

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) No. _____
)
 E.F. HEIL, LLC, an Illinois limited liability)
 company,)
)
 Respondent.)

NOTICE OF ELECTRONIC FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that today, May 20, 2009, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that 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.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 et seq.) to correct the alleged pollution.

PEOPLE OF THE STATE OF ILLINOIS,
 by LISA MADIGAN, Attorney General
 of the State of Illinois

BY: Stephen J. Sylvester
 STEPHEN J. SYLVESTER
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Date: May 20, 2009

SERVICE LIST

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
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v.)	
)	No. _____
E.F. HEIL, LLC, an Illinois limited liability)	
company,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by 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 the Respondent, E.F. HEIL, LLC, an Illinois limited liability company, as follows:

COUNT I
CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by 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 this Complaint, Respondent E.F. HEIL, LLC, ("Heil") was and is an Illinois limited liability company in good standing with the State of Illinois.

4. At all times relevant to this Complaint, Heil owned and operated a clean construction and demolition debris ("CCDD") fill operation on approximately 93 acres, located at CR 089SE, Kankakee, Kankakee County, Illinois ("Site").

5. On August 8, 2005, Heil applied to the Illinois EPA for interim authorization to operate a CCDD fill operation at the Site.

6. On July 10, 2008, the Illinois EPA issued to Heil CCDD Permit No. CCDD2007-034 to operate a CCDD fill operation at the Site.

7. On September 25, 2007, the Illinois EPA inspected the Site. At that time, a pile of painted brick had been deposited at the Site.

8. Also during the September 25, 2007 inspection, there were concrete blocks with protruding metal in the fill area at the Site.

9. At all times relevant to this Complaint, Heil did not have an Illinois EPA-issued permit to store, dispose or treat waste at the Site.

10. Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006), provides as follows:

No person shall:

* * *

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

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; ...

11. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition:

“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.

12. Heil, a limited liability company, is a “person,” as that term is defined in section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

13. Section 3.160 of the Act, 415 ILCS 5/3.160 (2006), provides, in pertinent part, the following definition:

Construction or demolition debris

(a) “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 or other 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.

* * *

(b) “Clean construction or demolition debris” means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities. ...

14. Section 3.290 of the Act, 415 ILCS 5/3.290 (2006), provides the following definition:

“Municipal waste” means garbage, general household and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris.

15. Section 3.535 of the Act, 415 ILCS 5/3.535 (2006), provides the following

definition:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities...

16. Section 3.185 of the Act, 415 ILCS 5/3.185 (2006), provides the following

definition:

"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.

17. Section 3.540 of the Act, 415 ILCS 5/3.540 (2006), provides the following

definition:

"Waste disposal site" is a site on which solid waste is disposed.

18. The pile of painted brick and concrete blocks with protruding metal in the fill area at the Site constitute "general construction or demolition debris," ("GCDD") as that term is defined in section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2006).

19. The GCDD, in the form of painted brick and concrete blocks with protruding metal in the fill area at the Site, which had been deposited, dumped, and/or accumulated at the Site constitutes "municipal waste," as that term is defined in Section 3.290 of the Act, 415 ILCS 5/3.290 (2006).

20. The pile of painted brick and concrete blocks with protruding metal in the fill area, which had been deposited, dumped, and/or accumulated at the Site constitutes "waste," as that term is defined in 3.535 of the Act, 415 ILCS 5/3.535 (2006).

21. Dumping, depositing, or placing both the painted brick and concrete blocks with protruding metal in the fill area constitutes "disposal," as that term is defined in Section 3.185 of the Act, 415 ILCS 5/3.185 (2006).

22. Heil's Site, where Heil caused or allowed the disposal of a pile of painted brick and concrete blocks with protruding metal in the fill area constitutes a "waste disposal site," as that term is defined in Section 3.540 of the Act, 415 ILCS 5/3.540 (2006).

23. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, by disposing of waste, in the form of a pile of painted brick and concrete blocks with protruding metal in the fill area, without an Illinois EPA-issued permit to store, dispose or treat waste at the Site, Heil violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board ("Board") enter an order against the Respondent, E.F. HEIL, LLC, as follows:

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

2. Finding that the Respondent has violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006);

3. Ordering the Respondent to cease and desist from any further violations of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1)

(2006), with an additional penalty of Ten Thousand Dollars (\$10,000.00) against the Respondent for each day of violation;

5. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

FAILURE TO DETERMINE IF WASTE WAS HAZARDOUS OR SPECIAL

1-21. Complainant realleges and incorporates herein by reference paragraphs 1 through 9 and paragraphs 11 through 22 of Count I as paragraphs 1 through 21 of this Count II.

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

No person shall:

* * *

(e) Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage, or abandonment, except at a site or facility which meets the requirement of this Act, and of regulations and standards thereunder.

23. Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), provides as follows:

Generator Obligations

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

24. Section 3.205 of the Act, 415 ILCS 5/3.205 (2006), provides the following definition:

“Generator” means any person whose act or process produces waste.

25. By accepting waste, in the form of painted brick, at its Site Heil was a "generator," as that term is defined in Section 3.205 of the Act, 415 ILCS 5/3.205 (2006).

26. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, Heil failed to make a determination whether the waste in the form of painted brick it accepted at the Site was special waste.

27. By failing to make a determination whether the waste, in the form of painted brick, was special waste, Heil violated Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a).

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

c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, 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 processes used.

d) If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 724 through 728, 733, and 739 for possible exclusions or restrictions pertaining to the management of the specific waste.

29. Section 721.102 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code

721.102, provides the following definition:

- 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 that is described as follows:
 - A) Abandoned, as explained in subsection (b) of this Section;
 - * * *
- b) A material is a solid waste if it is abandoned in one of the following ways:
 - 1) It is disposed of;
 - 2) It is burned or incinerated; or
 - 3) It is accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

30. The waste in the form of painted brick that was accepted at the Site is a "solid waste," as that term is defined in Section 721.102 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102.

31. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, Heil failed to make a determination whether the solid waste, in the form of painted brick, it accepted at the Site was a hazardous waste.

32. By failing to make a determination whether the solid waste, in the form of painted brick, it accepted at the Site was a hazardous waste, Heil violated Section 722.111 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111,

33. As alleged herein, by violating Sections 722.111 and 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a), Heil thereby violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, E.F. HEIL, LLC, as follows:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006), and Sections 722.111 and 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(e) of the Act, 415 ILCS 5/21(e) (2006), and Sections 722.111 and 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2006), and Sections 722.111 and 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a), with an additional penalty of Ten Thousand Dollars (\$10,000.00) against the Respondent for each day of violation;
5. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III
DISPOSING OF NON-CLEAN CONSTRUCTION OR DEMOLITION DEBRIS
WASTE AT THE SITE

1-21. Complainant realleges and incorporates herein by reference paragraphs 1 through 9 and paragraphs 11 through 22 of Count I as paragraphs 1 through 21 of this Count III.

22. Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2006), provides as follows:

Clean Construction or Demolition Debris Fill Operations.

(a) No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

23. Section 1100.201(a) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a), provides as follows:

Section 1100.201 Prohibitions

a) No person shall conduct any CCDD fill operation in violation of the Act or any regulations or standards adopted by the Board.

24. Section 1100.205 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205, provides, in pertinent part, as follows:

Section 1100.205 Load Checking

The owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of waste at the facility. At a minimum, the load checking program must consist of the following components:

* * *

f) If material other than CCDD is discovered to be improperly accepted or deposited at the facility, the owner or operator must remove and properly dispose of the material.

g) The owner or operator must ensure that all appropriate facility personnel are properly trained in the identification of material that is not CCDD.

25. Section 1100.103 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.103,

provides the following definitions:

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part will be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5]:

* * *

“Operator” means a person responsible for the operation and maintenance of a CCDD fill operation.

“Owner” means a person who has any direct or indirect interest in a CCDD fill operation or in land on which a person operates and maintains a CCDD fill operation. A “direct or indirect interest” does not include the ownership of publicly traded stock. The “owner” is the “operator” if there is no other person who is operating and maintaining a CCDD fill operation.

* * *

26. Heil is both an “operator” and an “owner” of the Site, as those terms are defined in Section 1100.103 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.103.

27. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, Heil accepted for disposal at the Site waste in the form of a pile of painted brick and concrete blocks with protruding metal in the fill area.

28. By accepting for disposal at the Site waste in the form of pile of painted and concrete blocks with protruding metal in the fill area, Heil violated Section 1100.205(f) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(f), and thereby violated Section 1100.201(a) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a).

29. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, Heil failed to ensure that all appropriate facility personnel at the Site were properly trained in the identification of material that was not CCDD.

30. By failing to ensure that all appropriate facility personnel at the Site were properly trained in the identification of material that was not CCDD, Heil violated Section 1100.205(g) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(g), and thereby violated Section 1100.201(a) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a).

31. By violating Sections 1100.201(a) and 1100.205(f) and (g) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(f) and (g), Heil thereby violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, E.F. HEIL, LLC, as follows:

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

2. Finding that the Respondent has violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2006), and Sections 1100.201(a) and 1100.205(f) and (g) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(f) and (g);

3. Ordering the Respondent to cease and desist from any further violations of Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2006), and Sections 1100.201(a) and 1100.205(f) and (g) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(f) and (g);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2006), and Sections 1100.201(a) and 1100.205(f) and (g) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(f) and (g), with an additional penalty of Ten Thousand Dollars (\$10,000.00) against the Respondent for each day of violation;

5. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
FAILURE TO USE A PHOTO IONIZATION DETECTOR
OR OTHER EQUIVALENT DEVICE TO CHECK ALL INCOMING LOADS

1-24. Complainant realleges and incorporates herein by reference paragraphs 1 through 9 and paragraphs 11 through 22 of Count I and paragraphs 23, 25, and 26 of Count III as paragraphs 1 through 24 of this Count IV.

25. Section 22.51(c) of the Act, 415 ILCS 5/22.51(c) (2006), provides as follows:

Clean Construction or Demolition Debris Fill Operations.

(c) In accordance with Title VII of this Act, the Board may adopt regulations to promote the purposes of this Section. The Agency shall consult with the mining and construction industries during the development of any regulations to promote the purposes of this Section.

(1) No later than December 15, 2005, the Agency shall propose to the Board, and no later than September 1, 2006, the Board shall adopt, regulations for the use of clean construction or demolition debris as fill material in current and former quarries, mines, and other excavations. Such regulations shall include, but shall not be limited to, standards for clean construction or demolition debris fill operations and the submission and review of permits required under this Section.

(2) Until the Board adopts rules under subsection (c)(1) of this Section, all persons using clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation shall:

(A) Assure that only clean construction or demolition debris is being used as fill material by screening each truckload of material received using a device approved by the Agency that detects volatile organic compounds. Such devices may include, but are not limited to, photo ionization detectors. All screening devices shall be operated and maintained in accordance with manufacturer's

specifications. Unacceptable fill material shall be rejected from the site;

26. Section 1100.204 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.204, provides as follows:

Section 1100.204 Operating Standards

c) Equipment

Equipment must be maintained and available for use at the facility during all hours of operation, so as to achieve and maintain compliance with the requirements of this Part.

27. Section 1100.205 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205, provides, in pertinent part, as follows:

Section 1100.205 Load Checking

The owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of waste at the facility. At a minimum, the load checking program must consist of the following components:

a) Routine Inspections

1) An inspector designated by the facility must inspect every load before its acceptance at the facility utilizing an elevated structure, a designated ground level inspection area, or another acceptable method as specified in the Agency permit. In addition to a visual inspection, the inspector must use an instrument with a photo ionization detector utilizing a lamp of 10.6 eV or greater or an instrument with a flame ionization detector, or other monitoring devices approved by the Agency, to inspect each load. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used by the Agency during an Agency inspection must result in the rejection of the inspected load.

* * *

c) Documentation of Inspection Results

The documentation for each inspection must include, at a minimum, the following:

* * *

- 2) The results of the routine inspection required under subsection (a) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection;

28. On September 25, 2007, the Illinois EPA inspected the Site. At that time, Heil was not using a photo ionization detector ("PID") utilizing a lamp of 10.6 electron volts ("eV") or greater or an instrument with a flame ionization detector ("FID"), or other Illinois EPA-approved monitoring device to inspect each incoming load at the Site.

29. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, Heil failed to maintain and make available for use at the facility a PID utilizing a lamp of 10.6eV or greater or an instrument with a FID, or other Illinois EPA-approved monitoring device to inspect each incoming load at the Site.

30. By failing to maintain and make available for use at the facility a PID or utilizing a lamp of 10.6eV or greater or an instrument with a FID, or other Illinois EPA-approved monitoring device to inspect each incoming load at the Site, Heil violated Section 1100.205(a)(1) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(1), and thereby violated Section 1100.201(a) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a).

31. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, Heil failed to conduct routine inspections of each incoming load at the Site by failing to use a PID utilizing a lamp of 10.6eV or greater, or an instrument with a FID, or other Illinois EPA-approved monitoring device to inspect each incoming load at the Site.

32. By failing to conduct routine inspections of each incoming load at the Site by failing to use a PID utilizing a lamp of 10.6eV or greater, or an instrument with a FID, or other Illinois EPA-approved monitoring device to inspect each incoming load at the Site, Heil violated Section 1100.205(c)(2) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(c)(2), and thereby violated Section 1100.201(a) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a).

33. By violating Sections 1100.201(a) and 1100.205(a)(1) and (c)(2) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1) and (c)(2), Heil thereby violated Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, E.F. HEIL, LLC, as follows:

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

2. Finding that the Respondent has violated Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(a)(1) and (c)(2) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1) and (c)(2);

3. Ordering the Respondent to cease and desist from any further violations of Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(a)(1) and (c)(2) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1) and (c)(2);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 22.51(a) and (c) of the Act, 415 ILCS

5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(a)(1) and (c)(2) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1) and (c)(2), with an additional penalty of Ten Thousand Dollars (\$10,000.00) against the Respondent for each day of violation;

5. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

FAILURE TO CONDUCT DAILY DISCHARGE INSPECTIONS

1-27. Complainant realleges and incorporates herein by reference paragraphs 1 through 9 and paragraphs 11 through 22 of Count I and paragraphs 22, 23, 25, and 26 of Count III, and paragraphs 25 and 28 of Count IV as paragraphs 1 through 27 of this Count V.

28. Section 1100.205(b)(1) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(b)(1), provides as follows:

b) Random Inspections

1) In addition to the inspections required under subsection (a) of this Section, an inspector designated by the facility must conduct a discharge inspection of at least one randomly selected load delivered to the facility each day. The driver of the randomly selected load must be directed to discharge the load at a separate, designated location within the facility. The inspector must conduct an inspection of the discharged material that includes, but is not limited to, additional visual inspection and additional instrument testing using the instruments required under subsection (a)(1) of this Section. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used by the Agency during an Agency inspection must

result in the rejection of the inspected load.

29. Section 1100.205(c)(3) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(c)(3), provides as follows:

c) Documentation of Inspection Results

The documentation for each inspection must include, at a minimum, the following:

* * *

- 3) The results of any random inspection required under subsection (b) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection; and

* * *

30. On September 25, 2007, the Illinois EPA inspected the Site. At that time, Heil did not have any documentation that Heil conducted a discharge inspection of at least one randomly selected load delivered to the Site each day.

31. From a date better known to Heil, and on at least September 25, 2007, to a date better known by Heil, Heil failed to conduct and document a discharge inspection of at least one randomly selected load delivered to the Site each day using a PID utilizing a lamp of 10.6eV or greater, or an instrument with a FID, or other Illinois EPA-approved monitoring device.

32. By failing to conduct and document a discharge inspection of at least one randomly selected load delivered to the Site each day using a PID utilizing a lamp of 10.6eV or greater, or an instrument with a FID, or other Illinois EPA-approved monitoring device, Heil violated Section 1100.205(b)(1) and (c)(3) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(b)(1) and (c)(3), and thereby violated thereby violated Section 1100.201(a) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a).

33. By violating Sections 1100.201(a) and 1100.205(b)(1) and (c)(3) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(b)(1) and (c)(3), Heil thereby violated Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, E.F. HEIL, LLC, as follows:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(b)(1) and (c)(3) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(b)(1) and (c)(3);
3. Ordering the Respondent to cease and desist from any further violations of Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(b)(1) and (c)(3) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(b)(1) and (c)(3);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(b)(1) and (c)(3) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(b)(1) and (c)(3), with an additional penalty of Ten Thousand Dollars (\$10,000.00) against the Respondent for each day of violation;
5. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney,

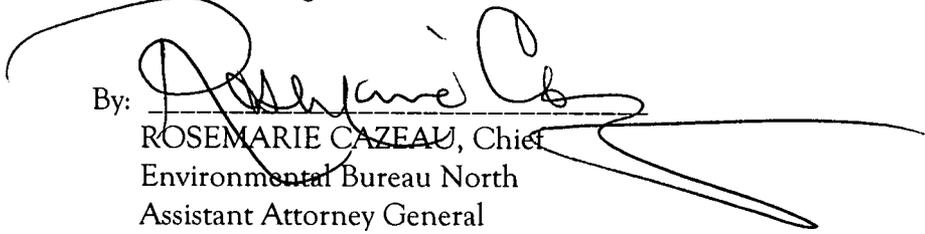
expert witness, and consultant fees; and

6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General of the
State of Illinois

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

By:


ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

Of Counsel:

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CERTIFICATE OF SERVICE

I, Stephen J. Sylvester, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on May 20, 2009.

BY:


STEPHEN J. SYLVESTER