

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

MAY - 4 2000

MDI LIMITED PARTNERSHIP )  
#42, an Illinois Partnership, )

Complainant, )

v. )

REGIONAL BOARD OF TRUSTEES )  
FOR BOONE AND WINNEBAGO )  
COUNTIES, in their official capacity, and )  
BOARD OF EDUCATION OF )  
BELVIDERE DISTRICT 100, in their )  
official capacity, )

Respondents. )

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 00-181

Citizen's Suit Enforcement Action

NOTICE OF FILING

To: See Attached Notice List

PLEASE TAKE NOTICE that on May 4, 2000, I filed with the Office of the Clerk of the Pollution Control Board a Complaint, a copy of which is herewith served upon you.

MDI LIMITED PARTNERSHIP #42

By: Andrew Warren  
One of its Attorneys

Roy L. Bernstein  
Andrew J. Warren  
SCHWARTZ & FREEMAN  
401 North Michigan Avenue  
Suite 1900  
Chicago, IL 60611  
(312) 222.0800  
Attorney Number 90736

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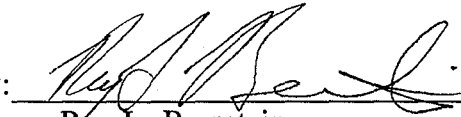
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**APPEARANCE**

I hereby file my appearance in this proceeding on behalf of MDI Limited Partnership

#42.

SCHWARTZ & FREEMAN

By:   
 Roy L. Bernstein  
 One of the Attorneys for MDI Limited  
 Partnership #42

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 Andrew J. Warren  
 SCHWARTZ & FREEMAN  
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**COMPLAINT**

The Complainant, MDI LIMITED PARTNERSHIP #42 ("MDI"), by and through its attorneys, Schwartz & Freeman, complains against the Respondent REGIONAL BOARD OF TRUSTEES FOR BOONE AND WINNEBAGO COUNTIES (the "Regional Board") and BOARD OF EDUCATION OF BELVIDERE DISTRICT 100 (the "Belvidere District") (the Regional Board and Belvidere District are referred to collectively herein as the "School District") as follows:

**Summary of the Complaint**

MDI seeks to recover from the School District costs incurred in connection with the removal and remediation of contamination from two underground storage tanks at a facility in Belvidere, Illinois. The Belvidere District installed and operated the underground storage tanks for more than 20 years before they were abandoned in place. Due to the School District's acts and omissions, causing contamination and allowing contamination to remain in

place, MDI incurred significant costs by conducting a response action to address the contamination.

### Common Allegations

1. MDI is an Illinois limited partnership and a “person” within the meaning of Section 3.26 of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/3.26.
2. The Regional Board is a body politic and corporate and a “person” within the meaning of Section 3.26 of the Act, 415 ILCS 5/3.26.
3. The Belvidere District is a body politic and corporate and a “person” within the meaning of Section 3.26 of the Act, 415 ILCS 5/3.26.
4. Upon information and belief, the Regional Board oversees and supervises the Belvidere District.
5. Jurisdiction of the Illinois Pollution Control Board (the “Board”) is proper pursuant to Section 31 of the Act, 415 ILCS 5/31.
6. Upon information and belief, beginning in at least the 1890’s and continuing until 1985, the Belvidere District owned the real property commonly known as 500 Pearl Street, Belvidere, Illinois (“the Facility”).
7. The Belvidere District installed two underground storage tanks, each with a capacity of 20,000 gallons, at the Facility during the 1930’s for heating oil storage.
8. Upon information and belief, the Belvidere District operated the underground storage tanks from the date of installation and continuing until the 1950’s.
9. The Belvidere District never removed the contents of the underground storage tanks before discontinuing their active use.

10. During the period of operation, the Belvidere District permitted petroleum constituents to be released into soils at the Facility from the underground storage tanks.

11. Beginning at the end of the period of active operation and continuing to at least 1985, the Belvidere District permitted the continued release of petroleum constituents into soils at the Facility from the underground storage tanks.

12. Upon information and belief, the Belvidere District sold the Facility to the Regional Board in 1985.

13. Upon information and belief, the Regional Board owned the Facility from 1985 to 1991.

14. During its period of ownership, the Regional Board permitted the continued release of petroleum constituents into soils at the Facility from the underground storage tanks.

15. Upon information and belief, the Regional Board sold the Facility to the City of Belvidere (the "City") in 1991.

16. Upon information and belief, neither the Belvidere District nor the Regional Board disclosed the presence of the underground storage tanks at the Facility to the City.

17. In November 1995, the City entered into an Option Agreement with MDI for redevelopment of the Facility.

18. As part of its evaluation of the Facility, MDI through its consultant, prepared a Phase I Environmental Assessment in July, 1997 (the "Phase I Report"), which Phase I Report did not disclose the presence of the underground storage tanks at the Facility.

19. MDI exercised its option and purchased the Facility from the City in 1998 for redevelopment into senior citizen residential housing.

20. In July 1998, during excavation associated with MDI's redevelopment of the Facility, the two underground storage tanks were discovered beneath the foundation of a building being removed by MDI. At the time of discovery, petroleum contamination was observed in the soils surrounding the underground storage tanks.

21. On July 16, 1998, a representative of the Office of the Illinois State Fire Marshall confirmed that a petroleum release had occurred at the Facility and assigned Illinois Emergency Management Agency Incident Number 982110 to the leaking underground storage tanks.

22. MDI exposed the underground storage tanks and pumped oily waste water and sludge from the tanks for disposal at an approved disposal facility. The underground storage tanks were cleaned and removed from the Facility.

23. During removal of the underground storage tanks, MDI discovered that fill under and around the tanks and native soil was contaminated by petroleum constituents that had leaked from the underground storage tanks. MDI excavated and stockpiled the contaminated soil for off-site disposal at an approved facility.

24. By October 1998, MDI removed and disposed of approximately 630 cubic yards of petroleum-contaminated soils and approximately 17,000 gallons of oily water and sludge from the Facility.

25. MDI incurred costs for work at the Facility in connection with the removal of the two underground storage tanks and the investigation and removal of contaminated soils and tank contents exceeded \$90,000.

26. Despite repeated demands by MDI, neither the Belvidere District nor the Regional Board have reimbursed MDI for the costs incurred at the Facility.

**COUNT I**  
**Violation of Section 21(a) of the Act**

27. MDI realleges and incorporate by reference as if set forth fully herein Paragraphs 1 through 26 of the Complaint.

28. Section 21(a) of the Act prohibits any person from causing or allowing the open dumping of any waste. 415 ILCS 5/21(a).

29. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility constitute "waste" under the Act. 415 ILCS 5/3.53.

30. The School District caused or allowed petroleum constituents to be released from the underground storage tanks at the Facility in violation of Section 21(a) of the Act.

WHEREFORE, MDI request the Board enter an order as follows:

(a) Require the School District to reimburse MDI for the costs in incurred removing the underground storage tanks and investigating and cleaning up petroleum contaminated soils at the Facility; and

(b) Order any other relief that the Board and equity deem appropriate.

**COUNT II**  
**Violation of Section 21(d)(2) of the Act**

31. MDI realleges and incorporate by reference as if set forth fully herein Paragraphs 1 through 26 of the Complaint.



32. Section 21(d)(1) prohibits a person from conducting a waste-storage operation or waste-disposal operation without a permit granted by the Illinois Environmental Protection Agency ("IEPA"). 415 ILCS 5/21(d)(1).

33. Section 21(d)(2) prohibits a person from conducting a waste-storage operation or waste-disposal in violation of any regulations or standards adopted by the Board pursuant to the Act. 415 ILCS 5/21(d)(2).

34. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility constitute "waste" under the Act. 415 ILCS 5/3.53.

35. The presence of petroleum constituents in underground storage tanks at the Facility constitutes "storage" under the Act. 415 ILCS 5/3.46.

36. The leaking of petroleum constituents from underground storage tanks at the Facility constitutes "disposal" under the Act. 415 ILCS 5/3.08.

37. The School District conducted a waste-storage operation and a waste-disposal operation without a permit in violation of Section 21(d)(1) of the Act. 415 ILCS 5/21(d)(1).

38. The School District conducted a waste-storage operation and a waste-disposal operation in violation of regulations or standards adopted by the Board pursuant to the Act. 415 ILCS 5/21(d)(2).

WHEREFORE, MDI request the Board enter an order as follows:

(a) Require the School District to reimburse MDI for the costs in incurred removing the underground storage tanks and investigating and cleaning up petroleum contaminated soils at the Facility; and

- (b) Order any other relief that the Board and equity deem appropriate.

**COUNT III**  
**Violation of Section 21(e) of the Act**

39. MDI realleges and incorporates by reference as if set forth fully herein paragraphs 1 through 26 of the Complaint.

40. Section 21(e) of the Act prohibits disposal, storage, or abandonment of any waste, "except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder." 415 ILCS 5/21(e).

41. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility constitute "waste" under the Act ILCS 5/3.53.

42. The presence of petroleum constituents in underground storage tanks at the Facility constitutes "storage" under the Act 415 ILCS 5/3.46.

43. The leaking of petroleum constituents from underground storage tanks at the Facility constitutes "disposal" under the ACT. 415 ILCS 5/3.08.

44. The presence of petroleum constituents in underground storage tanks at the Facility for decades after the cessation of active use by the Belvidere District constitutes "abandonment" under Section 21(e) of the Act. 415 ILCS 5/21(e).

45. The School District disposed, stored, and abandoned waste at a facility that did not meet the requirements of the Act, and the regulations and standards thereunder, in violation of Section 21(e) of the Act.

WHEREFORE, MDI requests that the Board enter an order as follows:

(a) Require the School District to reimburse MDI for the costs it incurred removing the underground storage tanks and investigating and cleaning up petroleum contaminated soils at the Facility; and

(b) Order any other relief that the Board and equity deem appropriate.

Respectfully submitted,

MDI LIMITED PARTNERSHIP #42

By: Andrew Warren  
One of its attorneys

Roy L. Bernstein  
Andrew Warren  
SCHWARTZ & FREEMAN  
401 North Michigan Avenue  
Suite 1900  
Chicago, Illinois 60611  
telephone (312) 222-0800  
facsimile (312) 222-0818

Dated: May 4, 2000

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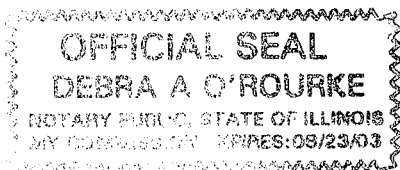
**PROOF OF SERVICE**

I, the undersigned, on oath state that on May 4, 2000, I served MDI Limited Partnership #42's Complaint and Appearance of Counsel, by Certified Mail-Return Receipt Requested, all proper postage paid, by depositing the same in the U.S. Mail post box located at 401 N. Michigan Avenue, Chicago, Illinois, before 5:00 p.m., upon the following persons:  
See Attached Notice List.

Audrey Minglin  
Audrey Minglin  
(Name)

Subscribed and Sworn to Before Me  
this 4 day of May, 2000.

Debra A. O'Rourke  
Notary Public



## **SERVICE LIST**

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

Dr. Richard Fairgrievies  
Regional Superintendent  
Regional Board of School Trustees  
for Boone and Winnebago Counties  
300 Heart Boulevard  
Loves Park, IL 61111

Dr. Richard Sens  
Superintendent of Schools  
Belvidere School District 100  
1201 Fifth Avenue  
Belvidere, IL 61008

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