

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

JOEL A. MOSKE, d/b/a U.S. SCRAP,

Respondent.

PCB NO. 11-42
(Enforcement-Land)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on January 9, 2014, 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 the MOTION FOR SUMMARY JUDGMENT AGAINST JOEL E. MOSEK, d/b/a U.S. SCRAP, a copy of which is attached hereto and herewith served upon you.

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: s/Raymond J. Callery
RAYMOND J. CALLERY
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB NO. 11-42
) (Enforcement - Land)
 JOEL A. MOSKE, d/b/a U.S. SCRAP,)
)
 Respondent.)

MOTION FOR SUMMARY JUDGMENT
AGAINST JOEL A. MOSKE d/b/a U.S. SCRAP

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005, and Section 101.516 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.516, hereby moves for Summary Judgment against the Respondent, JOEL A. MOSKE d/b/a U.S. SCRAP, for violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2012), alleged in the Complaint.

I. INTRODUCTION

On January 19, 2011, the People filed their Complaint against the Respondent. The People's Complaint alleges violations of Sections 9(a), 9(c), 21(a), 21(e), 21(p)(3) and 21(p)(7)(i) of the Act, 415 ILCS 5/9(a), 9(c), 21(a), 21(e), 21(p)(3) and 21(p)(7)(i) (2012); and, Sections 722.111 and 808.121 of the Board's Waste Regulations, 35 Ill. Adm. Code 722.111 and 808.121.¹ The Complaint was served by substitute service on Joel A. Moske on March 1, 2011. No Answer or responsive pleadings to the Complaint have been filed by the Respondent and, therefore, no affirmative defenses have been pled. Pursuant to Sections 103.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d), all material allegations contained in the People's Complaint are admitted by the Respondent.

¹ The Complaint, Count III, mistakenly cites "Section 702.11" instead of Section 722.111. The text of 35 Ill. Adm. Code 722.111 is pled at ¶ 23, Count III, of the Complaint. The February 21, 2007 Inspection Report, Exhibit 1-A to the Motion to Deem Admitted, further cites 35 Ill. Adm. Code 722.111.

On October 25, 2012, the People served Respondent with a Request For Admission of Facts and Genuineness of Documents. The Respondent has failed to respond to the Request For Admission of Facts and Genuineness of Documents. All matters of fact and the genuineness of each document in the Request For Admission of Facts and Genuineness of Documents should be taken as admitted pursuant to Section 101.618(f) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618(f). Complainant has filed a Motion to Deem Admitted Matters of Fact and Genuineness of Documents ("Motion to Deem Admitted"). The Request For Admission of Facts and Genuineness of Documents is attached to the Motion to Deem Admitted as "Exhibit 1." Thus, the genuineness of each of the following documents attached to the Motion to Deem Admitted as Exhibits "1-A" through "1-E" should be taken as admitted:

1. Illinois Environmental Protection Agency ("Illinois EPA") inspection report with attachments dated February 21, 2007 ("Exhibit 1-A");
2. Illinois EPA inspection report with attachments dated May 6, 2008 ("Exhibit 1-B");
3. Illinois EPA inspection report with attachments dated June 22, 2009 ("Exhibit 1-C");
4. Illinois EPA inspection report with attachments dated November 12, 2010 ("Exhibit 1-D"); and,
5. Illinois EPA inspection report with attachments dated February 22, 2012 ("Exhibit 1-E").

Complainant also submits the Affidavit of Dustin Burger ("Burger Affidavit") in further support of this motion. The Burger Affidavit is attached to this Motion for Summary Judgment as "Exhibit A" hereto. Respondent's admissions, together with the exhibits supporting this motion, contain all material facts necessary to establish liability on Counts I, II and III of the Complaint and the People's entitlement to penalties. Accordingly, since there is no genuine issue of material fact, the People are entitled to a judgment as a matter of law.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

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

- (b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

A Motion for Summary Judgment should be granted when the pleadings demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); *People ex. rel. Madigan v. Lincoln, Ltd.*, 383 Ill. App. 3d 198, 204; 890 N.E. 2d 975, 980 (1st Dist. 2008). Inferences or conclusions drawn from the evidentiary material before the court must be reasonable; courts are not required to adduce remote factual possibilities in favor of the opponent of such a motion. *Gehrman v. Zajac*, 34 Ill. App. 3d 164, 166; 340 N.E.2d 184, 185 (1st Dist. 1975). The use of summary judgment is encouraged under Illinois law to facilitate litigation and avoid unnecessary trials. *Lincoln*, 383 Ill. App. 3d at 204; 890 N.E. 2d at 980. As was noted by the Supreme Court in *Allen v. Meyer*, 14 Ill. 2d 284, 292; 152 N.E. 2d 576, 580 (1958):

Summary judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein is presented no genuine issue as to any material fact, is to be encouraged. The benefits of summary judgment in a proper case insure not only to the litigants, in the saving of time and expense, but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trials.

III. RELIEF SOUGHT

Complainant seeks a finding of liability by Respondent on Counts I, II, and III of the Complaint, and assessment of a civil penalty in the amount of \$8,000.00. Complainant also requests that the Board order the Respondent to cease and desist from violating the Act and

associated regulations and grant such other further relief as the Board deems appropriate, including, but not limited to, proper disposal of the waste that remains on the site.

IV. UNCONTESTED FACTS

The following facts are uncontested:

1. U.S. Scrap, Inc. ("U.S. Scrap") was registered as a domestic corporation in Illinois on March 20, 1995, but was involuntarily dissolved on August 14, 2009. Compl., Count I, ¶ 3; Motion to Deem Admitted, Exh. 1, ¶ 1; Burger Affidavit, ¶ 6.

2. Joel A. Moske, U.S. Scrap's former President, continued to operate the former U.S. Scrap office, which is located at 1551 E. McBride Street, Decatur, Macon County, Illinois ("site"). Compl., Count I, ¶¶ 3-4; Motion to Deem Admitted, Exh. 1, ¶¶ 1-2; Burger Affidavit, ¶¶ 8, 12, 14 and 15.

3. The site is not permitted by the Illinois EPA as a sanitary landfill. Compl., Count I, ¶ 5; Motion to Deem Admitted, Exh. 1, ¶ 3; Burger Affidavit, ¶ 4.

4. 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. Compl., Count I, ¶ 6; Motion to Deem Admitted, Exh. 1, ¶ 4; Burger Affidavit, ¶ 10.

5. 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. Compl., Count I, ¶ 7; Motion to Deem Admitted, Exh. 1-A, photos 1-8; Burger Affidavit, ¶ 9.

6. On February 21, 2007, a pile of scrap wood, insulation and tar board was smoldering on the site. Motion to Deem Admitted, Exh. 1 ¶ 6 and Exh. 1-A, photos 1-2; Burger Affidavit, ¶ 11.

7. On May 6, 2008, the Illinois EPA re-inspected the site. 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. Compl., Count I, ¶ 8; Motion to Deem Admitted, Exh. 1, ¶ 7 and Exh. 1-B, photos 1-3; Burger Affidavit, ¶ 13.

8. On June 22, 2009, the Illinois EPA re-inspected the site. 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. Compl., Count I, ¶ 9; Motion to Deem Admitted, Exh. 1, ¶ 8 and Exh. 1-C, photos 1-2; Burger Affidavit, ¶ 15.

9. On November 12, 2010, the Illinois EPA re-inspected the site. 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. Compl., Count I, ¶ 10; Motion to Deem Admitted, Exh. 1, ¶ 9 and Exh. 1-D, photos 1-5; Burger Affidavit, ¶ 16.

10. On February 22, 2012, the Illinois EPA re-inspected the site. Two piles of soil mixed with metal, rubber, plastic, and other small bits from automobiles remained at the site. In addition, one small pile of scrap metals and a roll-off box of old lumber were on the site. Motion to Deem Admitted, Exh. 1, ¶ 10 and Exh. 1-E, photos 1-4; Burger Affidavit, ¶ 17.

V. SUMMARY OF COMPLAINANT'S CASE

There is no genuine issue of material fact as to the following:

1) Respondent violated Section 21(a) of the Act, 415 ILCS 5/21(a) (20 12), 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 standards promulgated thereunder (Compl., Count I);

2) Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (20 12), 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 (Compl., Count I);

3) Respondent violated Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2012), by causing or allowing open dumping resulting in the deposition of demolition debris (Compl., Count I);

4) Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2012), by causing or allowing the emission of contaminants into the environment so as to cause or tend to cause air pollution (Compl., Count II);

5) Respondent violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2012), by causing or allowing the open burning of scrap wood, insulation, and tar board at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder (Compl., Count II);

6) Respondent violated Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2012), by causing or allowing the open dumping of waste resulting in open burning (Compl., Count II); and,

7) Respondent violated Sections 722.111 and 808.121 of the Board's Waste Regulations, 35 Ill. Adm. Code 722.111 and 808.121, by not characterizing or determining whether the gray ash-like material on the site was either a hazardous or special waste (Compl., Count III).

VI. LEGAL ARGUMENT

A. Respondent Open Dumped and Improperly Disposed of Refuse.

In order to prevail on Count I as to violations of Sections 21(a), (e) and (p)(7)(i) of the Act, 415 ILCS 5/21(a), (e) and (p)(7)(i) (2012), the Complainant must prove that it is more likely than not that the material on the site was refuse or waste, that the Respondent caused or

allowed open dumping, that the waste was improperly disposed of at the site and that open dumping resulted in the disposition of demolition debris at the site.

"Refuse" is waste, 415 ILCS 5/3.385 (2012), and "waste" means any garbage...or other discarded material, 415 ILCS 5/5.535 (2012). In addition, "While the legislature has not defined 'discarded materials,' the legislature has mentioned what it is not: 'materials that would otherwise be disposed of or discarded [which] are * * * returned to the economic mainstream in the form of raw materials and products.' Thus, materials are 'discarded' unless they are returned to the economic mainstream." *Alternate Fuels, Inc. v. Illinois Environmental Protection Agency*, 215 Ill.2d 219, 240, 830 N.E.2d 444, 456 (2004) (quoting 415 ILCS 5/3.380).

"General construction or demolition debris" is defined at Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2012), 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.

"Open dumping means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirement of a sanitary landfill." 415 ILCS 5/3.305 (2012). A sanitary landfill is a "facility permitted by the Agency for the disposal of waste on land..." 415 ILCS 5/3.445 (2012). Furthermore, a "waste disposal site" is a site on which solid waste is disposed, 415 ILCS 3.540 (2012), and "disposal" means the "dumping, ... or placing of any waste...into or on any land...so that such 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 (2012).

Respondent consolidated scrap metal, broken concrete, waste wood, glass, plastic and other discarded material into piles directly on the land without any cover and thus the waste is disposed of and has entered the environment. The scrap metal, broken concrete, waste wood, glass and other discarded material is waste. It also meets the definition of "demolition debris." Since the site is not permitted by the Illinois EPA as a sanitary landfill, it is a waste disposal site that does not fulfill the requirements of a sanitary landfill. Respondent's actions in consolidating waste at the site amounts to "open dumping."

In addition, Respondent has caused or allowed these conditions at the site. An alleged polluter must "at least [be] in control of the premises on which the pollution occurred..." or have "exercised sufficient control over the source of the pollution in such a way as to have caused...or allowed the pollution." *Phillips Petroleum Company v. Illinois EPA*, 72 Ill. App.3d 217, 220-221, 390 N.E.2d 620, 623 (2nd Dist. 1979). U.S. Scrap, Inc. was the former operator of the site. U.S. Scrap, Inc. was involuntarily dissolved on August 14, 2009. Respondent, Joel A. Moske, was the president of U.S. Scrap, Inc. Since the dissolution of the corporation, Respondent has continued to operate the site as U.S. Scrap. Respondent was present at the site during the Illinois EPA inspections on February 21, 2007 (Motion to Deem Admitted, Exh. 1-A) and June 22, 2009 (Motion to Deem Admitted, Exh. 1-C). Respondent spoke with Illinois EPA and was actively managing the site on those occasions. Burger Affidavit, ¶¶ 8, 12, 14 and 15. Respondent exercised sufficient control over the site to have caused or allowed the pollution.

B. Respondent's Open Dumping Resulted in Open Burning and Emission of Contaminants Into the Environment

In order to prevail on Count II as to violations of Sections 9(a), 9(c), and 21(p)(3) of the Act, 415 ILCS 5/9(a), 9(c), and 21(p)(3) (2012), the Complainant must prove that it is more likely than not that the Respondent open dumped in such a manner so as to cause open burning and,

in doing so, caused, threatened, or allowed the discharge or emissions of contaminants into the environment so as to cause or tend to cause air pollution.

"Open burning is the combustion of any matter in the open or in an open dump." 415 ILCS 5/3.300 (2012). On February 21, 2007, a pile of scrap wood, insulation and tar board was smoldering on the site. Motion to Deem Admitted, Exh. 1-A, photos 1-2. Burned demolition debris material was also observed. Motion to Deem Admitted, Exh. 1-A, photo 3. By causing or allowing scrap wood, insulation, tar board and other demolition debris to be openly burned on the site, the Respondent also caused or allowed emissions of contaminants. A "contaminant is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.165 (2012).

The burning of wood and debris give rise to a Section 9(a) violation. *People v. Harvey Cash d/b/a Cash Oil Company*, PCB 96-75 (January 8, 1998). On February 21, 2007, the debris pile was actually smoldering, indicating the visible release of gaseous matter or energy into the environment which would tend to cause air pollution. In addition to the smoldering debris, other burned demolition debris material was also present. Respondent, caused threatened, or allowed the discharge of contaminants into the environment, caused or allowed the open burning of refuse, and caused or allowed open dumping which resulted in open burning at the site.

C. Respondent Failed to Properly Characterize Waste

In order to prevail on Count III as to violations of Sections 722.111 and 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121, the Complainant must prove that it is more likely than not that Respondent failed to characterize or determine whether the gray ash-like material on the site was a hazardous or special waste. Section 722.111 requires that any person that generates a solid waste, as defined by 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste. Section 808.121 requires each person who generates waste to determine whether the waste is a special waste.

"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, P.L. 94-580, or pursuant to Board regulations . . . 415 ILCS 5/3.220 (2012).

"Special waste" means any of the following: (b) hazardous waste, as determined in conformance with RCRA hazardous waste determination requirements set forth in Section 722.111 of Title 35 of the Illinois Administrative Code, including a residue from burning or processing hazardous waste in a boiler or industrial furnace unless the residue has been tested in accordance with Section 726.212 of Title 35 of the Illinois Administrative Code and proven to be nonhazardous . . . 415 ILCS 5/3.475(b) (2012).

A large pile of uncharacterized gray, ash-like material was present at the site on February 21, 2007. The material was presumed to be fly ash. Motion to Deem Facts Admitted, Exh. 1-A, photo 5. By failing to characterize or determine whether the gray, ash-like material was a hazardous or special waste, Respondent violated Sections 722.111 and 808.121.

VII. Civil Penalty Request

A. Impact on the public resulting from alleged non-compliance.

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

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. 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;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

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

1. The threat of injury to the public is moderate. The inspection on February 21, 2007 of this site was due to a complaint that tires were being burned at the site, indicating a potential health danger to the public.
2. There is no social or economic value of the scrap metal, broken concrete, waste wood, glass and other discarded material disposed of at the site.
3. The disposal of the scrap metal, broken concrete, waste wood, glass and other discarded material at the site, and the open burning of refuse was not suitable for the property.
4. Proper disposal and/or recycling of the waste materials was both economically and technically feasible.
5. As of the February 22, 2012 inspection, the Respondent had removed most but not all of the waste materials improperly disposed of at the site.

B. Consideration of Section 42(h) factors.

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

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 the Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is no otherwise legally required to perform.
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

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

1. Respondent violated the Act by open dumping of waste, improper disposal of refuse, open burning and failure to determine or characterize waste. These violations are considered moderate in their potential for harm and extent of deviation from the applicable law. These actions resulted in the violations continuing for at least five years.
2. Respondent has shown a lack of diligence in attempting to come back into compliance with the Act and Board regulations. As of the February 22, 2012 inspection, the Respondent had removed most but not all of the waste materials improperly disposed of at the site.
3. Respondent has incurred a nominal economic benefit by avoiding the costs of proper disposal of waste materials and soil containing waste.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eight Thousand Dollars (\$8,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Complainant is not aware of any prior adjudications of violations of the Act by Respondent.
6. Respondent did not self-report the alleged violations.
7. Respondent has not agreed to perform a supplemental environmental project.
8. Respondent did not successfully complete a Compliance Commitment Agreement in this matter.

VIII. CONCLUSION

The Board should grant the People summary judgment determining that the Respondent caused or allowed open dumping and disposal of waste at a site that does not meet the requirements of the Act or regulations. The Board should also grant the People summary judgment determining that Respondent's open dumping resulted in open burning and emission of contaminants into the environment so as to tend to cause air pollution. Respondent further failed to determine or characterize waste at the site. No Answer or responsive pleadings to the Complaint or Request For Admission of Fact of Genuineness of Documents have been filed and, therefore, no affirmative defenses have been plead and all statements of fact and genuineness of documents should be taken as admitted pursuant to Sections 103.204(d) and 101.618(f) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and 101.618(f). Accordingly, there is no genuine issue as to any material fact as to the *prima facie* proof of the alleged violations and Complainant is entitled to judgment as a matter of law as to Count I, Count II and Count III of the Complaint.

WHEREFORE, Complainant, People of the State of Illinois, respectfully request that the Board enter a final order:

- A) Granting Complainant's motion for summary judgment on Count I, Count II and Count III of the Complaint;


- B) Finding violations of Sections 9(a), 9(c), 21(a), 21(e), 21(p)(3) and 21(p)(7)(i) of the Act, 415 ILCS 5/9(a), 9(c), 21(a), 21(e), 21(p)(3) and 21(p)(7)(i) (2012); and Sections 722.111 and 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121;
- C) Ordering the Respondent to remove any remaining waste material from the site and properly dispose of it in compliance with the Act and associated regulations;
- D) Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- E) Assessing against the Respondent a civil penalty in the amount of \$8,000 pursuant to Section 42(h) of the Act; and
- F) Granting such other relief as the Board deems 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:


RAYMOND J. CALLERY
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Dated: January 9, 2014.

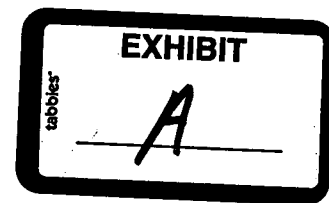
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PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 v.) PCB NO. 11-42
) (Enforcement - Land)
 JOEL A. MOSKE, d/b/a U.S. SCRAP,)
)
 Respondent.)

AFFIDAVIT OF DUSTIN BURGER

Upon penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he verily believes the same to be true:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA"), Bureau of Land, as an inspector in the Champaign Regional Office.
2. As an inspector with the Illinois EPA, my duties include, but are not limited to, the investigation and inspection of regulated facilities, such as open dumps, in the area of the Champaign region, including Macon County, Illinois.
3. On February 21, 2007, May 6, 2008, June 22, 2009, November 12, 2010 and February 22, 2012, I inspected the U.S. Scrap facility located at 1551 East McBride Street, Decatur, Macon County, Illinois ("site").
4. The site is not permitted by the Illinois EPA as a sanitary landfill.
5. My inspections of the site included walking around the site, observing the conditions present, taking photographs and preparing reports documenting my observations and factual conclusions.



6. According to information provided by the Illinois Secretary of State, 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.

7. The president of the U.S. Scrap corporation was Joel A. Moske.

8. Subsequent to U.S. Scrap's corporate dissolution, Joel A. Moske continued to operate the site.

9. On February 21, 2007, I inspected the site. 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.

10. My February 21, 2007 inspection was prompted by a complaint that tires were being burned at the site.

11. On February 21, 2007, a pile of scrap wood, insulation, and tar board which had been burned were still smoldering on the site.

12. On February 21, 2007, I spoke with Joel A. Moske in the U.S. Scrap office.

13. On May 6, 2008, I re-inspected the site. 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.

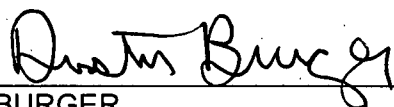
14. On May 6, 2008, the U.S. Scrap office was closed but two workers were at the site. One of the workers informed me that the owner, Joel A. Moske, intended to utilize a magnet or trammel screen to separate the metal from the dirt and other debris.

15. On June 22, 2009, I re-inspected the site. Joel A. Moske met me at the site and accompanied me on the inspection. 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.

16. On November 12, 2010, I re-inspected the site. The office building was locked. 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.

17. On February 22, 2012, I re-inspected the site. The office building was locked. Two piles of soil mixed with metal, rubber, plastic and other small parts from automobiles remained on the site. In addition, one small pile of scrap metals and a roll-off box of old lumber was on the site.

FURTHER AFFIANT SAYETH NOT.



DUSTIN BURGER
Illinois Environmental Protection Agency
Bureau of Land, Champaign Regional Office

Subscribed and Sworn to before me
this 19th day of December, 2013.


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that I did on January 9, 2014, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the NOTICE OF ELECTRONIC FILING and MOTION FOR SUMMARY JUDGMENT AGAINST JOEL A. MOSKE d/b/a U.S. SCRAP upon the following:

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

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

s/ Raymond J. Callery
RAYMOND J. CALLERY
Assistant Attorney General

This filing is submitted on recycled paper.