

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.) PCB 11 - 058
) (Enforcement - Water)
)
ZACHARY ISAAC d/b/a NU SHINE CAR)
WASH, and SAMUEL JOHNSON,)
)
Respondents.)

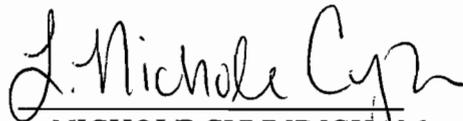
NOTICE OF FILING
(VIA ELECTRONIC FILING)

TO: Zachary Isaac Mr. Bradley P. Halloran, Hearing Officer
1048 Horizon Ridge Illinois Pollution Control Board
Lake in the Hills, IL 60156 James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that today, July 12, 2012, I have filed with the Office of the Clerk of the Pollution Control Board a Motion to Deem Facts Admitted and for Summary Judgment Against Respondent Zachary Isaac d/b/a Nu Shine Car Wash, a copy of which is attached and hereby served upon you.

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

BY:


L. NICHOLE CUNNINGHAM
Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-3532

Date: July 12, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

vs.)

PCB 11 - 058
(Enforcement - Water)

ZACHARY ISAAC, d/b/a NU SHINE)
CAR WASH, and SAMUEL JOHNSON)

Respondents)

**MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY
JUDGMENT AGAINST RESPONDENT ZACHARY ISAAC
d/b/a NU SHINE CAR WASH**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois (“People”), pursuant to Sections 103.204 and 101.516 of the Illinois Pollution Control Board’s (“Board”) Procedural Rules, 35 Ill. Adm. Code 103.204 and 101.516, and hereby moves to deem facts admitted and for summary judgment against Respondent, ZACHARY ISAAC, d/b/a NU SHINE CAR WASH (“Isaac”), on all counts of the People’s Complaint filed on March 3, 2011 (“Complaint”).¹ 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 Illinois Attorney General, on her own motion, and upon the request of the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) pursuant to Section 31 of the Illinois

¹ On April 5, 2012, the Board accepted and entered a stipulation and proposed settlement between the People and Respondent Johnson, wherein Johnson agreed to pay \$4,000 in civil penalties. *See People v. Zachary Isaac, d/b/a Nu Shine Car Wash, and Samuel Johnson, PCB 11-58 (April 5, 2012).*

Environmental Protection Act (“Act”), 415 ILCS 5/31 (2010).

The People filed their Complaint on March 4, 2011. On June 21, 2011, service was made upon Respondent Isaac by Mr. Thomas J. Symenski, Investigator in the Office of the Illinois Attorney General, by leaving a copy of the Complaint and Notice of Filing at Respondent Isaac’s usual place of abode with a person of Isaac’s family above the age of 13 and informing that person of the contents thereof.² (See Affidavit of Service, attached hereto as Exhibit A.) As of the date of filing this Motion, Respondent Isaac has not filed an appearance, answer, or other responsive pleading.

Section 103.204(d) of the Board Procedural Rules provides as follows:

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.

(35 Ill. Adm. Code 103.204(d).) As of the date of filing this Motion, three hundred and eighty-six (386) days have passed since the Complaint was served upon Respondent Isaac. The People therefore request that the Board find, pursuant to Section 103.204 of the Board Procedural Rules that all material allegations of the Complaint are deemed to be admitted by Respondent Isaac.

(35 Ill. Adm. Code 103.204.)

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Section 101.506(b) of the Board’s Procedural Rules provides as follows:

² Service upon Respondent Isaac was first attempted by certified mail on June 6, 2011, as stated in the Certificate of Service to the Complaint. The certified mail was returned undeliverable, and substitute service was made on June 21, 2011 as stated herein.

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.

(35 Ill. Adm. Code 101.506(b).) In a summary judgment proceeding in front of the Board, the movant is entitled to a judgment as a matter of law when the pleadings, depositions, admissions on file, and affidavits show that there is no genuine issue of material fact. *People v. Lowell Null*, PCB 11-26, slip op. at 7 (October 6, 2011) (citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483 (1998)). When the Board rules on a motion for summary judgment, the Board has said that they “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Id.* (citations omitted). Summary judgment is a “drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to relief “is clear and free from doubt.” *Id.* In order to oppose a motion for summary judgment, “a party opposing a motion for summary judgment may not rest on the pleadings, but must ‘present a factual basis which would arguably entitle [it] to judgment.’” *Id.* (citing *Gauthier v. Westfall*, 266 Ill. App. 3d 213, 219 (2nd Dist. 1994)).

III. MOTION FOR SUMMARY JUDGMENT ON ALL COUNTS

The People have alleged three violations of the Act and Board regulations against Respondent Isaac, specifically *Water Pollution*, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), (Count I); *Construction of a Sewer Line Without a Permit*, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2010), and Section 309.202(a) of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a) (2010), (Count II); and, *Introduction of Nondomestic Contaminants in Algonquin Sewer System*, in violation of Section 12(h) of the Act, 415 ILCS 5/12(h), (Count III). If the Board deems all material facts to be admitted, the facts

alleged in the People's Complaint are sufficient to prove the violations.

COUNT I - Water Pollution

Respondent Isaac is a resident of the State of Illinois and has conducted business in the State of Illinois as Nu Shine Car Wash, located at 1065 W. Algonquin Road, Algonquin, McHenry County, Illinois ("Facility"). (P.'s Cmplt. at C.I, ¶ 3.) On July 29, 2009 and July 31, 2009, Karen Katamay from the Illinois EPA Division of Water Pollution Control, Field Operations Section ("Inspector Katamay"), inspected the Facility along with representatives from the McHenry Department of Health ("MCDH") and the Village of Algonquin. (P.'s Cmplt. at C.I, ¶s 5 & 7.)

At the July 29th inspection, Inspector Katamay observed visual signs that a trench had been excavated and refilled and was running from the Facility to the Village of Algonquin's sanitary sewage collection system ("Algonquin sewer system"). (P.'s Cmplt. at C.I, ¶ 5.) She also observed that the Facility had a triple basin system that was filled with sludge and oil deposits. (P.'s Cmplt. at C.I, ¶ 6.)

At the July 31st inspection, Inspector Katamay discovered that wastewater from the Facility's car washing operation were going through the floor drain to the triple basin system. (P.'s Cmplt. at C.I, ¶ 7.) The inspectors placed dye into the triple basin system at the Facility and soon detected the dye in a manhole in the Algonquin sewer system. (*Id.*) This confirmed that the drains from the Facility were connected to the Algonquin sewer system. (*Id.*) The flow from the Facility into the Algonquin sewer system contained both domestic and non-domestic sources; non-domestic sources included the oils and sludge from the triple basin system and wastewater from the car wash operation. (P.'s Cmplt. at C.I, ¶ 9.) The Facility does not have,

and has never had, a permit either from the Illinois EPA or from the Village of Algonquin authorizing Respondent to construct a sanitary sewer line, to connect the Facility to the Algonquin sewer system or to discharge sewage from a nondomestic source. (P.'s Cmplt. at C.I, ¶ 10.)

Section 12(a) of the Act states that “no person shall cause or threaten or allow the discharge of any contaminants into the environment . . . so as to cause or tend to cause water pollution in Illinois. . . .” (415 ILCS 5/12(a) (2010)) As an individual, Respondent Isaac meets the definition of a “person,” as defined in Section 3.315 of the Act. (415 ILCS 5/3.315 (2010) and P.'s Cmplt. at C.I, ¶ 13.) The sludge, oil, dirt and detergents contained in the Facility’s wastewater constitute “contaminants,” which is broadly defined as “any solid, liquid or gaseous matter, any odor or any form of energy, from whatever source.” (415 ILCS 5/3.165 (2010) and P.'s Cmplt. at C.I, ¶ 15.) The Algonquin sewer system constitutes a “water” of the State of Illinois, because it is a public accumulation of water underground that flows within the State of Illinois. (415 ILCS 5/3.550 (2010) and P.'s Cmplt. at C.I, ¶ 17.)

Inspector Katamay observed that wastewater from Respondent’s car washing operations, which contained oils, sludge, dirt, and detergents, were flowing into the Facility’s triple basin system that Respondent Isaac had connected to the Algonquin sewer system without a permit. (P.'s Cmplt. at C.I, ¶s 6 & 7.) As a result, contaminants from Respondent’s Facility were entering the Algonquin sewer system, a water of the State of Illinois. The discharge of these contaminants causes or would tend to cause water pollution in Illinois because the contaminants are capable of causing an alteration of the physical, chemical, biological properties of waters of

the State and are likely to create a nuisance or render water harmful to human or animal life or health. (P.'s Cmplt. at C.I, ¶s 18 & 19.)

Therefore, by causing or threatening the discharge of contaminants into the Algonquin sewer system through an illegally constructed sewer line, Respondent Isaac caused or tended to cause water pollution in Illinois in violation of Section 12(a) of the Act. Complainant has proved the violations alleged against Respondent Isaac in Count I.

COUNT II - Construction of Sewer Line Without a Permit

The facts cited above also prove the violations alleged in Count II. Pursuant to Section 12(b) of the Act, no person can “[c]onstruct, install or operate any equipment, Facility or vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.” (415 ILCS 5/12(b) (2010).) Section 309.202(a) of the Board regulations provides, more specifically, that “no person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency . . .” (35 Ill. Adm. Code 309.202(a).)

The connection created by Respondent Isaac to carry wastewater from the Facility into the Algonquin sewer system is a “sewer” as defined in the Board regulations, because it is a stationary means of transport constructed for the purpose of collecting and transporting wastewater. (35 Ill. Adm. Code 301.390(a) and P.'s Cmplt. at C. II, ¶ 22 & 23.) Respondent did not have a construction permit issued by the Agency to construct a new sewer, and the sewer is capable of causing or contributing to water pollution in Illinois. (P.'s Cmplt. at C.I, ¶s 10 & 19.)

Therefore, Respondent Isaac has violated Section 12(b) of the Act, as well as Section 309.202(a) of the Board regulations. (415 ILCS 5/12(b) (2010) and 35 Ill. Adm. Code 309.202(a).) The People have proved the violations alleged against Respondent Isaac as alleged in Count II.

COUNT III - Introduction of Nondomestic Contaminants in Algonquin Sewer System

The facts cited above also prove the violations alleged in Count III. Section 12(h) of the Act provides that no person shall “[i]ntroduce contaminants into a sewage works from any nondomestic source except in compliance with the regulations and standards adopted by the Board under this Act.” (415 ILCS 5/12(h) (2010).) Wastewater from the Facility is a “nondomestic source,” containing oils, sludge, and detergents which constitute “contaminants.” (P.’s Cmplt. at C.I, ¶s 9 & 15.) Respondent constructed a sewer line that introduced these contaminants from Respondent’s triple basin system into the Algonquin sewer system despite not having a permit for this construction. (P.’s Cmplt. at C.I, ¶ 10.) Therefore, Respondent introduced contaminants from nondomestic sources into the Algonquin sewer system without complying with the Act and Board regulations and so as to cause water pollution in violation of the Act, which is a violation of Section 12(h) of the Act. (415 5/12(h) (2010).) The People have proved the violations alleged against Respondent Isaac as alleged in Count III.

IV. REQUESTED REMEDY

The Board should consider ordering appropriate relief without a formal hearing. In this case, the People request that the Board assess a civil penalty in the amount of Ten Thousand Dollars (\$10,000.00) against Respondent Isaac and order Respondent to cease and desist from further violations of the Act and Board regulations. An analysis of the Act’s Section 33(c) factors clearly shows that a civil penalty is appropriate, and consideration of the 42(h) factors

supports an assessment of a \$10,000.00 civil penalty. (415 ILCS 5/33(c) and 42(h) (2010).)

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

The People believe that Sections 33(c)(i) and 33(c)(iv) of the Act, 415 ILCS 5/33(c)(i) and 5/33(c)(iv) (2010), strongly support an assessment of a civil penalty. Section 33(c)(i) provides for consideration of “the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people.” (415 ILCS 5/33(c)(i).) Respondent’s pollution of Algonquin’s sewer system constitutes a significant interference with the health, welfare, and physical property of the people. Connections to municipal sewer systems require permits to allow the municipalities to properly regulate and control a city’s sewage flow and to allow the Illinois EPA to effectively monitor such connections. Unauthorized, unpermitted, and uncontrolled changes to this system by private entities prevent the Village of Algonquin from properly ensuring that its citizens are served by a well ordered, clean, and sufficient sewer system.

Respondent avoided oversight of its wastewater disposal activities by failing to obtain a permit from the Illinois EPA or the Village of Algonquin for its connection to the Algonquin sewer system. Respondent knowingly constructed a sewer connection that allowed pollutants to enter Algonquin’s sewer system, which significantly interfered with the health, welfare, and physical property of the people, and therefore factor 33(c)(i) mitigates strongly towards allowing a civil penalty to be assessed against Respondent. (415 ILCS 5/33(c)(i) (2010).)

Section 33(c)(iv) provides for consideration of “the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from [the] pollution source.” (415 ILCS 5/33(c)(iv) (2010).) Respondent never attempted to receive a

permit for the construction of a sewer line to the Algonquin sewer system, but obtaining such a permit was both technically practical and economically reasonable.

Respondent was merely required to follow the same permitting requirements as every other car wash in Illinois, which must also find a way to dispose of wastewater from their car washing operations. There is no indication that this Facility had some particular situation that made it less technically practical or economically reasonable for it to follow the same permitting requirements that all other car washes are subject to.

The People believe that an evaluation of the Section 33(c) factors indicates that assessment of a civil penalty against Respondent Isaac is appropriate.

B. The Section 42(h) Factors Support Assessment of a \$10,000.00 Civil Penalty

The Board looks to the factors in 415 ILCS 5/42(h) (2010) to determine the amount of an appropriate civil penalty. The People's evaluation of these factors follows:

(1) The duration and gravity of the violation

Respondent's violations polluted the Algonquin sewer system, interfering with the health, general welfare, and property of the people, and added additional strain on a municipal sewer system. Respondent's failure to submit a construction permit application for the sewer line prevented the Illinois EPA from reviewing the project prior to construction to ensure the line would not harm the environment or human health. The facts show that Respondent's violations occurred from at least June 29, 2009 until a date better known to Respondent.³

(2) The presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act

³ Upon information and belief, the violations continued until September 1, 2009.

Respondent Isaac was not diligent in attempting to comply with the requirements of the Act or the Board's regulations, as he never attempted to obtain a permit for the Facility's connection to the Algonquin sewer system.

- (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*

Respondent's noncompliance with statutory and regulatory requirements resulted in an economic benefit because Respondent avoided the costs of obtaining a permit while reaping the benefits of unauthorized use of the Algonquin sewer system. The likely cost of a permit fee would have been roughly \$800, as well as an additional estimated cost of \$500 for preparation of the application by an Illinois Registered Professional Engineer. Because Respondent has neither appeared nor participated in this case, detailed information regarding Respondent's expenses is not available. However, the People believe that the recommended penalty of \$10,000.00 will recover the economic benefits realized by Respondent Isaac 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;*

The People believe that the recommended penalty of \$10,000.00 will serve to deter violations by other persons similarly subject to the Act. This requested penalty should impress upon similarly situated defendants the need to ensure a construction permit is in place rather than initiating construction of an unauthorized sewer line.

- (5) *The number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;*

The People are not aware of any previously adjudicated violations by Respondent.

- (6) *Whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency*

Respondent 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 Respondent.

- (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.*

Respondent has not successfully completed a Compliance Commitment Agreement.

IV. CONCLUSION

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

Therefore, pursuant to Section 103.204 of the Board Procedural Rules, the Board should find that all material allegations have been admitted. The People have sufficiently alleged facts to support violations of Sections 12(a), 12(b) and 12(h) of the Act, 415 ILCS 5/12(a), 5/12(b), and 5/12(h) (2010), and the Board should grant summary judgment in favor of Complainant and against Respondent on all Counts.

The People request 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 Isaac in the amount of \$10,000.00. In the alternative, the People request that the Board order a hearing against Respondent 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

ZACHARY ISAAC d/b/a NU SHINE CAR WASH:

1. Deeming all material allegations in the Complaint to be admitted;
2. Granting summary judgment in favor of Complainant and against Respondent

Isaac on all Counts;

3. Assessing a civil penalty of \$10,000.00 against Respondent;
4. Alternatively, setting a date for hearing on the issue of penalty in this matter;
5. Requiring Respondent to cease and desist from further violations of the Act and

Board regulations; and

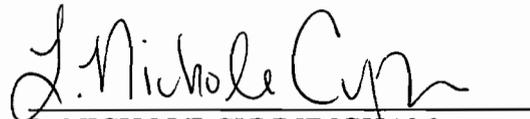
6. Granting such other relief as the Board deems appropriate and just.

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:



L. NICHOLE CUNNINGHAM
Assistance Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington, Suite. 1800
Chicago, Illinois 60602
Tel: (312) 814.3532

Date: July 12, 2012

STATE OF ILLINOIS

)SS.

CASE NUMBER: AG11-CI-22872

COUNTY OF McHenry)

AFFIDAVIT OF SERVICE

I, Thomas J. Symenski *151, being first duly sworn, depose and state as follows:

I am an Investigator in the Office of the Attorney General, State of Illinois. Pursuant to 15 ILCS 205/4c investigators employed by the Attorney General have all the powers possessed by sheriffs.

I am over 21 years of age and not a party to this case.

I served the within Notice of Filing and a copy of the attached Complaint

upon Zachary Isaac, on the 21st day of June, 2011 at approximately 3:00 pm by:

PERSONAL service was made by giving a copy of the aforementioned _____ to _____, _____ Race, _____ Age, _____ Sex personally at _____ in _____ County, Illinois.

SUBSTITUTE service on Zachary Isaac was made by handing the aforementioned Notice of Filing _____ to Zachary Isaac Sr. (father), a member of the same household, (who is 13 years of age or older) _____, _____ Race, _____ Age, _____ Sex informing that person of the contents of the above cited document(s) on the 6th day of June, 2011 at the hour of 3:00 pm, at 884 Oak Valley Drive, in Crystal Lake, County of McHenry, his/her usual place of residence and by placing the document(s) in the United States Mail on 21st, with postage fully prepaid and addressed to the Respondent's last known address.

CORPORATION OR PARTNERSHIP service on _____ by leaving a copy of the _____ and of the cited document(s) with _____, Registered Agent / Officer or Agent.

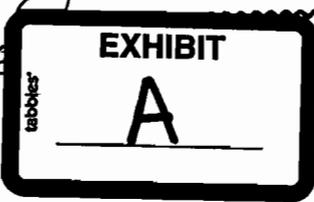
Thomas J. Symenski
Investigator

Office of the Attorney General

Subscribed and sworn to before me

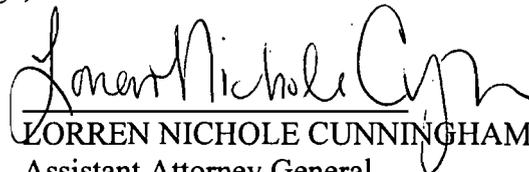
this 22nd day of June, 2011 at Cook County

Salvino W. [Signature]
Notary Public



CERTIFICATE OF SERVICE

I, Lorren Nichole Cunningham, Assistant Attorney General, do certify that on the 12th day of July, 2012, I caused to be served upon the parties named in the Notice of Filing the foregoing Notice of Filing and Motion to Deem Facts Admitted and for Summary Judgment Against Respondent Zachary Isaac, d/b/a Nu Shine Car Wash, by First Class U.S. Mail by depositing the same at the United States Postal Service facility located at 100 W. Randolph, Chicago, Illinois.



LORREN NICHOLE CUNNINGHAM
Assistant Attorney General
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Chicago, Illinois 60602
(312) 814-3532