

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

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SEP 10 2003

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

RICKY and JERRY HESS,

Respondents.

AC 04-11

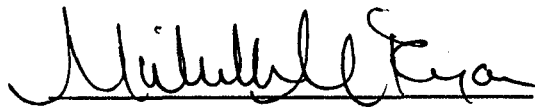
(IEPA No. 393-03-AC)

NOTICE OF FILING

To: Ricky and Jerry Hess
Rural Route 4
Box 102
Bloomington, Illinois 61704

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
Special Assistant Attorney General

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

Dated: September 8, 2003

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
RICKY and JERRY HESS,)
)
Respondents.)

AC 04-11
(IEPA No. 393-03-AC)

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2002).

FACTS

1. That Ricky and Jerry Hess (collectively "Respondents") are the present owners and operators of a facility located south of Old Peoria Road and the abandoned railroad tracks, in Bloomington, McLean County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Bloomington/Hess.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1138135002.
3. That Respondents have owned and operated said facility at all times pertinent hereto.
4. That on July 14, 2003, Dustin Burger of the Illinois Environmental Protection Agency's Champaign Regional Office inspected the above-described facility. A copy of his inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

VIOLATIONS

Based upon direct observations made by Dustin Burger during the course of his July 14, 2003 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) (2002).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2002), 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 One Thousand Five Hundred Dollars (\$1,500.00). 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 September 30, 2003, 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 (2002), 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) (2002), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative

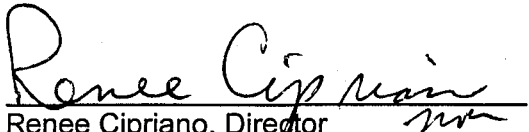
Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

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 (2002). 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 Respondent.


Renee Cipriano, Director
Illinois Environmental Protection Agency

Date: 9/8/03

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

REMITTANCE FORM

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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
RICKY and JERRY HESS,)
)
Respondents.)

AC

(IEPA No. 393-03-AC)

FACILITY: Bloomington/Hess

SITE CODE NO.: 1138135002

COUNTY: McLean

CIVIL PENALTY: \$1,500.00

DATE OF INSPECTION: July 14, 2003

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

NOTE

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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AFFIDAVIT

SEP 10 2003

IN THE MATTER OF:)
)
)
)
)
Jerry and Ricky Hess,)
)
)
)
Respondent)

STATE OF ILLINOIS
Pollution Control Board

IEPA DOCKET NO. 393-03-AC

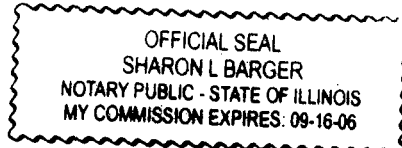
Affiant, Dustin Burger, being first duly sworn, voluntarily deposes and states as follows:

1. Affiant is a field inspector employed by the Land Pollution Control Division of the Illinois Environmental Protection Agency and has been so employed at all times pertinent hereto.
2. On July 14, 2003 between 12:10 P.M. and 12:15 P.M., Affiant conducted an inspection of the site in McLean County, Illinois, known as Bloomington/Hess, Illinois Environmental Protection Agency Site No. 1138135002.
3. Affiant inspected said Hess site by an on-site inspection which included photographing the site.
4. As a result of the activities referred to in Paragraph 3 above, Affiant completed the Inspection Report form attached hereto and made a part hereof, which, to the best of Affiant's knowledge and belief, is an accurate representation of Affiant's observations and factual conclusions with respect to the Bloomington/Hess site.

Dustin Burger

Subscribed and Sworn to before me
this 24th day of July,
2003.

Sharon L. Barger
Notary Public



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Open Dump Inspection Checklist

County: McLean LPC#: 1138135002 SEP 10 2003
 Region: 4 - Champaign
 Location/Site Name: Bloomington/Hess STATE OF ILLINOIS
 Date: 07/14/2003 Time: From 12:10P To 12:15P Previous Inspection Date: 11/17/2002
 Inspector(s): Dustin Burger Weather: Clear, calm, dry, 80s
 No. of Photos Taken: # 4 Est. Amt. of Waste: 240 yds³ Samples Taken: Yes # No
 Interviewed: NA Complaint #: C02-149-CH

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

Jerry and Ricky Hess
 RR 4, Box 101
 Bloomington, Illinois 61704
 217/287-2937

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SECTION	DESCRIPTION	VIOL
ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS		
1. 9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input type="checkbox"/>
2. 9(c)	CAUSE OR ALLOW OPEN BURNING	<input type="checkbox"/>
3. 12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4. 12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5. 21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6. 21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1) Without a Permit	<input checked="" type="checkbox"/>
	(2) In Violation of Any Regulations or Standards Adopted by the Board	<input checked="" type="checkbox"/>
7. 21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY	<input checked="" type="checkbox"/>
8. 21(p)	CAUSE OR ALLOW THE OPEN DUMPING OF ANY WASTE IN A MANNER WHICH RESULTS	
	(1) Litter	<input checked="" type="checkbox"/>
	(2) Scavenging	<input type="checkbox"/>
	(3) Open Burning	<input type="checkbox"/>
	(4) Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5) Proliferation of Disease Vectors	<input type="checkbox"/>
	(6) Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

LPC # 1138135002--Hess

Inspection Date: 07/14/2003

	(7)	Deposition of General Construction or Demolition Debris; or Clean Construction or	<input type="checkbox"/>
9.	55(a)	NO PERSON SHALL:	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G			
10.	812.101(a)	FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL	<input checked="" type="checkbox"/>
11.	722.111	HAZARDOUS WASTE DETERMINATION	<input type="checkbox"/>
12.	808.121	SPECIAL WASTE DETERMINATION	<input type="checkbox"/>
13.	809.302(a)	ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST	<input type="checkbox"/>
OTHER REQUIREMENTS			
14.		APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	<input type="checkbox"/>
15.	OTHER:		<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

Dustin Beff

Signature of Inspector(s)

Informational Notes

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

Illinois Environmental Protection Agency
Bureau of Land

LPC#1138135002—McLean County
Bloomington/Hess
July 14, 2003
Inspector: Dustin Burger
GIS Info: N 40.512639 W 89.118500

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Narrative Inspection Report

I conducted an open dumping inspection at the above referenced property on July 14, 2003 from approximately 12:10 to 12:15 P.M. This inspection was conducted to determine the regulatory status and evaluate compliance with the Environmental Protection Act (Act) and Title 35 Illinois Administrative Code, Subtitle G: Land Pollution (Regulations). Four photos and no samples were taken. The weather was clear, calm, and dry, with temperatures in the 80s.

This site claims to be a metal recycling yard. Both the County Zoning and Health Departments have received numerous complaints regarding the unkept property. The local State's Attorney Brian Hugg has asked for IEPA help since this facility was in existence before the county enacted its junkyard ordinance and therefore was "grand fathered" as an unregulated facility under county regulations.

The site consists of a battered old home and equipment storage shed. The surrounding yard and property is littered with debris. Much of the material is metallic in nature and could be salvaged, but there is no semblance of order to the mess. Metal parts are scattered throughout the property in overgrown fields rather than being neatly stacked or piled where they could be retrieved for recycling. Most of the metal piles also contained non-recyclable materials such as scrap wood, plastic, or landscape waste. The field behind the equipment shed was littered with white goods and is overgrown with weeds. Because of the extensive vegetation, it was obvious many of the piles of debris had been present for an extended length of time.

Ricky and Jerry Hess were sent an ACWN on July 23, 2002, which was initially rejected for service. I hand delivered an ACWN to the Hess brothers on 8/16/2002 and explained that the Agency considered all the material accumulated on the property wastes that needed to be removed to a properly permitted facility.

I re-inspected the site on October 17, 2002 and found only a small pile of metal near the road had been removed. The Agency granted a verbal request to extend the deadline for removal to March 1, 2003 as the brothers indicated they were working during the harvest season and would not be able to remove any wastes until the crops were out.

Current Inspection

My current inspection consisted of a inspection of the property form the public right-of-way. I did not see any of the Hess family when I arrived, and I was concerned about the presence of several dogs that roamed the site. From the county road, I could see that all of the waste materials had not been removed. The field northeast of the house still contained wood, metal, and pallets (photo 2), while the yard in front of the house still had old refrigerators, lawn equipment, autos, wood, metal, and two old air-conditioners (photo 1). The drive to the east of the house was still strewn with white goods, metal, old doors, a tire, and other materials.

Regulated Status

This site is regulated as an open dump. No effort has been made to segregate recyclable materials from other wastes. In addition, the material is scattered over a large area and is overgrown with vegetation.

Apparent violations observed during this inspection:

Environmental Protection Act. 415 ILCS 5/1 et. seq. (formerly Ill. Rev. Stat. Ch. 111 1/2, 1001 et. seq.) {hereinafter called the "Act"}

- #1 Pursuant to Section 21(a) of the Act, no person shall cause or allow the open dumping of any waste.

A violation of Section 21(a) is alleged for the following reason: **evidence of open dumping of waste was observed during the inspection.**

- #2 Pursuant to Section 21(d)(1) of the Act, no person shall conduct and waste-storage, waste-treatment, or waste-disposal operation without a permit

A violation of Section 21(d)(1) is alleged for the following reason: **evidence of the operation of a waste-storage, waste-treatment, or waste-disposal operation without a permit was observed during the inspection.**

- #3 Pursuant to Section 21(d)(2) of the Act, no person shall conduct and waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Pollution Control Board.

A violation of Section 21(d)(2) is alleged for the following reason: **evidence of the operation of a waste-storage, waste-treatment, or waste-disposal operation in violation of regulations adopted by the Board was observed during the inspection.**

- #4 Pursuant to Section 21(e) of the Act, no person shall 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.

A violation of Section 21(e) is alleged for the following reason: **waste was disposed, stored, or abandoned at this site which does not meet the requirements of the Act and of regulations and standards thereunder.**

- #5 Pursuant to Section 21(p)(1) of the Act, no one shall cause or allow the open dumping of any waste in a manner which results in litter.

A violation of Section 21(p)(1) is alleged for the following reason: **waste was open dumped at this site resulting in litter.**

35 Illinois Administrative Code. (Title 35: Environmental Protection, Subtitle G: Land Pollution, Chapter I: Pollution Control Board) [Regulations]

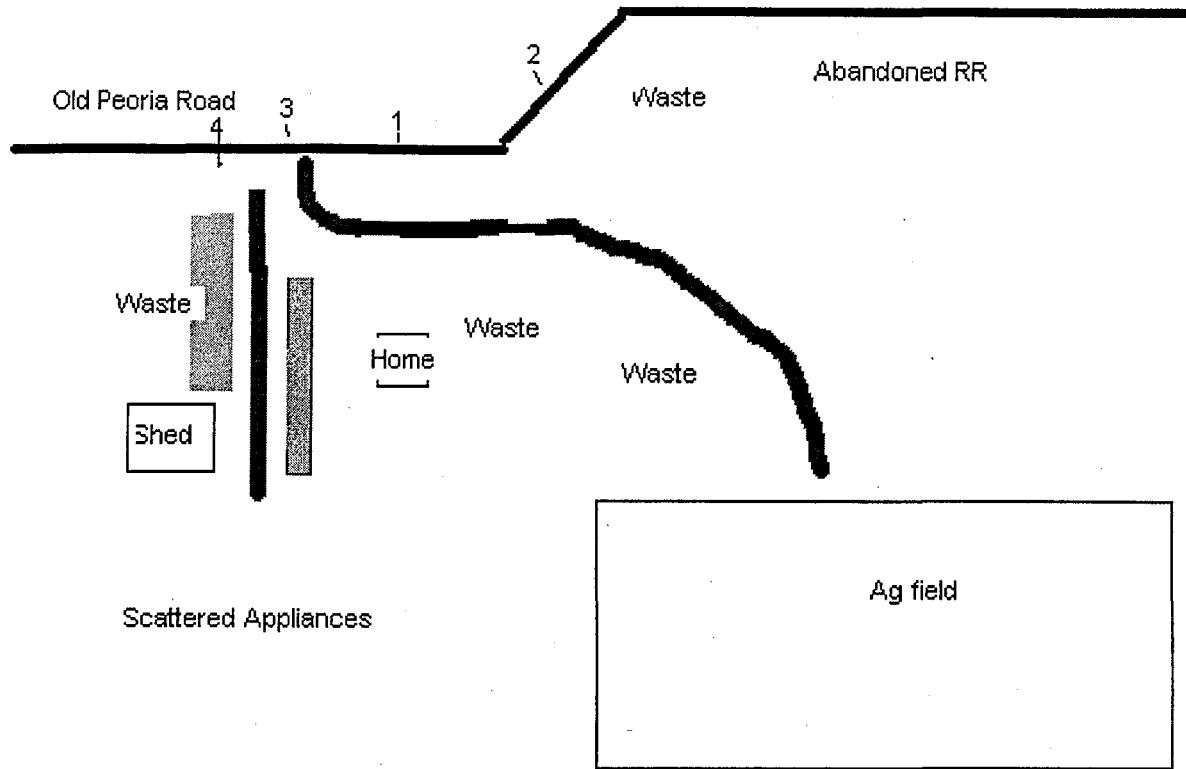
- #6 Pursuant to Section 812.101(a) of the Regulations, All persons, except those specifically exempted by Section 21(d) of the Act, shall submit to the Agency an application for a permit to develop and operate a landfill.

A violation of Section 812.101(a) is alleged for the following reason: **this waste management site has not submitted an application to the Agency for a permit to develop and operate a landfill.**

LPC#1138135002--McLean County
Bloomington/Hess
July 14, 2003 Inspection
Site Sketch



Not to Scale



Numbers denote photos/direction



Illinois Environmental Protection Agency
Bureau of Land

DIGITAL PHOTOGRAPHS

LPC #1138135002--McLean County
Bloomington/Hess
FOS File

DATE: July 14, 2003
TIME: 12:10-12:15 A.M.
DIRECTION: South
PHOTO by: Dustin Burger
PHOTO FILE NAME:
1138135002~07142003-001.jpg
COMMENTS:





Illinois Environmental Protection Agency
Bureau of Land

DIGITAL PHOTOGRAPHS

LPC #1138135002--McLean County
Bloomington/Hess
FOS File

DATE: July 14, 2003
TIME: 12:10-12:15 A.M.
DIRECTION: Southeast
PHOTO by: Dustin Burger
PHOTO FILE NAME:
1138135002~07142003-002.jpg
COMMENTS:





Illinois Environmental Protection Agency
Bureau of Land

DIGITAL PHOTOGRAPHS

LPC #1138135002—McLean County
Bloomington/Hess
FOS File

DATE: July 14, 2003
TIME: 12:10-12:15 A.M.
DIRECTION: South
PHOTO by: Dustin Burger
PHOTO FILE NAME:
1138135002~07142003-003.jpg
COMMENTS:





Illinois Environmental Protection Agency
Bureau of Land

DIGITAL PHOTOGRAPHS

LPC #1138135002—McLean County
Bloomington/Hess
FOS File

DATE: July 14, 2003
TIME: 12:10-12:15 A.M.
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PHOTO by: Dustin Burger
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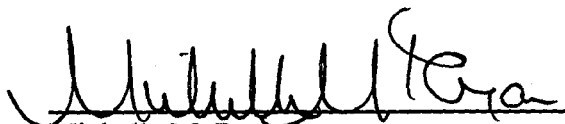
PROOF OF SERVICE

I hereby certify that I did on the 8th day of September, 2003 send by overnight mail to the Champaign Regional Office of the Illinois EPA, a true and correct copy of the following instrument(s) entitled ADMINISTRATIVE CITATION, AFFIDAVIT, and OPEN DUMP INSPECTION CHECKLIST for hand delivery

To: Ricky and Jerry Hess
Rural Route 4
Box 102
Bloomington, Illinois 61704

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

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


Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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