

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD DEC 1 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
G & M TOTAL, INC., an Illinois)
Corporation, GEORGE PAPAS,)
individually and as President of)
G & M TOTAL, INC.,)
)
Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 97-119
(Enforcement)

NOTICE OF FILING

TO:

Mr. Thomas Davis
2610 Sheridan Road, Suite 214
Zion, Illinois 60099

George Papas
6751 W. Tonto Drive
Glendale, Arizona 85308

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, its MOTION FOR SUMMARY JUDGMENT, a true and correct copy of which is attached hereto and is hereby served upon you.

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

BY: Katherine A. Kelly
KATHERINE A. KELLY
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-3153

Dated: December 1, 2003

DEC 1 2003

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 G & M TOTAL, INC., an Illinois)
 Corporation, GEORGE PAPAS,)
 individually and as President of)
 G & M TOTAL, Inc.,)
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 Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 97-119
(Enforcement)

COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. Lisa Madigan, Attorney General of the State of Illinois, and pursuant to Section 101.244 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.244 (1996), hereby moves for the entry of an order granting summary judgment in favor of Complainant and against Respondents, G & M TOTAL, INC. ("G & M Total") and GEORGE PAPAS ("Papás"), as to Counts I and II of Complainant's Complaint. In support thereof, Complainant states as follows:

1. On January 8, 1997, Complainant filed a two-count complaint against the Respondents alleging violations of Section 12(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/12(a) (1996), and Sections 731.160, 731.162 and 731.163 of the Illinois Pollution Control Board Regulations ("Board Regulations"), 35 Ill. Adm. Code 731.160, 731.162 and 173.163 (1996). Respondents, G & M TOTAL and PAPAS, were served with Complainant's Complaint via certified mail on January 16, 1997.

A Copy of the certified receipt is attached to and incorporated into this motion as Exhibit A.

2. On December 1, 1997, Complainant filed its first Request for Admission of Facts. Complainant caused the document to be mailed to Respondents, G & M TOTAL and PAPAS, on December 1, 1997. The document requested the admission of all material facts alleged in Complainant's Complaint. A copy of the first Request for Admission of Facts is attached to and incorporated into this motion as Exhibit B.

3. As of the date of filing of this Motion, Respondents, G & M TOTAL and PAPAS, have not filed a response to the Complainant's first Request for Admission of Facts.

4. Because the Respondents failed to respond to Complainant's Request for Admission of Facts within the required 60 day period, the Complainant filed its Motion to Deem Facts Admitted on August 5, 2003, pursuant to 35 Ill. Adm. Code Sections 103.204(d) and 103.204(e).

5. On October 2, 2003, the Illinois Pollution Control Board ("Board") granted the Complainant's Motion to Deem Facts Admitted. A copy of the October 2, 2003 Board Order is attached to and incorporated into this motion as Exhibit C.

6. Section 12(a) of the Act, 415 ILCS 5/12(a) (1994), provides as follows:

No person shall:

- a. Cause threaten or allow the discharge of any contaminate into the environment of any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or as to violate regulations or standards adopted by the Pollution Control Board under this Act

7. Section 3.06 of the Act, 415 ILCS 5/3.06 (1994), provides as follows:

"CONTAMINANTS" is any solid, liquid or gaseous matter, any odor, or any form of energy, from whatever source.

8. Section 731.160 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.160, provides as follows:

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this Subpart except for USTs excluded under Section 731.110(b) and UST systems subject to RCRA corrective action requirements under 35 Ill. Adm. Code 724.200, 724.296, 725.296 or 725.Subpart G.

9. Section 731.162 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.162, provides as follows:

- a) Owners and operators shall perform the following abatement measures:
 1. Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
 2. Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;
 3. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into substance structures (such as sewers or

basements);

4. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with 35 Ill. Adm. Code 722, 724, 725, 807, and 809;
 5. Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by Section 731.152(b) or the closure site assessment of Section 731.172(a). In selecting sample types, sample locations and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and
 6. Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 731.164.
- b) Within 20 days after release confirmation, owners and operators shall submit a report to the Agency, summarizing the initial abatement steps taken under subsection (a) and any resulting information or data.

10. Count I of the Complainant's Complaint, entitled Failure to Perform Initial Abatement Measures and Site Check, specifically alleges that the Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (1994), and Sections 731.162 and 731.160 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code Sections 731.162 and 731.160, respectively by: (1)

releasing gasoline into the soil at 2301 Sheridan Road, Zion, Lake County, Illinois ("Site"); (2) failing to demonstrate and/or supply the Illinois Environmental Protection Agency ("Illinois EPA") with sufficient documentation that Respondents have performed the initial abatement measures and site checks after confirmation of the release; and (3) failing to submit a report to the Illinois EPA summarizing the initial abatement steps taken and any resulting information or data within 20 days after release confirmation.

11. Section 731.163 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 731.163, provides as follows:

- a) Owners and operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Section 731.160 and Section 731.161. This information must include, but is not necessarily limited to the following:
 1. Data on the nature and estimated quantity of release;
 2. Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
 3. Results of the site check required under Section 731.162(a) (5); and
 4. Results of the free product investigations required under Section 731.162(a) (6), to be used by owners and operators to determine

whether free product must be recovered under Section 731.164.

- b) Within forty-five (45) days after confirmation of the release, owners and operators shall submit the information collected in compliance with subsection (a) to the Agency, in a manner that demonstrates its applicability and technical adequacy.

12. Count II of the Complainant's Complaint, Failure to Perform an Initial Site Characterization, specifically alleges that the Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (1994), and Sections 731.163 and 731.160 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code Sections 731.163 and 731.160 by: (1) failing from at least August 26, 1991 and continuing until May 17, 1996, to demonstrate and/or supply the Illinois EPA with sufficient documentation that Respondents had performed the initial site characterization; (2) failing from at least August 26, 1991 and continuing until May 17, 1996, to submit the information about the site and the nature of the release to the Illinois EPA within 45 days after release confirmation.

13. In its October 2, 2003 Order, the Board deemed admitted the following facts:

- a. Papas owns the real property located at 2301 Sheridan Road, Zion, Lake County, Illinois ("site") and has owned this property since at least October 5, 1988.

- b. Papas is the president of G & M and has been the

president since at least June 12, 1990.

c. G & M owns and operates a gas station located at 2301 Sheridan Road, Zion, Lake County, Illinois and has owned and operated this gas station since at least June 12, 1990.

d. From at least October 5, 1988 and continuing until at least May 1, 1995, at least five (5) USTs and respective UST systems were located at the Site. Four (4) of the USTs located at the Site were utilized to store gasoline, and one (1) was utilized to store kerosene.

e. On July 11, 1991, G & M reported a release of gasoline from the UST system at the Site to the IEMA.

f. On November 7, 1994, a subsurface boring test was performed at the Site. The results of that investigation produced evidence of a release of gasoline and/or kerosene.

g. On November 7, 1994, G & M reported a release of gasoline from the UST system at the Site to IEMA.

h. On or about May 1, 1995, at least five (5) USTs and respective UST system were removed from Site.

i. Neither Papas nor G & M provided a twenty (20) day report, as described in 35 Ill. Adm. Code 731.162, to the Illinois EPA within twenty (20) days after confirmation of the release reported on or about July 11, 1991.

j. Neither Papas nor G & M provided a twenty (20) day report, as described in 35 Ill. Adm. Code 731.162, to the

Illinois EPA within twenty (20) days after confirmation of the release reported on or about November 7, 1994.

k. On or about May 17, 1996, G & M submitted to the Illinois EPA a twenty (20) day report, as described in 35 Ill. Adm. Code 731.162.

l. Neither Papas nor G & M provided a forty-five (45) day report, as described in 35 Ill. Adm. Code 731.163 to the Illinois EPA within 45 days after confirmation of the release reported on or about July 11, 1991.

m. Neither Papas nor G & M provided a forty-five (45) day report, as described in 35 Ill. Adm. Code 731.163 to the Illinois EPA within 45 days after confirmation of the release reported on or about November 7, 1994.

n. On or about March 27, 1996, G & M submitted to the Illinois EPA a forty-five (45) day report, as described in 35 Ill. Adm. Code 731.163.

o. The Illinois EPA did not receive the forty-five (45) day report dated March 27, 1996 until May 1, 1996.

14. The above facts, as deemed admitted, are sufficient to find that the Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (1994), and Sections 731.160, 731.162 and 731.163 of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code Sections 731.160, 731.162, and 731.163.

15. Section 101.244 of the Board Procedural Rules, 35 Ill.

Adm. Code 101.244 (1996) provides, in pertinent part, as follows:

* * *

A motion for summary judgment prior to hearing may be made by any party to an enforcement proceeding pursuant to Title VIII of the Act or a permit appeal pursuant to Title X of the Act.

* * *

16. Summary judgement is appropriate only when the pleadings, depositions, and admissions on file, together with the affidavits, if any, disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (2002); see also, Balla v. Gambro, Inc., 145 Ill. 2d 492, 584 N.E.2d 104.112 (Ill. 1991).

17. If the Board finds that the Respondents, G & M TOTAL, and PAPAS have admitted all allegations asserted in Complainant's first Request for Admission of Facts, then the record shows that there is no genuine issue of material fact remaining for review. Since the Board, in its October 2, 2003 Order, did find admitted all allegations asserted in Complainant's first Request for Admission of Facts, pursuant to Section 101.244 of 35 Ill. Adm. Code 101.244 (1996), Complainant is entitled to summary judgement in its favor as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board issue an order in favor of Complainant and against Respondents G & M TOTAL, INC. and GEORGE PAPAS:

1. Granting summary judgement, in favor of the Complainant and against the Respondents, on Counts I and II of the Complainant's Complaint;

2. Finding that the Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (1996), and Sections 731.160, 731.162 and 731.163 of the Board Regulations, 35 Ill. Adm. Code 731.160, 731.162 and 173.163 (1996).

3. Ordering the Respondents to cease and desist from further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996), and Sections 731.160, 731.162 and 731.163 of the Board Regulations, 35 Ill. Adm. Code 731.160, 731.162 and 173.163 (1996).

4. Assessing against the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996) and each violation of Sections 731.160, 731.162 and 731.163 of the Board Regulations, 35 Ill. Adm. Code 731.160, 731.162 and 173.163 (1996); and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation shall have continued;

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

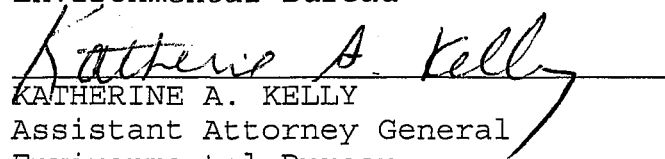
6. Granting such additional relief as the Board deems appropriate and just.

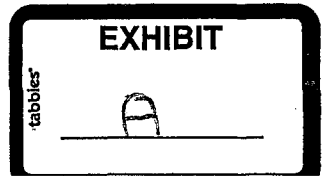
PEOPLE OF THE STATE OF ILLINOIS
Ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:


KATHERINE A. KELLY
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-3153



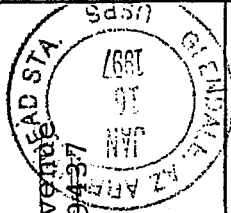
Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:

George Papas
43376 Prairie Avenue
Zion, IL 60099-9437



4a. Article Number

P 449 482 551

4b. Service Type

- Registered
- Express Mail
- Return Receipt for Merchandise
- COD
- Certified
- Insured

7. Date of Delivery

1/16/97

5. Received By: (Print Name)

George Papas

6. Signature: (Addressee or Agent)

X George Papas

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

RECEIVED
CLERK'S OFFICE
DEC - 1 1997
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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v.)
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G & M TOTAL, INC., an Illinois)
Corporation, GEORGE PAPAS, individually)
and as President of G & M Total, Inc.,)
)
Respondents.)

PCB 97-119
(Enforcement)

REQUEST FOR ADMISSION OF FACTS

Pursuant to 35 Ill. Adm Code 103.162(a), Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests Respondent, GEORGE PAPAS, to admit the truth of the following facts, in writing, under oath within twenty (20) days from the date of service hereof.

INSTRUCTIONS AND DEFINITIONS

1. With respect to any requested admission which Respondent refuses to answer because of a claim of privilege, provide a statement signed by an attorney representing Respondent setting forth as to each:

- a. the nature of the claim of privilege;
- b. the statute, rule or decision which is claimed to give rise to the claim of privilege;
- c. all facts relied upon in support of the claim of privilege;
- d. an identification of all documents related to the claim of privilege;
- e. an identification of all persons having knowledge of any facts related to the claim of privilege; and

EXHIBIT
tabbles
B

f. an identification of all events, transactions or occurrences related to the claim of privilege.

2. "Illinois EPA" shall mean Illinois Environmental Protection Agency
3. "Respondent" shall mean George Papas.
4. "G & M" shall mean G & M Total, Inc.
5. "Papas" shall mean George Papas.
6. "OSFM" shall mean Office of the State Fire Marshall.
7. "IEMA" shall mean Illinois Emergency Management Agency.
8. "IESDA" shall mean Illinois Emergency Services Disaster Agency.
9. "Site" shall refer to the property and any portion thereof described in paragraphs 3 and 4 of Count I of the Complaint.
10. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, or disposing from a UST or UST system into groundwater, surface water, soil or subsurface soil.
11. "UST" or "UST system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
12. "Regulated substance" means any "hazardous substance" or "petroleum".
13. "Hazardous substance" means any substance listed in 40 CFR 320.4 (but not including any substance regulated by the hazardous waste under 35 Ill. Adm. Code 721).
14. "Petroleum" [including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pound per square inch absolute)], includes, but is not limited to, petroleum and petroleum-based substances

comprising a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuel, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil.

15. "Below ground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the below ground portions of an underground storage tank system and below ground releases associated with overfills and transfer operations as the regulated substance moves from an underground storage tank.

16. "Or " shall mean and/or wherever appropriate.

17. The singular form and plural form shall be construed interchangeably so as to elicit any facts or information which might otherwise be construed as outside their scope.

FACTS TO BE ADMITTED

Fact No. 1

Papas currently owns the real property located at 2301 Sheridan Road, Zion, Lake County, Illinois.

Fact No. 2

Since at least October 5, 1988, Papas has owned the real property located at 2301 Sheridan Road, Zion, Lake County, Illinois.

Fact No. 3

Papas is currently the president of G & M.

Fact No. 4

Papas has been the president of G & M since at least June 12, 1990.

Fact No. 5

Since at least June 12, 1990, G & M has owned and operated a gas station located at 2301 Sheridan Road, Zion, Lake County, Illinois.

Fact No. 6

G & M currently owns and operates a gas station located at 2301 Sheridan Road, Zion, Lake County, Illinois.

Fact No. 7

On or about October 5, 1988, Papas signed and submitted to the OSFM a Notification for Underground Storage Tanks for four (4) USTs.

Fact No. 8

On or about September 30, 1993, Papas signed and submitted to the OSFM a Notification for Underground Storage Tanks for four (4) USTs.

Fact No. 9

From at least October 5, 1988 and continuing until at least May 1, 1995, at least five (5) USTs and respective UST system were located at the Site.

Fact No. 10

Four (4) of the USTs located at the Site were utilized to store gasoline.

Fact No. 12

One (1) of the USTs located at the Site was utilized to store kerosene.

Fact No. 13

On July 10, 1991, G & M conducted a tightness test of four (4) of the USTs located at the Site.

Fact No. 14

On July 10, 1991, one (1) of the USTs at the Site failed the tightness test.

Fact No. 15

On July 11, 1991, G & M reported a release of gasoline from the UST system at the Site to the IEMA, formerly known as IESDA.

Fact No. 16

On November 7, 1994, a subsurface boring test was performed on the Site.

Fact No. 17

On November 7, 1994, the results of the subsurface investigation produced evidence of a release of gasoline and/or kerosene.

Fact No. 18

On November 7, 1994, G & M reported a release of gasoline from a UST system at the Site to the IEMA, formerly known as IESDA.

Fact No. 19

On or about May 1, 1995, at least five (5) USTs and respective UST system were removed from the Site.

Fact No. 20

Papas did not provide a 20 day report, as described in 35 Ill. Adm. Code 731.162, to the Illinois EPA within 20 days after confirmation of the release reported on or about July 11, 1991.

Fact No. 21

G & M did not provide a 20 day report, as described in 35 Ill. Adm. Code 731.162, to the Illinois EPA within 20 days after confirmation of the release reported on or about July 11, 1991.

Fact No. 22

Papas did not provide a 20 day report, as described in 35 Ill. Adm. Code 731.162, to the Illinois EPA within 20 days after confirmation of the release reported on or about November 7, 1994.

Fact No. 23

G & M did not provide a 20 day report, as described in 35 Ill. Adm. Code 731.162, to the Illinois EPA within 20 days after confirmation of the release reported on or about November 7, 1994.

Fact No. 24

On or about May 17, 1996, G & M submitted to the Illinois EPA a 20 day report, as described in 35 Ill. Adm. Code 731.162.

Fact No. 25

Papas did not provide a 45 day report, as described in 35 Ill. Adm. Code 731.163 to the Illinois EPA within 45 days after confirmation of the release reported on or about July 11, 1991.

Fact No. 26

G & M did not provide a 45 day report, as described in 35 Ill. Adm. Code 731.163, to the Illinois EPA within 45 days after confirmation of the release reported on or about July 11, 1991.

Fact No. 27

Papas did not provide a 45 day report, as described in 35 Ill. Adm. Code 731.163, to the Illinois EPA within 45 days after confirmation of the release reported on or about November 7, 1994.

Fact No. 28

G & M did not provide a 45 day report, as described in 35 Ill. Adm. Code 731.163, to the Illinois EPA within 45 days after confirmation of the release reported on or about November 7, 1994.

Fact No. 29

On or about March 27, 1996, G & M submitted to the Illinois EPA a 45 day report, as described in 35 Ill. Adm. Code 731.163.

Fact No. 30

By letter dated August 23, 1996, the Illinois EPA informed Papas that the Illinois EPA did not receive the 45 day report dated March 27, 1996, until May 1, 1996.


PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

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

WILLIAM D. SEITH, Chief
Environmental Bureau

BY: _____


ALYSSA L. FRON
Assistant Attorney General
Environmental Bureau
100 West Randolph St., 11th Flr.
Chicago, Illinois 60601
(312) 814-3774

CERTIFICATE OF SERVICE

I, ALYSSA L. FRON, an Assistant Attorney General in this case, do certify that I caused to be mailed this 1st day of December, 1997, the foregoing Notice of Filing, Request for Admission of Facts, Complainant's First Set of Interrogatories, and Complainant's First Request for Production of Documents upon:

Thomas Robinson, Esq.
2161 Sheridan Road
Zion, Illinois 60099

Deborah L. Frank, Esq.
Hearing Officer
608 South Prospect Avenue
Champaign, Illinois 61820

by placing same in an envelope, postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois; and

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

by hand delivery.



ALYSSA L. FRON

ILLINOIS POLLUTION CONTROL BOARD

October 2, 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 97-119
) (Enforcement - Land)
G&M TOTAL, INC., an Illinois corporation,)
and GEORGE PAPAS, individually and as)
president of G&M TOTAL, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by W.A. Marovitz):

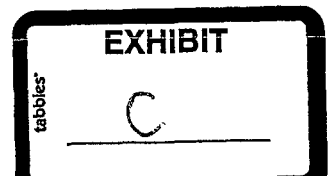
On January 8, 1997, the Illinois Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against G&M Total, Inc., an Illinois corporation (G&M), and George Papas, individually and as president of G&M (Papas). The People allege that G&M and Papas violated the Environmental Protection Act (415 ILCS 5/12(a) (2002)) and Board rules (35 Ill. Adm. Code 731.160, 731.162, 731.163) by not timely responding to a leaking underground storage tank (UST) at their gasoline station. On August 5, 2003, the People filed a motion to deem facts admitted, to which neither G&M nor Papas responded. The Board grants the People's motion for the reasons below.¹

DISCUSSION

G&M allegedly owns and operates a gasoline station located at 2301 Sheridan Road, Zion, Lake County. Comp. at 2. Papas allegedly owns the real property, leases it to G&M, and is responsible for and involved in the day-to-day operation of the gasoline station. *Id.* On December 1, 1997, the People mailed to respondents a request to admit facts. Mot. at 2. According to the People, the document requested the admission of all material facts alleged in the complaint. *Id.*

The facts requested to be admitted address many subjects, including: (1) property and gasoline station ownership and operation; (2) Papas' capacity with G&M; (3) the presence, use, tightness testing, and removal of USTs at the gasoline station; (4) the failure of a UST to pass a tightness test; (5) UST notifications submitted by Papas to the Office of the State Fire Marshal; (6) subsurface soil testing indicating a release of gasoline or kerosene or both at the site; (7) G&M reporting a release to the Illinois Emergency Management Agency (formerly known as the Illinois Emergency Services and Disaster Agency); and (8) when G&M submitted "20 day" and "45 day" reports to the Illinois Environmental Protection Agency. Mot., Exh. B at 3-7.

¹ The Board cites the complaint as "Comp. at _" and the motion to deem facts admitted as "Mot. at _."



At the time the People served the request to admit facts, the Board's procedural rules provided:

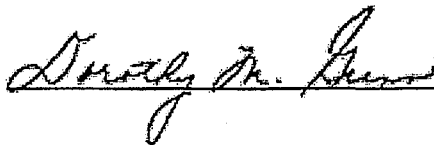
Each of the matters of fact . . . of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. 35 Ill. Adm. Code 103.162(c) (repealed Jan. 1, 2001).

This rule was repealed on January 1, 2001, when the Board adopted an entirely new set of procedural rules. However, the current rule on admissions in the absence of denial (35 Ill. Adm. Code 101.618(f)) is nearly identical to the repealed rule, and which one applies makes no difference in today's outcome. Because the Board applies the procedural rule in effect at the time the document in question was filed or served (*see People v. John Crane, Inc.*, PCB 01-76, slip op. at 2-3 (May 17, 2001)), former Section 103.162(c), quoted above, applies to the People's 1997 request to admit.

Besides not responding to the People's August 5, 2003 motion to deem facts admitted, G&M and Papas have never responded to the 1997 request to admit. Accordingly, under former Section 103.162(c), the facts set forth in the request to admit are deemed admitted by respondents. The Board therefore grants the People's motion to deem facts admitted. *See* 35 Ill. Adm. Code 101.500(d) (non-movant waives objection to granting motion if non-movant fails to respond to motion).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 2, 2003, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

CERTIFICATE OF SERVICE

I, KATHERINE A. KELLY, an Assistant Attorney General, do certify that I caused to be mailed this 1st day of December, 2003, the foregoing MOTION and NOTICE by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois, 60601.

Katherine A. Kelly