

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

87th & GREENWOOD, LLC, a Delaware
Limited Liability Company,
INNOVATIVE RECYCLING
TECHNOLOGIES, INC., a Connecticut
corporation, and
LAND RECLAMATION SERVICES, INC.,
an Illinois corporation,

Respondents.

No. PCB
(Enforcement-Land)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, June 1, 2010, filed Complainant's Motion to Deem Facts Admitted and For Summary Judgment against Respondent Land Reclamation Services, Inc. with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A true and accurate copy of the Complaint is attached herewith and 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

ROSEMARIE CAZEAU, Chief, Environmental Bureau
North

BY:



A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a horizontal line.

CHRISTOPHER GRANT
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, Illinois 60602
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

87th & GREENWOOD, LLC, a Delaware limited liability company, INNOVATIVE RECYCLING TECHNOLOGIES, INC., a Connecticut corporation, and LAND RECLAMATION SERVICES, INC., an Illinois corporation,

Respondents,

No. PCB 10-71
(Enforcement-Land)

MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT AGAINST RESPONDENT LAND RECLAMATION SERVICES, INC.

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to 35 Ill. Adm. Code 103.204 and 101.516, requests that the Illinois Pollution Control Board (“Board”) deem all material facts alleged against Respondent, LAND RECLAMATION SERVICES, INC. (“LRS”), to be admitted, and grant summary judgment in favor of Complainant and against Respondent LRS on Counts I, II, and III of the Complaint. In support thereof, Complainant states as follows:

I. REQUEST TO DEEM FACTS ADMITTED

This action was brought on behalf of the People of the State of Illinois by the Attorney General of the State of Illinois, on her own motion, and upon 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 (2008).

Complainant filed its complaint on March 19, 2002. Service was made upon Respondent

Land Reclamation Service's ("LRS's) registered agent, by certified mail, on March 23, 2010.

See: Exhibit 'A'. As of the date of filing this Motion, Respondent LRS has not filed an appearance, answer, or other responsive pleading.

Section 103.204 of the Board Procedural Rules, 35 Ill. Adm. Code 103.204, provides, in pertinent part, as follows:

* * *

- (d) Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

* * *

As of the date of filing this Motion, sixty nine (69) days have passed since the complaint was served upon Respondent LRS. Complainant therefore requests that the Board find, pursuant to Section 103.204 of the Board Procedural Rules, 35 Ill. Adm. Code 103.204, that all material allegations of the complaint are deemed to be admitted by Respondent LRS.

II. MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, AND III.

Complainant has alleged three violations of the Act against Respondent LRS, specifically Sections 21(a) [Count I], 21(e) [Count II], and 21(d)(1) [Count III], 415 ILCS 5/21(a), 5/21(d)(1), and 5/21(e) (2008). If the Board deems all material facts to be admitted, the facts alleged are sufficient to prove the violations.

Count I: Open Dumping of Waste

Complainant has alleged that LRS owned and operated a business at 1127 South Chicago Street, Joliet, Will County, Illinois, which Complainant has designated as the “LRS Site” [Complaint, Count I., par 10]. The LRS Site is not covered by an Illinois EPA permit for the storage or disposal of waste [*Id.*]. LRS obtained and reviewed analytical test results, which indicated that soil excavated from property at 87th & Greenwood, Chicago, Cook County, Illinois (“Excavation Site”) was contaminated with a number of non-naturally occurring compounds [Count. I, paragraphs 7, 11]. Despite its knowledge of this contamination, LRS agreed to accept the materials for disposal [Count. I, par. 11]. Between January 15, 2006 and February 15, 2006, LRS accepted approximately 350 loads of the contaminated soil from the Excavation Site for dumping at the LRS Site, for which it charged a fee [Count I., paragraphs 12-13]. Illinois EPA performed sampling on the material after it had been dumped at the LRS Site, and confirmed that the material had above-background levels of numerous non-naturally occurring compounds, including, but not limited to, benzo(a)anthracene, carbazole, cadmium, copper, iron, lead, magnesium, beryllium, antimony, and total chromium. [Count. I, par. 15]. At the direction of Illinois EPA, the contaminated soil was eventually removed to a properly permitted facility [Count. I, par. 16].

Section 21(a) of the Act, 415 ILCS 5/21(a) (2008) prohibits the open dumping of waste. “Open Dumping” is defined to include consolidation of refuse (defined as being equivalent to “waste”), at a facility which does not meet the requirements of the Act. As an unpermitted facility, the LRS Site did not meet the requirements of the Act, which requires a permit for waste disposal operations (*see, e.g.,* 415 ILCS 5/21(d)(1) (2008)). The loads of contaminated soil

were discarded at the Site by the Respondents. As discarded material, the contaminated soil meets the definition of "waste" pursuant to 415 ILCS 5/3.535 (2008).

By causing and allowing the disposal of approximately 350 loads of contaminated soil at the LRS Site, LRS caused and allowed the consolidation of refuse at a disposal site that did not meet the requirements of the Act, and thereby caused and allowed the open dumping of waste, in violation of 415 ILCS 5/21(a) (2008). Complainant has proved the violations alleged against Respondent LRS in Count I.

Count II: Waste Disposal at an Unpermitted Facility

The facts cited above also prove the violations alleged in Count II. Section 21(e) of the Act, 415 ILCS 5/21(e) (2008), prohibits the disposal, storage, or abandonment of waste, except at a facility which meets the requirements of the Act. Because the LRS Site was not covered by a permit, it did not meet the Act's requirements for a waste storage or disposal facility. However, LRS disposed of 350 truckloads of discarded, contaminated soil at the LRS Site, in clear violation of 415 ILCS 5/21(e) (2008). Complainant has proved the violations alleged against Respondent LRS as alleged in Count II.

Count III: Conducting a Waste Disposal Operation Without a Permit

The above-noted facts also support a finding of violation of 415 ILCS 5/21(d)(1), as alleged in Count III. Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2008), prohibits a person (defined to include corporations such as LRS) from conducting waste disposal operations without a permit. LRS did not obtain a permit for the LRS site for the storage or disposal of waste. However, it clearly solicited the dumping of the contaminated soil in this matter. It reviewed sample data prior to agreeing to accept the contaminated soil. The contaminated soil

was "waste". By soliciting and accepting disposal of the contaminated soil at the LRS Site, and by charging a fee for the dumping, LRS conducted a waste disposal operation without a permit. By doing so, LRS violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2008), as alleged in count III.

III. REQUESTED REMEDY

The Board should consider ordering appropriate relief without a formal hearing. In this case, Complainant requests that the Board assess a penalty in the amount of Twenty Thousand Dollars (\$20,000.00) against Respondent LRS. Complainant believes that this sum is appropriate because of LRS's active involvement in the acceptance of the contaminated soil.

An Evaluation of the Section 33(c) Factors Indicates that a Civil Penalty is Appropriate:

Complainant believes that Sections 33(c)(i) and 33(c)(iv) of the Act, 415 ILCS 5/33(c)(i) and 5/33(c)(iv) (2008), strongly support assessment of a civil penalty. Section 33(c)(i) provides:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;*

LRS's acceptance of contaminated soil at a facility not suitable for disposal of this waste constitutes a significant interference with the protection of the health, welfare, and property of the people. The Act requires persons who engage in waste disposal businesses to take extensive protective measures. These may include installation of an engineered liner, collection and control of leachate, the provision of financial assurance for long term care, and other requirements which were enacted to ensure that contaminants will not negatively impact local residents, or the environment. Illinois EPA evaluates risk and imposes conditions on waste disposal activities through the permitting process.

LRS avoided oversight of its waste disposal activities by failing to seek or obtain a permit

from Illinois EPA. LRS knowingly accepted contaminated soil for a fee, without taking the steps required to prevent off-site impact from the dumping activities. LRS's violations created a significant risk to the environment and persons situated near the LRS Site.

Section 33(c)(iv) provides:

- (iv) *the technical practicability and economic reasonableness of reducing or eliminated the emissions, discharges or deposits resulting from such pollution source;*

As shown by the admitted facts, disposal of the contaminated soil at a suitable and properly-sited facility was both possible and economically reasonable. Once the illegal dumping came to the attention of Illinois EPA, the materials solicited for dumping by LRS were removed to a permitted facility in Indiana. These facts show that it would have been practical and reasonable for the materials to be taken to a permitted waste disposal facility in the first instance.

The waste relocation was done pursuant to Illinois EPA's enforcement process, and should not be confused with subsequent *voluntary* compliance. Complainant therefore does not believe that this removal should be considered "subsequent compliance" pursuant to 415 ILCS 5/33(c)(v).

Complainant believes that an evaluation of the Section 33(c) factors indicates that assessment of a civil penalty against Respondent LRS is appropriate.

The Section 42(h) Factors Support Assessment of a \$20,000.00 Civil Penalty

The Board looks to the factors in 415 ILCS 5/42(h) (2008) to determine the amount of an appropriate civil penalty. Complainant's evaluation of these factors follows:

1. *The duration and gravity of the violation;*

The facts show dumping of approximately 350 truckloads of contaminated soil over a period of approximately 30 days.

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;*

LRS was not diligent in accepting contaminated soil after having reviewed test results which clearly indicated high levels of non-naturally occurring compounds.

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;*

The facts show that LRS realized dumping profits from accepting the contaminated soil. LRS also avoided the costs, including application fees and engineering costs, of applying for and obtaining a waste disposal permit from Illinois EPA. Because LRS has not appeared and participated in this case, information on costs incurred in relocating the waste to a permitted facility is not available. However, Complainant believes that its recommended penalty of \$20,000.00 will recover the economic benefits realized by LRS from the violations.

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;*

Complainant believes that its recommended penalty of \$20,000.00 will serve to deter violations by 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;*

Complainant is not aware of any previously adjudicated violations by LRS.

6. *Whether the respondent voluntarily self-disclosed, in accordance with subsection*

i

of this Section, the non-compliance to the Agency;

Respondent LRS did not self-disclose its noncompliance.

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.*

No supplemental environmental project has been proposed by LRS.

IV. CONCLUSION

Respondent LRS has failed to appear or answer to the Complaint in this matter.

Therefore, pursuant to Section 103.204 of the Board Procedural Rules, 35 Ill. Adm. Code 103.204, the Board should find that all material allegations have been admitted. Complainant has sufficiently alleged violations of the Sections 21(a), 21(e) and 21(d)(1) of the Act, 415 ILCS 5/21(a), 5/21(e), and 5/21(d)(1) (2008), and the Board should grant summary judgment in favor of Complainant and against Respondent LRS on Counts I, II, and III.

Complainant requests that the Board, after consideration of the penalty factors described in Sections 33(c) and 42(h) of the Act, assess a civil penalty against Respondent LRS in the amount of \$20,000.00. In the alternative, Complainant requests that the Board order a hearing against LRS on the sole issue of civil penalty.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board issue an order in favor of Complainant and against Respondent LAND RECLAMATION SERVICES, INC.:

1. Deeming all material allegations in the complaint to be admitted;
2. Granting summary judgment in favor of Complainant and against Respondent LRS on Counts I, II, and III;

3. Assessing a civil penalty of \$20,000.00 against Respondent LRS;
4. Alternatively, setting a date for hearing on the issue of penalty in this matter;
5. Requiring Respondent LRS to cease and desist from further violations of the Act and pertinent regulations; and
6. Granting such other relief as the Board deems appropriate and just.

RESPECTFULLY SUBMITTED:

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:



CHRISTOPHER GRANT
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Assistant Attorney General
69 W. Washington Street, #1800
Chicago, IL 60602
(312) 814-5388



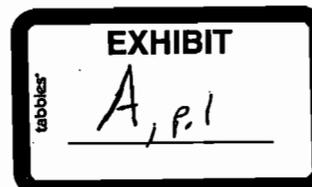
SERVICES PROGRAMS PRESS PUBLICATIONS DEPARTMENTS CONTACT

CORPORATION FILE DETAIL REPORT

Entity Name	LAND RECLAMATION SERVICES, INC.	File Number	63668311
Status	DISSOLVED		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	08/02/2004	State	ILLINOIS
Agent Name	ILLINOIS CORPORATION SERVICE C	Agent Change Date	09/27/2006
Agent Street Address	801 ADLAI STEVENSON DRIVE	President Name & Address	FRANK SCHMIDT 1127 S CHICAGO JOLIET IL 660436
Agent City	SPRINGFIELD	Secretary Name & Address	INVOLUNTARY DISSOLUTION 01 09 09
Agent Zip	62703	Duration Date	PERPETUAL
Annual Report Filing Date	00/00/0000	For Year	2008

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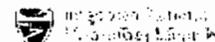
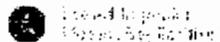
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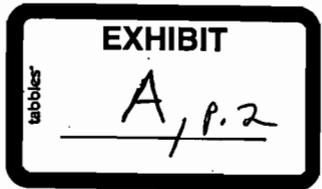
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	B. Received by (Printed Name) _____ C. Date of Delivery _____	
D. Is delivery address different from return? <input type="checkbox"/> Yes, <input type="checkbox"/> No. If YES, enter delivery address below: _____		
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
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vs.

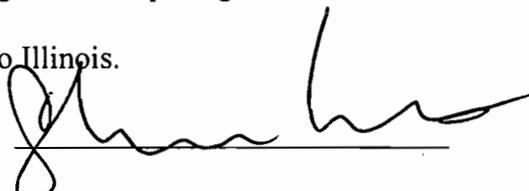
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Respondents.

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(Enforcement-Land)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this first day of June, 2010 the foregoing Motion to Deem Facts Admitted and for Summary Judgment against Respondent Land Reclamation Services, Inc., and Notice of Filing, upon the persons listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List:

87th & Greenwood, LLC
c/o InCorp Serv Inc., Registered Agent
2501 Chatham Road, #110
Springfield, Illinois 62704

Land Reclamation Services, Inc.
c/o Illinois Corporation Service, Registered Agent
801 Adlai Stevenson Drive
Springfield, Illinois 62703-4261

Innovative Recycling Technologies, Inc.
c/o Matthew E. Cohn, Esq.
Meckler Bulger Tilson Marick & Pearson
123 North Wacker Drive, Suite 1800
Chicago, Illinois 60606

Mr. Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Drive
Chicago, Illinois 60601