

18, and November 19, 2012. At all three conferences, respondent elected to participate *pro se*. At no point has an attorney entered an appearance on behalf of respondent, and respondent has failed to file an answer to the complaint or raise any affirmative defense.

On November 21, 2012, the People filed a motion to deem material facts in the complaint admitted by operation of law. Pursuant to Board Rule 101.500(d), a party may file a response to a motion within 14 days after service of the motion. 35 Ill. Adm. Code 101.500(d). Respondent failed to file a response to the motion. On December 17, 2012, the hearing officer granted the People's motion to deem material facts admitted.

On December 20, 2012, the People filed a motion for summary judgment (Mot.). Accordingly, the deadline for the respondents' answer was January 3, 2013. Respondent failed to file a response to the complainant's motion for summary judgment and thereby is deemed to have waived objection to the granting of the motion. *Id.*

On January 24, 2013, the People filed a motion to amend the motion for summary judgment. In their December 20, 2012 motion for summary judgment, the People refer to the supporting affidavit of Illinois Environmental Protection Agency (IEPA) inspector Kendall Couch (Aff.), but inadvertently omitted the affidavit and its attachments in the filing. Through their motion to amend, the People sought to add the affidavit of inspector Couch to the motion for summary judgment. The deadline for the respondents' answer to the Peoples motion to amend was thereby set for February 7, 2013, and respondent failed to file an answer.

The Board accordingly grants the People's motion to amend, and will consider Mr. Crouch's affidavit along with the People's motion.

COMPLAINT

On July 2, 2012, the People filed a complaint (Comp.) against respondent alleging non-compliance with various provisions of the Act and Board regulations. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. The five-count complaint alleges respondent's open dumping of waste and used or waste tires, as well as improper transport and storage or disposal of hazardous wastes. Rural property owned by respondent's mother, located at 2958 Nation Road, Salem, Marion County (site) is the locus of all violations alleged against respondent in the People's complaint. Comp. at 2, ¶4.

In Count I, the People allege three open dumping violations against respondent. Comp. at 4-5, ¶18-23. The People allege respondent violated Sections 21(a), 21(e), and 21(p) of the Act, 415 ILCS 5/21 (2010), by causing or allowing the open dumping of wastes at the site, by disposing or abandoning wastes at a site that does not meet the requirements of the Act or the Board's regulations and standards, and by causing or allowing open dumping and discard of used substances, unconsumed substances, and wastes at the site which resulted in litter. *Id.*

In Count II, the People allege a used and waste tire open dumping violation against respondent. Comp. at 6-7, ¶14-15. The People claim respondent violated Section 55(a) of the

Act, 415 ILCS 5/55(a) (2010), by causing or allowing the open dumping of used or waste tires on the property. *Id.*

In Count III, the People allege thirteen hazardous wastes storage or disposal violations against respondent. Comp. at 11-15, ¶¶29-53. The People claim respondent violated Section 21(f) of the Act, 415 ILCS 5/21(f) (2010), by conducting hazardous waste storage or hazardous waste-disposal operations on the site without a Resource Conservation and Recovery Act (RCRA) permit. Comp. at 11, ¶29. The People also allege respondent violated twelve Board regulations related to the operation of a hazardous waste storage or disposal site. The complaint alleges respondent violated Board regulations by operating a hazardous waste storage or disposal site without the following: a RCRA permit (35 Ill. Adm. Code 703.121(a), 35 Ill. Adm. Code 703.121(b)); a United States Environmental Protection Agency (USEPA) identification number (35 Ill. Adm. Code 724.111); proper security so as to prevent or minimize the possibility of unknowing or unauthorized entry to the site (35 Ill. Adm. Code 724.114(a)); posting a sign warning “Danger – Unauthorized Personnel Keep Out” when not in compliance with Board regulation 724.114(a)(1-2) (35 Ill. Adm. Code 724.114(c)); complying with general inspection requirements (35 Ill. Adm. Code 724.115(a)); proper design and operation of a hazardous waste storage or disposal facility (35 Ill. Adm. Code 724.131); required aisle space (35 Ill. Adm. Code 724.135); a closure plan (35 Ill. Adm. Code 724.212); proper condition and maintenance of hazardous waste containers (35 Ill. Adm. Code 724.271); handling hazardous waste containers in a manner that prevents rupture or leakage and keeping hazardous waste containers closed except when necessary to fill or remove waste (35 Ill. Adm. Code 724.273); conducting weekly inspections of areas where hazardous waste containers are stored (35 Ill. Adm. Code 724.274); and a containment system for container storage areas (35 Ill. Adm. Code 724.275(a). Comp. at 11-15, ¶¶29-51. The People also allege respondent stored wastes beyond one year at his storage and disposal facility in violation of Board Regulation 728.150(c), 35 Ill. Adm. Code 728.150(c). Comp. at 15, ¶53.

In Count IV, the People allege two hazardous waste analysis violations against respondent. Comp. at 16, ¶¶16-18. The People allege respondent violated Board regulations 724.113(a) and 724.113(b) (35 Ill. Adm. Code 724.113) (2010) by failing to obtain a detailed chemical and physical analysis of a representative sample of the wastes on the site, and by failing to develop and follow a written waste analysis plan.

In Count V, the People allege five hazardous waste transportation violations against respondent. Comp. at 18-19, ¶¶18-26. First, the People allege respondent violated Sections 21(g)(1) and 21(g)(2) of the Act, 415 ILCS 5/21(g) (2010), by conducting a hazardous waste-transportation operation without registering and obtaining a waste hauling permit, and by conducting a hazardous waste transportation operation in violation of the regulations and standards adopted by the Board. Comp. at 18, ¶¶18-20. Additionally, the People allege respondent violated Board regulations related to the transport of hazardous waste. The People allege respondent conducted a hazardous waste transportation operation without a USEPA identification number (35 Ill. Adm. Code 723.111) and that respondent failed to comply with the manifest system and recordkeeping requirements (35 Ill. Adm. Code 723.120(a) and 35 Ill. Adm. Code 723.120(b)). Comp. at 18-19, ¶¶22-26.

FACTS

There are no facts in dispute here. The facts alleged in the complaint—as supplemented by the attached photographs—have been admitted, and the facts contained in Mr. Crouch's affidavit have not been challenged. The facts, then, are as follows.

Judy Carter is the owner of rural property located at 2958 Nation Road, Salem, Marion County. Aff. Attachment A at 2; Mot. at 4. Respondent, Troy Carter, is Judy Carter's son. Aff. Attachment A at 5; Mot. at 4. For some time prior to March 24, 2009, respondent resided in a mobile home on Judy Carter's property at 2958 Nation Road, Salem, Marion County (site), which is the locus of all 24 violations alleged against respondent. *Id.* As of March 24, 2009, respondent's estranged wife, Nicole Carter, alone occupied the mobile home on the property. *Id.* Respondent maintained limited access to the site pursuant to an Order of Protection. *Id.*

The site is roughly one half-acre in size, with a gravel road running the length of the property, north to south. Aff. Attachment C at 1. The mobile home sits on the northern edge of the property, just east of the gravel road. *Id.* A detached garage and shed are also situated on the site, both located directly behind (south of) the mobile home. *Id.*

At a site inspection on March 24, 2009, IEPA inspector Kendall Couch observed a total of 36 55-gallon drums situated directly behind the detached garage on site. Aff. at 2, ¶5. The 55-gallon drums were in poor condition, rusted, leaking grey liquid, and variously labeled with hazardous waste stickers and auto paint markings. *Id.*; Comp. Exh. Photos 3-9. More than 50 waste tires covered a number of the upright 55-gallon drums, while other drums lay on their sides. *Id.*; Aff. Attachment C, Photos 2-9. Opposite the tires and across the gravel drive, the inspector observed an open dumping area as well as an open burning area. Aff. at 2, ¶5; Aff. Attachment C, Photo 1. The open dumping area contained approximately 40 to 50 cubic yards of waste, including roughly thirty waste tires, twenty 15-foot pieces of oilfield metal pipe, gas cylinders, empty drums, car parts, miscellaneous wood, steel pipe, plastic buckets, concrete, mattress springs, residential wastes, and refuse. *Id.* The open burning area, nearly 15 feet in diameter, consisted mostly of residential trash. Aff. at 2, ¶5, Aff. Attachment C, Photo 10.

Following the initial, March 24, 2009 site inspection, the IEPA conducted additional assessments of the site on March 25 and 27, May 7, June 25, November 24, 2009, and February 10, 2010. Aff. at 2-3.

In an interview with IEPA inspector Kendall Couch on March 25, 2009, respondent admitted that he owned the 55-gallon drums and that he had transported them to the site five to six years previously. Aff. at 2, ¶5; Aff. Attachment A at 6. Respondent also admitted ownership of the remaining wastes on the site, excepting that the burn pile was attributable to his estranged spouse, who was at that time residing on the property alone. Aff. at 2, ¶5. There was no indication that respondent had undertaken a detailed analysis of the contents of the 55-gallon drums, nor that he had developed and followed a written waste analysis plan for the drums. *Id.*

On March 27, 2009, inspector Kendall Couch along with two other IEPA inspectors sampled the waste from the 55-gallon drums on site. Aff. at 2, ¶6. Testing and analysis of the

samples confirmed that the drums contained hazardous waste. *Id.* On the same day, IEPA inspector Kendall Couch interviewed respondent about the 55-gallon drums. *Id.* Respondent indicated that he knew or had reason to know the drums were filled with hazardous material, because he said they contained auto-paint mixed with solvent. *Id.* Respondent told the inspector that he believed the waste originally came from Rockwell International, and that he had accepted between \$9.00 and \$11.00 per drum to remove them from an undisclosed location. *Id.*

As a result of the initial inspection on March 24, 2009, as well as subsequent site assessments, the IEPA requested that USEPA conduct an emergency stabilization and immediate removal action. *Aff.* at 2, ¶7. 36 55-gallon drums of hazardous waste were removed from the site by Illini Environmental on December 9, 2009. *Aff.* Attachment F at 3. Subsequently, the solid waste and waste tires were removed via a Consensual Removal Agreement (CRA) through the Illinois Removes Illegal Dumps (IRID) program on February 4, 2010. *Id.*

The site is not currently, nor was it formerly, registered or permitted as a waste storage or waste disposal facility. Respondent failed to seek or obtain a RCRA permit, and respondent was therefore at no time in compliance with the Board’s standards and regulations regarding hazardous waste management operators or facilities.

Following emergency removal efforts and subsequent site inspections, the People filed the complaint against respondent on July 2, 2012, alleging various violations of the Act and Board regulations related to the open dumping of wastes, the open dumping of used and waste tires, as well as the transport, storage, and disposal of hazardous wastes on the site.

STATUTORY PROVISIONS¹

Section 21 of the Act, 415 ILCS 5/21 (2010), states 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 the 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.

* * * * *

¹ The regulatory language for all seventeen provisions of the Board’s Rules and Regulations which the People allege respondent violated is five pages long. Therefore, relevant regulatory sections will be included in Appendix I to this Opinion and Order.

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

- 1) without a RCRA permit for the site issued by the agency under subsection (d) of Section 39 of this Act . . . ;
- 2) in violation of any regulations or standards adopted by the Board under this act...

* * * * *

(g) Conduct any hazardous waste-transportation operation:

- 1) without registering with and obtaining a special waste hauling permit from the Agency in accordance with the regulations adopted by the Board under this Act; or
- 2) in violation of any regulations or standards adopted by the Board under this Act.

* * * * *

(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;

* * * * *

Section 55 of the Act, provides as follows:

(a) No person shall:

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

* * * * *

Section 3.185 of the Act, provides as follows:

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

discharged into any waters, including ground waters. 415 ILCS 5/3.185 (2010).

Section 3.220 of the Act, provides as follows:

“Hazardous waste” means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, or pursuant to Board regulations. 415 ILCS 5/3.220 (2010).

Section 3.305 of the Act, provides as follows:

“Open dumping means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill. 415 ILCS 5/3.305 (2010).

Section 3.370 of the Act, provides as follows:

“RCRA Permit” means a permit issued by the Agency pursuant to authorization received by the Agency from the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), and which meets the requirements of Section 3005 of RCRA and of this Act. 415 ILCS 5/3.370

Section 3.460 of the Act provides as follows:

“Site” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder. 415 ILCS 5/3.460 (2010).

Section 3.480 of the Act, provides as follows:

“Storage” means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal. 415 ILCS 5/3.480 (2010).

Section 3.535 of the Act provides as follows:

“Waste” means any garbage...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 3.540 of the Act, provides as follows:

“Waste disposal site” is a site on which solid waste is disposed. 415 ILCS 5/3.540 (2010).

Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2010), defines litter as:²

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish ...which has been discarded, abandoned or otherwise disposed of improperly.

Section 54.13 of the Act, provides as follows:

“Used tire” means a worn, damaged, or defective tire that is not mounted on a vehicle.

Section 54.16 of the Act, provides as follows:

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

LEGAL BACKGROUND ON SUMMARY JUDGMENT

The Act addresses the Board’s jurisdiction over environmental matters when it states as follows:

The Board shall have the authority to conduct proceedings upon complaints charging violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order . . . 415 ILCS 5/5(d) (2010).

The Board’s procedural rules dictate that the Board will enter summary judgment if the record, including pleadings, depositions and admissions on file, together with any affidavits, shows there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant

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).

and in favor of the opposing party.” Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). 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 Purtill 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).

MOTION FOR SUMMARY JUDGMENT

The People have alleged multiple violations of the Act and Board regulations against Troy Carter. All material facts alleged in the People’s July 2, 2012 complaint were deemed admitted by the hearing officer on December 17, 2012.

In Count I, the People allege three open dumping violations against respondent. Because the facts alleged in the complaint have been deemed admitted by operation of law, the People argue there is no material fact in dispute and that they are entitled to a judgment as a matter of law as to Count I.

In Count II, the People allege a used and waste tire open dumping violation against respondent. Because all facts alleged in the complaint have been deemed admitted by operation of law, the People argue there is no material fact in dispute and that they are therefore entitled to a judgment as a matter of law as to Count II.

In Count III, the People allege various hazardous waste storage or disposal violations against respondent. Because all facts alleged in the complaint have been deemed admitted by operation of law, the People argue that there is no material fact in dispute and that they are therefore entitled to summary judgment as to Count III.

In Count IV, the People allege two hazardous wastes analysis violations against respondent. Because all facts alleged in the complaint have been deemed admitted by operation of law, and the People argue that there is no material fact in dispute and that they are therefore entitled to summary judgment as to Count IV.

In Count V, the People allege five hazardous wastes transportation violations against respondent. Because all facts alleged in the complaint have been deemed admitted, the People argue that there is no material fact in dispute and that they are therefore entitled to summary judgment as to Count V.

LACK OF RESPONSE TO THE MOTION FOR SUMMARY JUDGMENT

Respondent has not filed a response to the People’s motion for summary judgment. 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 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, respondent has waived any objection to the Board granting the motion for summary judgment. *See id.*

DISCUSSION

In summary, the Board finds that there are no genuine issues of material fact, and that the People are entitled to summary judgment as a matter of law. Thus, the Board finds that granting the People’s motion for summary judgment is appropriate. In their five-count complaint, the People allege that respondent committed twenty-four violations of the Act and Board regulations. Each count will be discussed separately.

Count I

In Count I, the People allege respondent violated Sections 21(a), 21(e), and 21(p) of the Act, 415 ILCS 5/21 (2010), by causing or allowing the open dumping of waste, by disposing or abandoning waste at a site that does not meet the requirements of the Act or Board regulations and standards, and by causing or allowing open dumping of waste in a manner which resulted in litter. 415 ILCS 5/21 (2010).

The record indicates that an open dumping area on site contained 40-50 cubic yards of waste, including waste tires, oilfield metal pipe, gas cylinders, empty drums, car parts, miscellaneous wood, steel pipe, plastic buckets, concrete, mattress springs, residential wastes and refuse. As an unpermitted facility, the site did not meet the requirement of the Act that a permit for waste disposal operations is required. *See, e.g.*, 415 ILCS 5/21(d)(1) (2010). Additionally, the record indicates that respondent admitted responsibility for all waste on site, excepting a portion of the waste in the open burning area, which he claimed was attributable to his estranged wife. The Board therefore concludes the record sufficiently demonstrates respondent caused or allowed the open dumping of waste at the site in violation of Section 21(a) of the Act. 415 ILCS 5/21(a) (2010). So, the record demonstrates that respondent disposed or abandoned waste at a site that does not meet the requirements of the Act or Board regulations and standards in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

Finally, Section 3(a) of the Litter Control Act defines “‘Litter’ . . . [as] discarded, used or unconsumed substance or waste. ‘Litter’ may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . .” 415 ILCS 105/3(a) (2010). The record demonstrates that the waste in the open dumping area included residential waste and refuse. Therefore, the Board finds respondent violated Section 21(p)(1) of the Act by a causing or allowing open dumping of used substances, unconsumed substances, and waste at the site which resulted in litter. 415 ILCS 5/21(p)(1).

The Board finds that the facts deemed admitted are sufficient to prove that respondent violated Sections 21(a), 21(e), and 21(p)(1) of the Act. 415 ILCS 5/21 (2010). The Board further finds that the People are entitled to judgment as a matter of law and the Board therefore

grants the motion for summary judgment as to Count I, finding that respondent violated Sections 21(a), 21(e), and 21(p)(1) of the Act. *Id.*

Count II

In Count II, the People allege respondent violated Section 55(a)(1) of the Act, 415 ILCS 5/55(a) (2010), by causing or allowing the open dumping of used or waste tires on the site.

The record indicates that approximately 50 waste tires were lying on top of various 55-gallon drums behind the detached garage at the site, while 30 additional waste tires lay in the open dumping area situated on the southwestern edge of the property. During an interview with IEPA inspector Kendall Couch, Respondent admitted ownership of all wastes on the property, including the waste tires. Therefore, respondent caused or allowed the open dumping of used or waste tires on the site in violation of Section 55(a) of the Act. 415 ILCS 5/55(a) (2010).

The Board finds that the facts deemed admitted are sufficient to prove that respondent violated Section 55(a) of the Act. *Id.* The Board further finds that the People are entitled to judgment as a matter of law and the Board therefore grants the motion for summary judgment as to Count II, finding that respondent violated Section 55(a) of the Act. *Id.*

Count III

In Count III, the People first allege respondent violated Section 21(f) of the Act, 415 ILCS 5/21(f) (2010), by conducting hazardous waste-storage or hazardous waste-disposal operations on the site without a RCRA permit. The record demonstrates that respondent claimed ownership and responsibility for the 36 55-gallon drums on the site. Sampling and analysis of the drums' contents by the IEPA indicated that the waste within and leaking from the drums was hazardous. Further, the record indicates that respondent had been storing the drums on the site in excess of five years without a RCRA permit. Therefore, the record sufficiently demonstrates that respondent conducted hazardous waste-storage or hazardous waste-disposal operations on the site. Respondent thereby conducted hazardous waste-storage or hazardous waste-disposal operations without a RCRA permit in violation of Section 21(f) of the Act.

The People also allege respondent violated numerous Board regulations related to the operation of a hazardous waste storage or disposal site. Board Regulation 703.121(a) states, in pertinent part, that an individual must have a RCRA permit for a hazardous waste management facility in order to conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation. 35 Ill. Adm. Code 703.121(a). Section 703.121(b) requires that an owner or operator of a hazardous waste management unit have permits during the active life (including the closure period) of the unit. 35 Ill. Adm. Code 703.121(b). As noted above, the record indicates that respondent claimed responsibility for the 36 55-gallon drums containing hazardous waste, and respondent failed to obtain a RCRA permit to operate the site as a waste-disposal or waste-storage facility. Therefore, the Board finds respondent conducted hazardous waste storage or waste disposal operations at the site without a RCRA permit in violation of Sections 703.121(a) and 703.121(b) of the Board's regulations. 35 Ill. Adm. Code 703.121.

Section 724.111 requires every owner or operator of a hazardous waste treatment, storage, or disposal facility to apply to USEPA Region 5 for a USEPA identification number and submit the copy of the application to the Bureau of Land. 35 Ill. Adm. Code 724.111. The record demonstrates that respondent did not obtain or seek a USEPA identification number. Respondent thereby violated Section 724.111 of the Board's regulations. *Id.*

Section 724.114(a) requires every owner or operator of a hazardous waste treatment, storage, or disposal facility to prevent or minimize the possibility of the unknowing or unauthorized entry of persons or livestock onto the active portion of the facility. 35 Ill. Adm. Code 724.114(a). If an owner or operator fails to prevent unknowing entry, 724.114(a)(1-2) requires that he or she demonstrate to the IEPA that physical contact with or disturbance of the waste by unauthorized or unknowing persons or livestock that may enter the site will not result in injury. The record demonstrates that respondent admitted ownership and responsibility for all wastes found on the site, including the 36 55-gallon drums of hazardous material, with the exception of the wastes on the burn pile. These facts indicate that under Section 720.110 of the Board's regulations, respondent was an "operator" for the hazardous waste site, because he was the person responsible for the overall operation of the facility. Respondent therefore operated a hazardous waste management site and failed to prevent unknowing or unauthorized entry onto the active portions of the site, and failed to minimize the possibility of such entry. Further, the record indicates respondent made no demonstration that physical contact with or disturbance of the waste would not injure unknowing or unauthorized persons or livestock that may enter the active portions of the site. The Board finds respondent thereby violated Section 724.114(a) of the Board's regulations. *Id.*

Additionally, Section 724.114(c) mandates that every owner or operator of a hazardous waste treatment, storage, or disposal facility who fails to make successful demonstration under 724.114(a)(1-2) must post a sign with the legend, "Danger – Unauthorized Personnel Keep Out" at each entrance to the active portion of the site. 35 Ill. Adm. Code 724.114. The Board finds that the record demonstrates that respondent failed make a successful demonstration under 724.114(a)(1-2) and failed to post a "Danger – Unauthorized Personnel Keep Out" sign in violation of Section 724.114(c). *Id.*

Section 724.115(a) of the Board's regulations requires every owner or operator of a hazardous waste treatment, storage, or disposal facility to conduct inspections of the site frequently enough to identify problems in time to correct them. 35 Ill. Adm. Code 724.115(a). The Board finds that the record indicates that respondent conducted no regular inspections of the hazardous waste or the site in violation of Section 724.115(a) of the Board's regulations. *Id.*

Section 724.131 requires that facilities must be designed, constructed, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. 35 Ill. Adm. Code 724.131. The Board finds that the record indicates respondent failed to properly design and operate the site so as to minimize the possibility of such an emergency situation in violation of Section 724.131 of the Board's regulations. *Id.*

Section 724.135 requires that aisle space at the facility is maintained so as to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency. 35 Ill. Adm. Code 724.135. The Board finds that the record indicates respondent failed to maintain appropriate aisle space on site in violation of Section 724.135. *Id.*

Section 724.212 requires every owner or operator of a hazardous waste treatment, storage, or disposal facility to have a written closure plan for his or her site. 35 Ill. Adm. Code 724.212. The Board finds that the record indicates respondent had no closure plan for the site. Respondent thereby violated Section 724.212 of the Board's regulations. *Id.*

Section 724.271 requires every owner or operator of a hazardous waste treatment, storage, or disposal facility to transfer hazardous waste from any container that is not in good condition to a container that is in good condition, or to manage the waste in some other way that complies with Board regulations. 35 Ill. Adm. Code 724.271. The record demonstrates respondent was responsible for the 55-gallon drums on site and that a number drums were in poor condition, rusted, and leaking grey liquid. Therefore, respondent failed to transfer hazardous waste from containers in poor condition to containers in good condition, or to manage waste in some other way that complied with Board regulations. The Board finds that the respondent thereby violated Section 724.271 of the Board's regulations. *Id.*

Section 724.273 requires that containers holding hazardous waste remain closed at all times excepting when it is necessary to add or remove waste, and that containers must be handled in a manner that prevents rupture or leakage. 35 Ill. Adm. Code 724.273. The record indicates that respondent was responsible for the 36 55-gallon drums on site; most drums were in poor condition, rusted, and leaking grey liquid; some drums were laying on their sides while others were covered with tires. Therefore, respondent did not manage hazardous waste containers so as to prevent rupture or leakage, and the Board finds that he thereby violated Section 724.273 of the Board's regulations. *Id.*

Section 724.274 requires every owner or operator of a hazardous waste treatment, storage, or disposal facility to inspect, at least weekly, the areas where containers are stored, looking for leaking and deteriorating containers. 35 Ill. Adm. Code 724.274. The Board finds that the record shows that respondent failed to conduct weekly inspections of the drums and the area where they were stored in violation of Section 724.274 of the Board's regulations.

Section 724.275(a) requires that containment storage areas have a containment system designed and operated so as to minimize the risks to human health and the environment in accordance with 724.275(b). Ill. Adm. Code 724.275(a). The record demonstrates respondent failed to have a hazardous waste containment system that was designed and operated in accordance with Section 724.275(b) of the Board's Regulations. Board finds that the respondent therefore violated Section 724.275(a) of the Board's regulations. *Id.*

Section 728.150(c) allows every owner or operator of a hazardous waste treatment, storage, or disposal facility to store hazardous wastes beyond one year only if he or she can demonstrate a permissible purpose. 35 Ill. Adm. Code 728.150(c). The record indicates that the

36 55-gallon drums containing hazardous waste had been on the site in excess of six years without a permissible purpose. Board finds that the respondent thereby violated Section 728.150(c) of the Board's regulations. *Id.*

In summary, the Board finds that the facts deemed admitted are sufficient to prove that respondent committed all alleged violations of the Act and Board Regulations related to the storage and disposal of hazardous wastes included in Count III of the People's complaint. The Board further finds that the People are entitled to judgment as a matter of law and the Board therefore grants the motion for summary judgment as to Count III, finding that respondent's hazardous waste storage and disposal operation resulted in fourteen total violations of the Act and Board Regulations.

Count IV

In Count IV, the People allege respondent violated Section 724.113(a) and 724.113(b), (35 Ill. Adm. Code 724.113), by failing to obtain a detailed chemical and physical analysis of a representative sample of the wastes on the site, and by failing to develop and follow a written waste analysis plan.

The record indicates that respondent failed to obtain a detailed chemical and physical analysis of a representative sample of the wastes in the 55-gallon drums prior to storing or disposing of drums on the site. The Board finds that, by failing to do so, respondent violated Section 724.113(a) of the Board's regulations. 35 Ill. Adm. Code 724.113(a).

Additionally, the record indicates that respondent failed to develop and follow a written waste analysis plan describing waste analysis procedures. The Board finds that respondent thereby violated Section 724.113(b) of the Board's regulations. 35 Ill. Adm. Code 724.113(b).

In summary, the Board finds that the facts deemed admitted are sufficient to prove that respondent violated Sections 724.113(a) and 724.113(b). 35 Ill. Adm. Code 724.113. The Board further finds that the People are entitled to judgment as a matter of law and the Board therefore grants the motion for summary judgment as to Count IV, finding that respondent violated Board regulations 724.113(a) and 724.113(b) of the Board regulations. *Id.*

Count V

In Count V, the People first allege respondent violated Sections 21(g)(1) and 21(g)(2) of the Act, 415 ILCS 5/21(g) (2010) by conducting a hazardous waste-transportation operation without registering and obtaining a hazardous waste hauling permit, and by conducting a hazardous waste transportation operation in violation of the regulations and standards adopted by the Board. The People also allege respondent's conduct in transporting hazardous waste violated Sections 723.111, 723.120(a), and 123.120(b) of the Board's regulations.

The record indicates that respondent transported 36 55-gallon drums of hazardous material from an undisclosed location to the site, five to six years prior to the IEPA site inspection on March 24, 2009. Therefore, the Board finds that respondent transported hazardous

waste for storage and disposal in Illinois. Further, the record demonstrates respondent transported the drums without registering and obtaining a special waste hauling permit from IEPA. Therefore, the Board also finds that respondent thereby violated Section 21(g)(1) and of the Act. 415 ILCS 5/21(g) (2010).

Similarly, Section 723.111 requires that a transporter of hazardous waste obtain a USEPA identification number. 35 Ill. Adm. Code 723.111. The Board finds that the record indicates respondent transported 36 55-gallon drums of hazardous waste to the site without a USEPA identification number in violation of Section 723.111. *Id.*

Section 723.120(a) requires that, before accepting hazardous waste for transport, a transporter must accept a hazardous waste manifest from the generator which has been signed in accordance with the provisions of 35 Ill. Adm. Code 723.123. 35 Ill. Adm. Code 723.120(a). The Board finds that the record indicates respondent transported 36 55-gallon drums of hazardous waste to the site without a signed hazardous waste manifest from the generator in violation of Section 723.120(a). *Id.*

Section 723.123(b) requires that, before leaving a generator's property with hazardous waste, a transporter must sign and date a hazardous waste manifest from the generator, acknowledging acceptance of the hazardous waste. 35 Ill. Adm. Code 723.120(b). The Board finds that the record indicates respondent transported 36 55-gallon drums of hazardous waste to the site without signing and dating a hazardous waste manifest in violation of Section 723.120(b) of the Board's regulations. *Id.*

Respondent's violations of Sections 723.111, 723.120(a), and 723.123(b) of the Board's regulations are sufficient to demonstrate respondent was not in compliance with 21(g)(2) of the Act, which is violated whenever an individual conducts a hazardous waste transportation operation in violation of the regulations and standards adopted by the Board. Therefore, by violating Sections 723.111, 723.120(a) and 723.123(b) of the Board's regulations, the Board finds that respondent violated Section 21(g)(2) of the Act. 415 ILCS 5/21(g) (2010).

In summary, the Board finds that the facts deemed admitted are sufficient to prove that respondent violated Sections 21(g)(1) and 21(g)(2) of the Act, and Sections 723.111, 723.120(a) and 724.120(b) of the Board's regulations. 415 ILCS 5/21(g); 35 Ill. Adm. Code 723.111, 723.120 (2010). The Board further finds that the People are entitled to judgment as a matter of law and the Board therefore grants the motion for summary judgment as to Count V, finding that respondent violated Sections 21(g)(1) and 21(g)(2) of the Act, as well as Sections 723.111, 723.120(a) and 724.120(b) of the Board's regulations. *Id.*

REMEDY

The Board finds that respondent violated twenty-four provisions of the Act and Board regulations in relation to respondent's open dumping of waste and used or waste tires, as well as his transport, storage or disposal of hazardous waste. Having done so, the Board must now turn to evaluating the record to determine the appropriate remedy and penalty. For this, the Board considers the factors of Sections 33(c) and 42(h) of the Act. 415 ILCS 5/33(c) 42(h) (2010).

In the prayer for relief in each count of the complaint, the People request entry of an order that respondent “cease and desist from any further violations of the Act and [Board] regulations”, imposition of a civil penalty, and such other relief as the Board may find just. *See, e.g.* Comp. p. 6. In their motion, the People specifically request a civil penalty of \$37,008.00. Mot. at 15-16.

Statutory Provisions Relating to Remedies and Penalties

Section 33(c) of the Act provides as follows:

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

- (i) the character and degree of injury to, or interference with the protection of 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 emissions, discharges, or deposits resulting from such pollution source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2010).

Section 42(h) of the Act provides as follows:

In determining the appropriate 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 respondent and other persons similarly subject to the Act;
- (5) the number, proximity in time, and gravity of previously adjudicated violations of the 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. 415 ILCS 5/42(h) (2010).

People’s Argument

Discussing the factors set forth in Section 33(c) of the Act, the People argue: 1) respondent’s actions threatened human health and the environment and hindered IEPA’s information-gathering responsibilities; 2) the social and economic value of the pollution source is not an issue; 3) the pollution source was not suitable for the area in which pollution occurred; 4) reducing or eliminating emissions and/or deposits was both technically practicable and economically feasible; and 5) the site was brought into compliance through the combination of emergency U.S. EPA intervention and IEPA’s IRID program. Mot. at 14.

Regarding the factors set forth in Section 42(h) of the Act, the People argue: 1) respondent openly dumped and conducted an illegal hazardous waste storage or disposal facility at the site for some time prior to March 24, 2009 through January 2010; 2) after IEPA notified him of noncompliance, respondent was not diligent in attempting to become compliant with the Act, Board regulations, and applicable federal regulations, and USEPA and IEPA’s IRID program intervention was necessary to remediate the site; 3) respondent gained economic benefits by avoiding landfill permitting costs by depositing wastes at a site other than a landfill, and avoided the transportation costs, landfill use fees and other costs related to hazardous waste disposal; 4) a penalty of thirty-seven-thousand and eight dollars (\$37,008.00) will effectively deter respondent from further violations and aid in future voluntary compliance with the act and Board regulations; 5) there is no record that respondent has committed previous violations; 6) self-disclosure is not at issue in this matter; and 7) a supplemental environmental project is not at issue in this matter. Mot. at 15-16.

Discussion on Remedy and Penalty

In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2010)). People v. Gilmer, PCB 99-27 (Aug. 24, 2000). The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution. Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Gilmer, PCB 99-27, slip. op. at 8.

The Board will discuss each of the Section 33(c) and 42(h) factors below. The Board will then explain the reasoning for the remedy chosen and civil penalty being assessed.

Section 33(c) Factors

The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People

The Board found that respondent engaged in the open dumping of waste and used or waste tires on the site, and that respondent transported and stored or disposed of hazardous waste on the site. Such actions endanger the health, general welfare, and physical property of the People of Illinois. Therefore, The Board finds that this factor weighs against respondent.

The Social and Economic Value of the Pollution Source

Although the record lacks specific evidence related to this factor, the Board finds that an open dump violating numerous requirements has little social and economic value. Therefore, the Board finds that this factor weighs against respondent.

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

The People assert that the disposal of the waste, waste or used tires, and hazardous waste was unsuitable for a property not properly permitted. The Board agrees and finds that this factor weighs against respondent.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source

The People argue and the Board agrees that compliance with the Act and Board is technically practical and economically reasonable. Therefore, this factor weighs against respondent.

Any Subsequent Compliance

The People note that the site was brought into compliance only through the combined actions of USEPA emergency intervention and IEPA's IRID program. This factor weighs heavily against the respondent, who made no efforts to remediate the environmental problem he created.

Finding on Section 33(c) factors

The Board finds that factors in Section 33(c) justify issuance of the "cease and desist" order requested by the People. These factors also weigh in favor of requiring respondent to pay a civil penalty.

Section 42(h) Factors

Duration and Gravity of the Violation

Five to six years prior to IEPA's April 24, 2009 inspection, respondent improperly transported 36 55-gallon drums containing hazardous waste to the site, where they were illegally stored or disposed of until IEPA and USEPA facilitated removal actions from December 2009 through February 2010. The potential harm from the improper transport, storage, or disposal of hazardous waste is grave. Respondent's actions endangered the citizens of Illinois over a period of more than five years. This record contains no evidence that respondent made any efforts at site clean up, so that state and federal agencies were required to do so. The Board finds that consideration of this factor considerably aggravates the assessment of a penalty.

Due Diligence

The People argue that respondent was not diligent. The record contains no evidence that the respondent made any attempt to properly comply with the requirements of the Act or Board regulations. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Economic Benefits Accrued

The People assert that respondent gained economic benefits by avoiding landfill permitting costs, landfill use fees, transportation costs, and other costs related to hazardous waste disposal as a result of his non-compliance with the Act and Board regulations. Therefore, the Board finds that consideration of this factor aggravates the assessment of a penalty.

Penalty That Will Serve To Deter Further Violations

The People argue that a total civil penalty of \$37,008.00 will deter respondent from committing future violations. The Board acknowledges that \$37,008.00 is not an insignificant amount of money. But, the Board finds that the record contains insufficient evidence to

determine if this penalty will deter future violations. Therefore, consideration of this factor neither mitigates nor aggravates assessment of a substantial penalty.

The Number, Proximity In Time, And Gravity Of Previously Adjudicated Violations Of This Act By The Violator

The record contains no evidence of prior adjudicated violations, and the People indicate that they are unaware of any previous violations. The Board finds that consideration of this factor mitigates against a substantial penalty.

Self-Disclosure

Respondent did not self-disclose the violations. Therefore, the Board finds that consideration of this factor aggravates assessment of a penalty.

Supplemental Environmental Project

A supplemental environmental project is not an issue in this matter; consideration of this factor is therefore unwarranted.

Compliance Commitment Agreement

A compliance commitment agreement has not been signed, and consideration of this factor is therefore unwarranted.

Appropriate Civil Penalty

The Board has stated that the statutory maximum penalty “is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts.” Gilmer, PCB 99-27, slip. op. at 8, citing IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock, PCB 88-71 (May 10, 1990), slip. op. at 72. The basis for calculating the maximum penalty is contained in Sections 42(a) and (b) of the Act. *See* 415 ILCS 5/42(a) and (b) (2010). Section 42(a) provides for a civil penalty not to exceed \$50,000 for violating a provision of the Act and an additional civil penalty not to exceed \$10,000 for each day during which the violation continues.

The Board has found that respondent violated seven provisions of the Act and seventeen Board regulations. The statutory penalty for violating seven provisions of the Act alone would be \$350,000 (7 times \$50,000), even without calculating daily violation of \$10,000 per day. The \$37,008.00 requested by the People is modest in comparison. Analysis of the Section 33(c) and 42(h) factors illustrates that there is only one mitigating factor: absence of a record of previous violations by this respondent.

But, the record also makes clear that respondent acquired the three dozen unlabeled 55-gallon drums of what turned out to be hazardous waste for disposal fees of some \$9-\$11 per barrel in 2003 or 2004, whereupon he disposed of them on his mother’s property without

protecting them from exposure to the elements. *See, supra*, p. 5. In March 2009, the IEPA inspector found the drums rusting, leaking, and exposed to the weather, except where covered by improperly managed waste tires and other waste. IEPA then immediately requested USEPA to conduct emergency site stabilization and waste drum removal. With no apparent actions by respondent, the drums were removed by a contractor in December 2009. The other waste and tires were not removed until February 2010. Under these facts, the apparent lack of major environmental damage was truly fortuitous.

The People's motion did not quantify respondent's economic benefit due to non-compliance with the Act and Board rules. *See Mot.* at 16. Likewise, it did not specify how much the federal and state environmental agencies expended for emergency site stabilization and waste removal. But, under these circumstances, the Board finds that imposition of the \$37,008.00 requested by the People is amply supported by this record.

Based on the record, the Board assesses the requested, uncontested \$37,008.00 penalty, and orders payment within 30 days.

CONCLUSION

The Board grants the People's motion for summary judgment and finds that respondent violated seven provisions of the Act and seventeen Board regulations as alleged in the People's complaint. Having found that respondent violated the Act and Board regulations, the Board finds that a civil penalty of \$37,008.00, as requested by the People, is appropriate and directs respondent to pay that civil penalty.

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

ORDER

1. The Board finds that Troy Carter (respondent) violated Sections 21(a), 21(e), 21(f), 21(g)(1), 21(g)(2), and 55(a)(1) of the Environmental Protection Act (415 ILCS 5/21,55 (2010)). Additionally, the Board finds that respondent violated Sections 703.121(a), 703.121(b), 723.111, 723.120(a), 723.120(b), 724.111, 724.113(a), 724.113(b), 724.114(a), 724.114(c), 724.115(a), 724.131, 724.135, 724.212, 724.273, 724.274, 725.275(a), and 728.150(c) of the Board's Regulations (35 Ill. Adm. Code 703, 723, 724, 725, 728).
2. The Board hereby assesses a penalty of \$37,008.00 against respondent. Troy Carter must pay this penalty no later than April 8, 2013, which is the [first business day following] the 30th day after the date of this order. Respondent must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and social security number must be included on the certified check or money order.
3. Respondent must send the certified check or money order 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Respondent must cease and desist from future violations.

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) (2008); *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 opinion and order on March 7, 2013, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

APPENDIX I: Regulatory Provisions

Board Regulation 702.110, 35 Ill. Adm. Code 702.110, provides in pertinent part the following:

“RCRA Permit” (RCRA) means a permit required pursuant to Section 21(f) of the Act [415 ILCS 5/21(f)].

Board Regulation 703.12, 35 Ill. Adm. Code 703.121, provides in pertinent part the following:

- a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operations as follows:
 - 1) Without a RCRA permit for the HWM (hazardous waste management) facility; or
 - 2) In violation of any condition imposed by a RCRA permit.
- b) An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit.

Board Regulation 720.110, 35 Ill. Adm. Code 720.110, provides in pertinent part the following:

“Container” means any portable device in which material is stored, transported, treated, disposed of, or otherwise handled.”

* * * * *

“EPA identification number” or “USEPA identification number” means the number assigned by USEPA pursuant to 35 Ill. Adm. Code 722 through 725 to each generator; transporter; and treatment, storage, or disposal facility.

* * * * *

“Facility” means the following:

All contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational unite (e.g., one or more landfills, surface impoundments, or combinations of them).

* * * * *

“Hazardous waste management unit” is a contiguous area of land or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, and a container storage area. A container alone does not constitute a unit; the unit includes containers, and the land or pad upon which they are placed.

* * * * *

“Manifest” means the shipping document USEPA Form 8700-22 (including, if necessary, USEPA Form 8700-22A) originated and signed by the generator or offeror that contains the information required by Subpart B of 35 Ill. Adm Code 722 and the applicable requirements of 35 Ill. Adm. Code 722 through 727.

* * * * *

“Operator” means the person responsible for the overall operation of a facility.

* * * * *

“Storage” means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

* * * * *

“Transporter” means a person engaged in the off-site transportation of a hazardous waste by air, rail, highway, or water.(f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

Board Regulation 723.111, 35 Ill. Adm. Code 723.111, provides in pertinent part the following:

- a) A transporter must not transport hazardous waste without having received a USEPA identification number from the Administrator.

Board Regulation 723.120, 35 Ill. Adm. Code 723.120, provides in pertinent part the following:

- a) No acceptance without a manifest.

- 1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the provisions of 35 Ill. Adm. Code 723.123.
- b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

Board Regulation 724.111, 35 Ill. Adm. Code 724.111, provides the following:

Every facility owner or operator must apply to USEPA Region 5 for a USEPA identification number using USEPA Form 8700-21. The facility owner or operator must obtain a copy of the form from the Agency, Bureau of Land (217-782-6762) and submit a completed copy of the form to the Bureau of Land, in addition to notification to USEPA Region 5.

Board Regulation 724.114, 35 Ill. Adm. Code 724.114, provides in pertinent part the following:

- a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility, unless the owner or operator demonstrates the following to the Agency:
 - 1) That physical contact with the waste, structures or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock that may enter the active portion of a facility; and
 - 2) That disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this Part.

* * * * *

- c) Unless the owner or operator has made a successful demonstration under subsections (a)(1) and (a)(2) of this Section, a sign with the legend, "Danger—Unauthorized Personnel Keep Out," must be posted at each entrance to the active portion of a facility, at other locations, in sufficient numbers to be seen from any approach to this active portion. The sign must be legible from a distance of at least 25 feet. Existing signs with a

legend other than “Danger—Unauthorized Personnel Keep Out” may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

Board Regulation 724.115(a), 35 Ill. Adm. Code 724.115(a), provides the following:

- a) The owner or operator must conduct inspections often enough to identify problems in time to correct them before they harm human health or the environment. The owner or operator must inspect the facility for malfunctions and deterioration, operator errors, and discharges that may be causing or may lead to either of the following:
 - 1) Release of hazardous waste constituents into the environment; or
 - 2) A threat to human health.

Board Regulation 724.131, 35 Ill. Adm. Code 724.131, provides the following:

Facilities must be designed, constructed, maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

Board Regulation 724.135, 35 Ill. Adm. Code 724.135, provides the following:

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless the owner or operator demonstrates to the Agency that aisle space is not needed for any of these purposes.

Board Regulation 724.271, 35 Ill. Adm. Code 724.271, provides the following:

If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects, etc.) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container that is in good condition or manage the waste in some other way that complies with the requirements of this Part.

Board Regulation 724.273, 35 Ill. Adm. Code 724.273, provides the following:

- a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
- b) A container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

Board Regulation 724.274, 35 Ill. Adm. Code 724.274, provides the following:

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Board Regulation 724.725(a), 35 Ill. Adm. Code 724.275(a), provides the following:

- a) Container storage must have a containment system that is designed and operated in accordance with subsection (b) of this Section, except as otherwise provided by subsection (c) of this Section.

Board Regulation 728.150(c), 35 Ill. Adm. Code 278.150(c), provides the following:

- c) An owner or operator of a treatment, storage, or disposal facility may store wastes beyond one year; however, the owner or operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recover, treatment, or disposal.