

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO.</b>
	)	<b>(Enforcement-Land)</b>
	)	
<b>JOEL A. MOSKE, d/b/a U.S. SCRAP,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on January 19, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601 a COMPLAINT and ENTRY OF APPEARANCE, copies of which are attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.


FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2008), to correct the pollution alleged in the Complaint filed in this case.

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: 

RACHEL R. MEDINA  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 19, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I did on January 19, 2011, cause to be served by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on the Service List.

  
Rachel R. Medina  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Joel A. Moske  
d/b/a U.S. Scrap  
1551 East McBride Street  
Decatur, IL 62526

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No.
	)	(Enforcement- Land)
JOEL A. MOSKE, d/b/a U.S. SCRAP,	)	
	)	
Respondent.	)	

**ENTRY OF APPEARANCE**

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, RACHEL R. MEDINA, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

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: *Rachel R Medina*  
RACHEL R. MEDINA  
Environmental Bureau  
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Complainant,	)	
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v.	)	PCB NO.
	)	(Enforcement - Land)
	)	
JOEL A. MOSKE, d/b/a	)	
U.S. SCRAP,	)	
	)	
Respondent.	)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of Respondent, JOEL A. MOSKE, d/b/a U.S. SCRAP, as follows:

COUNT I  
LAND POLLUTION VIOLATIONS

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 (2008).

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 (2008), and charged *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. U.S. Scrap, Inc. ("U.S. Scrap") was registered as a domestic corporation in Illinois on March 20, 1995, and was involuntarily dissolved on August 14, 2009. The president of the corporation was Joel A. Moske.

4. Since U.S. Scrap dissolved, Joel A. Moske continues to operate out of the former U.S. Scrap office at 1551 E. McBride Street, Decatur, Macon County, Illinois ("site").

5. The site is not permitted by the Illinois EPA as a sanitary landfill.

6. On February 21, 2007, the Illinois EPA conducted an inspection of the site in order to investigate a complaint that tires were being burned on the site.

7. On February 21, 2007, several piles of soil mixed with debris including metal, wood, concrete, and insulation were on the site. A pile of uncharacterized gray, ash-like material was present on the south side of a storage building located on the west side of the site. In addition, a large pile of broken concrete with protruding rebar was located on the east side of the site.

8. On May 6, 2008, the gray, ash-like material, some piles of debris, and some of the broken concrete with the protruding rebar were no longer present. However, a roll-off box full of tires, some of the broken concrete with protruding rebar, and a large pile of soil mixed with debris including metals, plastic, concrete, wood, glass and rubber were present on the site.

9. On June 22, 2009, piles of scrap metal were on the site. In addition, the large pile containing soil mixed with other debris remained on site. The debris mixed into this pile included plastic, glass, fiberglass and metal.

10. On November 12, 2010, two piles of soil mixed with metal, rubber, plastic, and other small bits from automobiles were on the site. The pile located on the west side of the site measured 1100 cubic yards and the pile located on the southern side of the site measured 900 cubic yards. In addition, one small pile of scrap metals and two trailers containing used tires were on the site.

11. Section 21 of the Act, 415 ILCS 5/21 (2008), 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:

\*\*\*

(7) deposition of:

\*\*\*

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

12. Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2008), provides, in pertinent part, as follows:

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

13. Section 3.300 of the Act, 415 ILCS 5/3.300 (2008), provides, in pertinent part, as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), provides as follows:

"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.

15. Section 3.385 of the Act, 415 ILCS 5/3.385 (2008), provides as follows:

"Refuse" means waste.



16. Section 3.445 of the Act, 415 ILCS 5/3.445 (2008), provides as follows:

"Sanitary Landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act....

17. Section 3.535 of the Act, 415 ILCS 5/3.535 (2008), provides, in pertinent part, as follows:

"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....

18. The gray, ash-like material; broken concrete with protruding rebar; roll-off box or trailers full of tires; piles of scrap metal; and, various piles of soil mixed with debris including metals, soil, plastic, concrete, wood, glass, rubber, and fiberglass were stored on the site as discarded solid materials and thus are waste under Section 3.535 of the Act, 415 ILCS 5/3.535 (2008).

19. In addition, the broken concrete with protruding rebar is demolition debris under Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2008).

20. By consolidating waste materials at a site which is neither permitted by the Illinois EPA as a sanitary landfill, nor meets the requirements of the Act and of the regulations and the standards promulgated thereunder, the Respondent is causing or allowing the open dumping of waste in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2008).

21. By disposing, storing, or abandoning waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, the Respondent is violating Section 21(e) of the Act, 415 ILCS 5/21(e) (2008).

22. By causing or allowing open dumping which resulted in the deposition of demolition debris, the Respondent violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2008).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, JOEL A. MOSKE, d/b/a U.S. SCRAP:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

**COUNT II**  
**AIR POLLUTION VIOLATIONS**

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. On February 21, 2007, a pile of scrap wood, insulation, and tarboard was smoldering on the site.

24. Section 9 of the Act, 415 ILCS 5/9 (2008), provides in pertinent part, as follows:

No person shall:

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

\*\*\*

(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....

25. Section 21 of the Act, 415 ILCS 5/21 (2008), provides in pertinent part, as follows:

No person shall:

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

....  
(3) open burning

26. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides as follows:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

27. Scrap wood, insulation, and tarboard are "contaminants" as defined under Section 3.1265 of the Act, 415 ILCS 5/3.165 (2008).

28. By accumulating pieces of scrap wood, insulation, and tarboard and causing or allowing the scrap wood, insulation, and tarboard to be openly burned on the site, the Respondent has caused or allowed the emission of contaminants into the environment.

29. By causing or allowing the emission of contaminants into the environment so as to cause or tend to cause air pollution, the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2008).

30. By causing or allowing the open burning of scrap wood, insulation, and tarboard at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, the Respondent has violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2008).

31. By causing or allowing the open dumping of waste which resulted in open burning, the Respondent has violated Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2008).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, JOEL A. MOSKE, d/b/a U.S. SCRAP:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and
- F. Granting such other relief as the Board may deem appropriate.

**COUNT III**  
**WASTE DETERMINATION VIOLATIONS**

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 702.11 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 702.11, provides in pertinent part, as follows:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste...

24. Section 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 808.121, provides, in pertinent part, as follows:

a) Each person who generates waste shall determine whether the waste is a special waste.

25. By not characterizing or determining whether the gray ash-like material on the site was either a hazardous or special waste, Respondent violated Sections 702.11 and 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 702.11 and 808.121.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, JOEL A. MOSKE, d/b/a U.S. SCRAP:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that the Respondent has violated the Act as alleged herein;

C. Ordering the Respondent to cease and desist from any further violations of the Act;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and

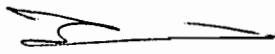
F. Granting such other relief as the Board may deem appropriate.

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  
Assistant Attorney General

Of Counsel  
RACHEL R. MEDINA  
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Dated: 1/18/11