILCS 5/21(d)(1) (2010). The Board finds that by disposing of wastes at the residential and corporate sites, as alleged in the complaint and deemed admitted by respondents, respondents conducted a waste-storage or waste-disposal operation in violation of regulations or standards adopted by the Board under the Act in violation of Section 21(d)(2) of the Act. 415 ILCS 5/21(d)(2) (2010).

Section 21(e)

By consolidating and disposing of the miscellaneous wastes on the residential and corporate sites, the respondents operated a waste disposal site. The facts alleged in the complaint and deemed admitted by respondents prove that neither Edward Fisher or Rhonda Fisher nor DEM/EX Group applied for or obtained the required permit to dispose of waste on the residential or corporate sites. Comp. at 9. Therefore, the Board finds that the respondents violated Section 812.101(a) of Title 35 of the Board's regulations by not submitting to the Agency an application for a permit to develop and operate a landfill. 35 Ill. Adm. Code 812.101(a). The Board further finds that respondents also violated 21(e) of the Act (415 ICLS 5/21(e) (2010)), by not obtaining the required permits to operate a waste disposal site in Illinois.

Section 21(p)

Section 21(p) of the Act prohibits open dumping that results in litter, open burning, or deposition of general construction or demolition debris or clean construction or demolition debris. 415 ILCS 5/21(p)(1), (3), and (7) (2010). The miscellaneous waste discarded on the residential and corporate sites meets the definition of "litter" as set out in the Litter Control Act.² 415 ILCS 105/3(a) (2010). By causing open dumping that resulted in litter at the residential and corporate sites, respondents violated Section 21(p)(1) of the Act. The Board finds that the facts

² The Board has relied upon the definition of "litter" under the Litter Control Act when addressing alleged violations of Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2010); see St. Clair County v. Louis Mund, AC 90-64, slip op. at 6 (Aug. 22, 1991).

deemed admitted by respondents are sufficient to prove that the respondents violated Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2010).

The complaint alleges that “an open burning debris pile containing ash-charred paper, a wire spiral binding among soot-covered gravel” and “a second burn pile containing metal banding, a rusty tin cap, and scrap metal” were witnessed on the corporate site by the Agency during a March 23, 2011 inspection. Comp. at 13-14. As discussed above, the allegations of the complaint were deemed admitted against respondents. *See supra* pp. 3-4. The Board finds that by causing open dumping that resulted in open burning at the corporate site, respondents violated Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2010).

The complaint also alleges that open dumping resulted in the deposition of general construction or demolition debris at the residential site and both general construction or demolition debris and clean construction or demolition debris at the corporate site. Comp. at 3-4, 10-14. Observations of the Agency, documented in the inspection reports of the August 4, 2010 and March 23, 2011 site inspections, support these allegations and the allegations were deemed admitted against respondents. Motions at 4-7; *See supra* 3-4.

The Board finds that the facts deemed admitted by respondents are sufficient to prove that the respondents violated Sections 21(p)(7)(i) of the Act at the residential and corporate sites and Section 21(p)(7)(ii) at the corporate site. 415 ILCS 5/21(p)(7)(i)-(ii) (2010).

Section 55

As stated above, Section 55(a) of the Act generally prohibits the open dumping of used or waste tires and Section 55(k) prohibits the accumulation of water in used or waste tires. 415 ILCS 5/55(a), (k) (2010). Count IV of the complaint alleges that respondents caused or allowed the open dumping of used or waste tires at the corporate site and caused or allowed water to accumulate in used or waste tires at the corporate site. Comp. at 17. Observations of the Agency support these allegations and the allegations of the complaint were deemed admitted against respondents. Motions at 4-7; *See supra* 3-4.

The Board finds that the facts deemed admitted by respondents are sufficient to prove that the respondents violated Sections 55(a) and 55(k)(1) of the Act at the corporate site. 415 ILCS 5/55(a), (k)(1) (2010).

Ruling on Motion for Summary Judgment

The Board finds that the facts deemed admitted by respondents, are sufficient to prove that the respondents violated Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) of the Act, and Section 812.101(a) of the Board's regulations. 415 ILCS 5/9(a), (c), 21(a), (d)(1)-(2), (e), (p)(1), (p)(3), (p)(7)(i)-(ii), 55(a)(1), (k)(1) (2010); 35 Ill. Adm. Code 812.101(a). The Board further finds that the People are entitled to judgment as a matter of law and the Board grants the motions for summary judgment for counts I through V of the complaint.

REMEDY AND PENALTIES

Having found that the respondents violated Sections 9(a), 9(c), 21(a), 21(d)(1) and (d)(2), 21(e), 21(p)(1), (p)(3), (p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) of the Act, and Section 812.101(a) of the Board's regulations, the Board must now determine the appropriate remedy in this case. In evaluating the record to determine the appropriate penalty, the Board considers the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2010)). The People request entry of a cease and desist order and imposition of a \$16,000 penalty against each respondent..

Section 33(c) of the Act provides, in pertinent part, that:

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:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2010).

The People provide brief statements, identical in each of the People's Motions, regarding each of the above factors, as follows: 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; and 5) on information and belief, respondent[s] [have] 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. Motions at 11-12.

Respondents did not reply to the People's Motions; therefore, the Board considers only the People's statements on these factors. The Board finds that the Section 33(c) factors favor the entry of a cease and desist order and the imposition of a civil penalty. The open dumping at the corporate site and the residential site, the open burning at the corporate site, and the disposal of used or waste tires at the corporate site are contrary to the law and the expectations of society and serve no social and economic benefit.

In addition to the People's statements, the Board finds that respondents have avoided Agency permitting programs designed to ensure the Agency, and thus the People, that waste handling activities are being conducted properly. This avoidance not only hinders the Agency's ability to gather information, but also threatens the environment. While there is a benefit to a demolition and excavation contractor such as DEM/EX Group, the business purpose is thwarted by the open dumping at the corporate site. In addition, the newly constructed house at the residential site adds value to the property, but that value is significantly diminished by the open dumping that has occurred.

Respondents have presented the Board with no evidence that respondents are unable to comply with the Act and Board regulations to properly permit the corporate site as a waste handling facility and avoid open dumping at the residential site. The remedy is also supported by the incidence of respondents' continued, alleged violations, evidenced by the VN's listed above.

Having concluded on the basis of the Section 33(c) factors that a penalty is appropriate, the Board next applies the factors of Section 42(h) to consider whether to impose the \$16,000 penalty requested by the People against each respondent. Section 42(h) of the Act provides:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of 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 respondent 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 determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2010).

The violations observed at the residential site continued for a minimum of five months, and those observed at the corporate site continued for a minimum of eight months. Over the duration of the Agency's observations at the sites, no due diligence was taken by respondents to address the violations of the Act. The Board finds that the first two Section 42(h) factors weigh against respondents.

As stated by the People, respondents "gained economic benefits by avoiding landfill permitting cost[s], depositing waste [at] a site other than a landfill, burning waste rather than paying for proper disposal, and avoided the transportation costs, landfill use fees and other costs related to tire disposal." Motions at 13-14. Thus, the Board finds that this factor weighs against respondents and will also serve to deter respondents and others similarly subject to the Act from future violations of the Act.

The Motions state that respondents Edward Fisher and Rhonda Fisher have committed previous violations of the Act related to open dumping at the corporate site. Motions at 14. These violations were resolved before the Board on June 5, 2008. IEPA v. Edward W. Fisher, Rhonda L. Fisher and DEM/EX Group, INC., PCB 08-26 (June 5, 2008). Pursuant to the June 5, 2008 Board Order, respondents were required to pay a civil penalty of \$3,000. In addition, a default judgment was entered against DEM/EX Group in Rock Island County on July 17, 2012 for asbestos demolition notification violations, asbestos emission control violations, and asbestos removal violations. The Board finds that these prior violations bolster the People's argument for a civil penalty in this matter.

Finally, the respondents did not self-disclose these violations to the Agency and did not perform a supplemental environmental project in settlement of this matter. Motions at 14. The Board finds that Section 42(h)(9) is not a factor in this analysis because the respondents did not enter a Compliance Commitment Agreement with the Agency.

In summary, the respondents' violations continued over several months at both the residential site and the corporate site. Respondents, however, did nothing to come into compliance with the Act even after being notified of the violations. The Board finds that

respondents have gained an economic benefit by avoiding transportation costs, permitting fees, and other disposal fees. In light of these facts, other recently adjudicated violations of the Act, and continuing compliance issues at the sites, the Board assesses the \$16,000 civil penalty requested by the People against each respondent, finding that it is sufficient to encourage future compliance by respondents, designed to include any economic benefit enjoyed by respondents, yet is not excessive based on the record.

CONCLUSION

The Board finds that there is no genuine issue of material fact, and that the People are entitled to summary judgment as a matter of law. The Board accordingly grants the People's unopposed motions for summary judgment against respondents Edward Fisher and Rhonda Fisher and DEM/EX Group. The Board therefore finds that the respondents violated 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) of the Act, and Section 812.101(a) of the Board's regulations as alleged in the People's five-count complaint. Having considered the factors of Sections 33(c) and 42(h) of the Act, the Board enters a cease and desist order and assesses the \$16,000 civil penalty against each respondent as requested by the People.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board grants the unopposed motions for summary judgment filed by the Office of the Attorney General, on behalf of the People, and finds that Edward Fisher, Rhonda Fisher, and DEM/EX Group violated Sections 9(a), (c), 21(a), (d)(1)-(2), (e), (p)(1), (p)(3), (p)(7)(i), (p)(7)(ii), 55(a)(1), (k)(1) of the Act, and Section 812.101(a) of the Board's regulations. 415 ILCS 5/9(a), (c), 21(a), (d)(1)-(2), (e), (p)(1), (p)(3), (p)(7)(i)-(ii), 55(a)(1), (k)(1) (2010); 35 Ill. Adm. Code 812.101(a).
2. Respondents Edward Fisher, Rhonda Fisher, and DEM/EX Group must each pay a civil penalty of \$16,000 no later than Monday June 17, 2013, which is the first business day after 30 days from the date of this order. Such payment must be made by certified check, money order, or electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number, case name, and Edward Fisher's social security number, Rhonda Fisher's social security number, and DEM/EX Group's federal employer identification number must be included on the respective certified checks or money orders.

3. Respondents must send the certified check, money order, or confirmation of electronic funds transfer to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
PO Box 19276
Springfield IL 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2010) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Respondents must cease and desist from further violations of the Act.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, and 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 16, 2013, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

Exhibit 5

IN THE CIRCUIT COURT FOR THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

COPY

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)

Plaintiff,)

vs.)

DEM/EX GROUP, INC.,)
an Illinois corporation,)

Defendant.)

No. 11-CH-413

FILED in the CIRCUIT COURT
OF ROCK ISLAND COUNTY
GENERAL DIVISION
JUL 02 2012
David J. Turner
Clerk of the Circuit Court

MOTION FOR DEFAULT ORDER AND FINAL JUDGMENT

NOW COMES, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 2-1301 of the Code of Civil Procedure, 735 ILCS 5/2-1301 (2010), moves this Court for the entry of an order finding the Defendant, DEM/EX GROUP, INC., an Illinois corporation (hereinafter referred to as "Dem/Ex"), to be in default for failure to appear or file an answer or otherwise plead within thirty (30) days, as required by Supreme Court Rule 181(a), and for the entry of final judgment against the Defendant, DEM/EX, and in support of this motion, states as follows:

1. On September 29, 2011, the Plaintiff filed a Complaint for Injunctive and Other Relief with this Court, stating a cause of action against the Defendant, DEM/EX, for its failure to comply with asbestos demolition notifications, emission control and removal. The Plaintiff is seeking injunctive relief to restrain the Defendant from violations of the Illinois Environmental Protection Act and Illinois Pollution Control Board regulations pursuant to Section 42(e) of the Act, 415 ILCS 54/42(e) (2010).
2. On October 13, 2011, a deputy with the Mason County Sheriff's Office obtained service of process of the Complaint upon the Defendant, Dem/Ex Group, Inc., c/o Edward Fisher, its Registered Agent. The executed Summons was filed herein on October 19, 2011.
3. The Defendant, DEM/EX, has not filed an Answer or other responsive pleading.

4. The Defendant, DEM/EX, has, therefore, failed to timely appear, answer or otherwise plead as required by Supreme Court Rule 181(a).

5. Pursuant to its statutory and constitutional authority, the Illinois Attorney General is authorized to enforce the provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2010).

6. Violations will continue unabated unless and until enjoined by this Court.

7. Defendant, DEM/EX, violated Section 9.13(b) of the Illinois Environmental Protection Act, 415 ILCS 5/9.13(b) (2010), as alleged in Count I of the Complaint by not properly filing a 10 day notice with the Illinois EPA and is therefore subject to a penalty double the amount of the one-hundred and fifty dollar (\$150) asbestos fee, a penalty totaling three-hundred dollars (\$300).

8. Defendant Demex, violated Section 9(a) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a) (2010) and Section 201.141 of the Illinois Pollution Control Board regulations, 35 Ill. Admin. Code 201.141, as alleged in Count II of the Complaint. The afore-mentioned violations continued for a period of least 50 days, (March 29, through May 17, 2010, *see* Paragraph 10 of Count II of the Complaint).

9. Defendant, DEM/EX, violated 12 National Emission Standards for Hazardous Air Pollutants, 40 CFR 60.01 *et seq.*, as alleged in Counts I through III of the Complaint, each of them individually is a violation of Section 9.1(d)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/9.1(d)(1) (2010). Ten of the afore-mentioned violations, as alleged in Counts II and III of the Complaint, continued for a period of at least 50 days, (March 29, through May 17, 2010, *see* Paragraph 10 of Counts II and III of the Complaint).

10. Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a) (2010), provides for a statutory penalty of not more than \$50,000 for individual violations of the Act and Board regulation and no more than ten thousand dollars (\$10,000) for each day during which the

violations continued.

11. Defendant DEM/EX, violated a total of 14 provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 (2010) *et seq*, excepting the 9.13(b) violation for not properly filing a 10 day notice with the Illinois EPA, as well as, one provision of the Illinois Pollution Control Board regulations for a total of 14 individual violations, of which 12 continued in duration for a period of no less than 50 days.

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Honorable Court:

- A. Order the Defendant is in default;
- B. Enter final judgment, permanently enjoining the Defendant from future violations of the Illinois Environmental Protection Act;
- C. Award a penalty of fifty-thousand \$50,000 dollars for Defendant's 14 individual violations, a penalty of one-hundred dollars (\$100) per day for the period of 50 days for Defendant's 12 continuous violations amounting to sixty-thousand dollars (\$60,000) and a penalty of three-hundred dollars (\$300) for Defendant's Section 9.13(b) violation, a statutory penalty totaling one-hundred-and-ten-thousand, three hundred dollars (\$110,300) payable to the Environmental Protection Trust Fund in accordance with Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a) (2010);

D. Grant any other relief this Honorable Court deems appropriate to administer justice.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:


KELLY O. PHELPS
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 29 June 2012

IN THE CIRCUIT COURT FOR THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)

Plaintiff,)

vs.)

DEM/EX GROUP, INC.,)
an Illinois corporation,)

Defendant.)

No. 11-CH-413

FILED in the CIRCUIT COURT
of ROCK ISLAND COUNTY
GENERAL DIVISION

JUL 17 2012

Lisa L. Sumner
Clerk of the Circuit Court

DEFAULT ORDER AND FINAL JUDGMENT

This Court, having considered the People's Motion for Default Order and Final Judgment pursuant to Sections 2-1301 of the Code of Civil Procedure, 735 ILCS 5/2-1301, (2010), and being fully advised in the premises, FINDS that service of process has been made upon the Defendant, DEM/EX GROUP, INC., that the Defendant has failed to timely appear, answer or otherwise plead, and holds the Motion is GRANTED.

IT IS THEREFORE ORDERED AND ADJUDGED:

1. Judgment is entered in favor of the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, against the Defendant, DEM/EX GROUP, INC.
2. The Defendant, DEM/EX GROUP, INC., is permanently enjoined from violating the Illinois Environmental Protection Act.
3. The Defendant, DEM/EX GROUP, INC., shall pay a civil penalty totaling one-hundred-and-ten-thousand, three hundred dollars (\$110,300) payable to the Environmental Protection Trust Fund in accordance with Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a) (2010).

Entered: 7/17/12



JUDGE

CERTIFICATE OF SERVICE

I, RYAN G. RUDICH, an Assistant Attorney General, certify that on the 22nd day of January, 2015, I caused to be served by first class mail the foregoing Notice of Electronic Filing and People's Motion for Summary Judgment to the parties on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 69 West Washington Street, Chicago, Illinois 60602.



RYAN G. RUDICH