

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
LISA MADIGAN, Attorney General )  
of the State of Illinois, )  
 )  
Complainant, )  
 )  
vs. ) PCB No. 09-64  
 ) (Enforcement - Land)  
CITGO PETROLEUM CORPORATION, )  
a Delaware corporation, )  
 )  
Respondent. )

**NOTICE OF FILING**

TO: Christopher Newcomb  
Senior Corporate Counsel  
Refinery Operations  
CITGO Petroleum Corporation  
135<sup>th</sup> Street and New Avenue  
Lemont, Illinois 60439

Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Ste. 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a First Amended Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure,

you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



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ZEMEHERET BEREKET-AB  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Flr.  
Chicago, IL 60602  
(312) 814-3816

DATE: March 18, 2009

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

v. )

CITGO PETROLEUM CORPORATION, )  
a Delaware corporation, )  
Respondent. )

No. PCB No. 09-  
(Enforcement - Land)

**FIRST AMENDED COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, CITGO PETROLEUM CORPORATION, a Delaware corporation, as follows:

**COUNT I**

**DISPOSING OF HAZARDOUS WASTE AT A FACILITY NOT PERMITTED TO ACCEPT HAZARDOUS WASTE**

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to the Complaint, Respondent, CITGO PETROLEUM CORPORATION ("Citgo" and/or "Respondent"), was and is a Delaware corporation registered with the Illinois Secretary of State to transact business in the State of Illinois.

4. Citgo owns and operates a petroleum refinery in Lemont, Will County, Illinois.

5. Sometime late in December 2006, Respondent, Citgo excavated contaminated soil at its refinery in Lemont.

6. On January 3, 2007, Citgo took four samples of the contaminated soil and sent the samples of the contaminated soil to be analyzed by Suburban Laboratories ("Suburban") in Hillside, Illinois.

7. On January 19, 2007, Suburban reported its analysis to Citgo which showed that the benzene contents of the soil were below the regulatory limit of 0.5 mg/l.

8. Citgo prepared a Generator's Waste Profile Sheet and allowed two roll-off boxes (21.7) tons of soil to be disposed as non-hazardous, declassified special waste.

9. On March 16 and March 19, 2007, the contaminated soil which was generated at the Citgo refinery was transported by Waste Management Southwest to Prairie View Landfill ("Prairie View") and disposed of at Prairie View Landfill as non-hazardous, declassified special waste.

10. In May 2007, Suburban performed a regularly scheduled internal quality control review of the data for the contaminated soil originally provided to Citgo. In this review, Suburban discovered a calculation error that it had made in the original analytical report.

11. On May 17, 2007, Suburban notified Citgo that a calculation error had been made, and the benzene concentrations in the soil were actually 1.478 mg/l of benzene, approximately

three times above the regulatory limit of 0.5 mg/1, thus, making the contaminated soils RCRA hazardous for toxicity for benzene.

12. On May 23, 2007, Citgo notified Prairie View of Suburban's new laboratory analysis and on May 30, 2007, Prairie View, in turn, notified the Illinois EPA of Suburban's revised laboratory report.

13. On July 25, 2007, the Illinois EPA conducted a RCRA inspection of Citgo's Lemont refinery. The inspection revealed that Citgo had deposited two roll-off boxes (21.7 tons) of soil contaminated with benzene as a non-hazardous waste at a facility not authorized to accept hazardous waste.

14. On September 7, 2007, the Illinois EPA sent to Citgo a Violation Notice ("VN") pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1) (2006).

15. On October 17, 2007, Citgo responded to the VN and proposed its Compliance Commitment Agreement ("CCA").

16. On November 1, 2007 the Illinois EPA rejected Citgo's CCA.

17. On March 10 and 12, 2008, the Illinois EPA sent to Citgo a Notice of Intent to Pursue Legal Action pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b) (2006).

18. On April 11, 2008, the Illinois EPA met with Citgo to discuss the violations.

19. Section 721.102 of the Pollution Control Board ("Board") Waste Disposal Regulations, 35 Ill. Adm. Code 721.102, titled, Definition of Solid Waste, provides in pertinent part as follows:

a) Solid Waste

- 1) A solid waste is any discarded material that is not excluded by Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131.

- 2) A discarded material is any material which is:
  - A) Abandoned, as explained in subsection (b) below; or
  - B) Recycled, as explained in subsection (c) below; or
  - C) Considered inherently waste-like, as explained in subsection (d), below.

\* \* \*

- b) Materials are solid waste if they are abandoned by being:
  - 1) Disposed of; or
  - 2) Burned or incinerated; or
  - 3) Accumulated, stored or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated.

\* \* \*

20. The soil analyzed by Suburban is a solid waste as it was abandoned by being disposed of, as the term solid waste is defined in 35 Ill. Adm. Code 721.102.

21. Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.103, titled, Definition of a Hazardous Waste, provides in pertinent part as follows:

- a) A solid waste, as defined in Section 721.102, is a hazardous waste if:
  - 1) It is not excluded from regulation as a hazardous waste under Section 721.104(b); and
  - 2) It meets any of the following criteria.
    - A) It exhibits any of the characteristics of hazardous waste identified in Subpart C of this part ...

22. Section 721.124 of Subpart C of Part 721 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.124, titled, Toxicity Characteristic, provides in pertinent part as follows:

- a) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristics Leaching Procedure (TCLP), test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," U.S. EPA Publication SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111, the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) below at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this Section.

**Board Note:** The reference to the "EP toxicity test" in 35 Ill. Adm. Code 808.410(b)(4) is to be understood as referencing the test required by this Section.

- b) A solid waste that exhibits the characteristic of toxicity has the U.S. EPA Hazardous Waste Number specified in the following table that corresponds to the toxic contaminant causing it to be hazardous.

**MAXIMUM CONCENTRATIONS OF CONTAMINANTS  
FOR THE TOXICITY CHARACTERISTIC**

<u>U.S.EPA Hazardous Number</u>	<u>Contaminant</u>	<u>CAS Number Note</u>	<u>Regulatory Level (mg/l)</u>
D018	Benzene	71-43-2	0.5

23. Section 720.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 720.110, titled, Definitions provides the following definitions:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazard waste into or on any land or water so that such solid waste or hazard waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Facility" means all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units (e.g., one or more landfills, surface impoundments or combinations of them).

"Generator" means any person by site, whose act or process produces hazardous waste identified or listed in 35 Adm. Code 721 or whose act first causes a hazardous waste to become subject to regulation.

"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.

24. Citgo was a generator of hazardous waste, as that term is defined in 35 Ill. Adm. Code 720.110.
25. The contaminated soil was a hazardous waste by toxicity characteristics as it was above the regulatory limit of 0.5 mg/l as defined in 35 Ill. Adm. Code 721.124(b).
26. The depositing of the soil at the Prairie View Landfill constitutes "disposal" as that term is defined in 35 Ill. Adm. Code 720.110.
27. On March 16 and 19, 2007, Citgo disposed of hazardous waste at Prairie View, a facility not permitted to accept hazardous waste.
28. Section 21(e) of the Act, 415 ILCS 5/21(e) (2006), provides as follows:  

No person shall:

  - (a) Dispose, treat, or store any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.
29. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides as follows:  

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision state agency or any other legal entity, or their legal representative, agent or assigns.
30. Citgo, a Delaware corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

31. By disposing of hazardous waste at a facility not permitted to accept hazardous waste, Citgo violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent with respect to this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006);
3. Ordering Respondent to cease and desist from any further violations of Section 21(e) of the Act, 415 ILCS 5/21(e) (2006);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2006), and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which Respondent continues to be in violation of Section 21(e) of the Act;
5. Ordering Respondent to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate.

**COUNT II**

**FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION**

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 25 and paragraphs 29 and 30 of Count I as paragraphs 1 through 27 of this Count II.

28. Section 21(i) of the Act, 415 ILCS 5/21(i) (2006), provides as follows:

No person shall:

\* \* \*

- (i) Conduct any process or engage in any act which produces hazardous waste in violation of any regulations or standards adopted by the Board under subsections (a) and (c) of Section 22.4 of this Act.

29. Section 722.111 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code

722.111, titled, Hazardous Waste Determination, provides in pertinent part as follows:

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

- a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- b) The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.

**BOARD NOTE:** Even if a waste is listed as a hazardous waste, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in 35 Ill. Adm. Code 721.Subpart D the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
  - 1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
  - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

30. As a generator of solid waste, Citgo is required to determine whether the waste the facility generated and disposed of was hazardous pursuant to Section 722.111 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111.

31. On March 16 and 19, 2007, waste determinations were not available for the soils contaminated with benzene as required by Section 722.111 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111.

32. By failing to perform a hazardous waste determination, Citgo violated Section 722.111 of 35 Ill. Adm. Code, thereby also violating Section 21(i) of the Act, 415 ILCS 5/21 (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent with respect to this Count II:

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

2. Finding that Respondent has violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2006) and 35 Ill. Adm. Code 722.111;

3. Ordering Respondent to cease and desist from any further violations of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006) and 35 Ill. Adm. Code 722.111;

4. Assessing a civil penalty against Respondent of Twenty Five Thousand Dollars (\$25,000.00) per day of violation of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006), and 35 Ill. Adm. Code 722.111;

5. Ordering Respondent to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and

6 Granting such other relief as the Board deems appropriate.

**COUNT III**

**FAILURE TO MANAGE HAZARDOUS  
WASTE IN ACCORDANCE WITH THE ACT**

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 27 of Count II as paragraphs 1 through 27 of this Count III.

28. Section 21(i) of the act, 415 ILCS 5/21(i), titled, Prohibited acts, provides as follows:

\* \* \*

No person shall:

- (i) Conduct any process or engage in any act which produces hazardous waste in violation of any regulations or standards adopted by the Board under subsections (a) and (c) of Section 22.4 of this Act.

29. Citgo failed to manage the waste it produced as a hazardous waste in violation of the Act and regulations adopted under the Act by failing to manage the waste it produced as hazardous.

30. By failing to manage the waste it produced as a hazardous waste, Citgo violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent with respect to this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2006);

3. Ordering Respondent to cease and desist from any further violations of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006);
4. Assessing against Citgo a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) per day of violation for each violation of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006);
5. Ordering Respondent to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and
- 6 Granting such other relief as the Board deems appropriate.

**COUNT IV**

**FAILURE TO PREPARE A MANIFEST PRIOR TO OFFERING THE  
HAZARDOUS WASTE FOR OFF-SITE TRANSPORTATION AND DISPOSAL**

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count III as paragraphs 1 through 27 of this Count IV.

28. Section 722.120(a) (1) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.120(a) (1), titled, General Requirements, provides as follows:

- a) Manifest use.
  - 1) A generator that transports hazardous waste or offers a hazardous waste for transportation for off-site treatment, storage, or disposal or, effective September 5, 2006, a treatment, storage, or disposal facility that offers for transport a rejected load of hazardous waste must prepare a manifest on USEPA Form 8700-22 (and, if necessary, on USEPA Form 8700-22A) according to the instructions included in the appendix to 40 CFR 262 (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

29. Citgo offered for transportation for off-site disposal two loads (21.7) tons of hazardous waste without first preparing a Uniform Hazardous Waste Manifest as required by 35 Ill. Adm. Code 722.120 (a)(1). Citgo only prepared a generator's waste profile sheet.

30. By failing to prepare a Uniform Hazardous Waste Manifest, Citgo violated 35 Ill. Adm. Code 722.120(a)(1), thereby also violating Section 21(i) of the Act, 415 ILCS 5/21(i) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent with respect to this Count IV:

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

2. Finding that Respondent has violated Section 21(i) of the Act, 415 ILCS 5/21(i) (2006) and 35 Ill, Adm. Code 722.120(a)(1);

3. Ordering Respondent to cease and desist from any further violations of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006) and 35 Ill, Adm. Code 722.120(a) (1);

4. Assessing against Respondent a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) per day of violation of Section 21(i) of the Act, 415 ILCS 5/21(i) (2006) and 35 Ill, Adm. Code 722.120(a)(1);

5. Ordering Respondent to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and

6 Granting such other relief as the Board deems appropriate.

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

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

By: RoseMarie Cazeau by RB  
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**CERTIFICATE OF SERVICE**

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 18<sup>th</sup> day of March 2009, the foregoing Notice of Filing, and a First Amended Complaint, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.

*Zemeheret Bereket AB*

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ZEMEHERET BEREKET-AB