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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD AUG 12 2004

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 97-119
) (Enforcement)
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

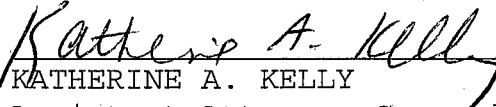
NOTICE OF FILING

TO: Bradley P. Halloran, Hearing Officer Mr. Thomas Davis
Illinois Pollution Control Board 2610 Sheridan Road
James R. Thompson Center Suite 214
100 W. Randolph St., Suite 11-500 Zion, IL 60099
Chicago, Illinois 60601

PLEASE TAKE NOTICE that the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, its Brief in Support of a Remedy, Notice of Filing, and a Certificate of Service, true and correct copies of which are attached hereto and are 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
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-3153

Dated: August 12, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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COMPLAINANT'S BRIEF IN SUPPORT OF A REMEDY

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, moves the Illinois Pollution Control Board ("Board") for the entry of an order granting Complainant's request for a remedy in the above-referenced enforcement matter.

INTRODUCTION

On January 8, 1997, Complainant filed a two-count complaint against 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). Specifically, the Complainant's Complaint alleges water pollution and failure to timely perform initial abatement

measures and site characterization following confirmation of a petroleum release at their gasoline service station located at 2301 Sheridan Road, Zion, Lake County, Illinois ("site").

On December 1, 2003, Complainant filed its Motion for Summary Judgment asking the Board to find that 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's Leaking Underground Storage Tank ("LUST") Regulations, 35 Ill. Adm. Code 731.160, 731.162 and 731.163, since Respondents have not participated in litigation efforts nor settlement efforts to resolve this case.

On March 4, 2004, the Board entered an Order finding "... that G&M and Papas violated Sections 731.162 and 731.163, and in turn Section 731.160, of the Board's UST regulations by, respectively, not timely submitting a "20 day report" and "45 day report" to the Agency documenting initial response measures." (See p. 6 of the Board's March 4, 2004, Order). The Board found that genuine issues of material fact existed for the alleged 12(a) violation and ordered the parties to proceed to hearing regarding the 12(a) violation and any further relief. (See p. 7-8 of the Board's March 4, 2004, Order).

As the Board found that Respondents violated Sections

731.162, 731.163 and 731.160 of the Board's UST regulations, Complainant does not believe it is necessary to proceed to hearing to determine liability for the alleged 12(a) violation and instead prefers to seek a final remedy for the regulatory violations found and to present its remedy analysis in the form of this brief.

CONSIDERATION OF SECTION 33(c) FACTORS

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the areas in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, Complainant states as follows:

1. In regards to public impact, Complainant maintains that Respondent's failure to comply with the Act and Board regulations denies the Agency and the public information that is important to the control and regulation of USTs in the State of Illinois. The respondents did not promptly initiate remediation of the known petroleum release which occurred at the Site originally in 1991, thus threatening further migration of contaminants. To date, Respondents have failed to completely and adequately remediate the site fostering the continual exposure of benzene, ethyl benzene, toluene and xylene to the environment.

2. The pollution source is an abandoned underground storage tank system ("UST system") within an inoperable gasoline service station and therefore is currently of minimal social and economic benefit.

3. The source is located in a commercial area and is therefore suitable to the area in which it is located.

4. It was both technically practicable and economically reasonable for the source to comply with the Board's UST regulations by immediately conducting initial abatement measures

and performing a site characterization in response to a known petroleum release into the environment. There existed and continues to exist a threat of soil and groundwater contamination resulting from the petroleum release which created and continues to create a danger to human health and the environment.

5. On July 11, 1991, G & M Total, Inc. reported to the Illinois Emergency Management Agency ("IEMA"), formally known as the Illinois Emergency Services and Disaster Agency, a release of petroleum from its UST system at the Site. On November 7, 1994, G & M Total, Inc. performed a subsurface soil boring for the Site which produced further evidence of a release of petroleum. On November 7, 1994, G & M Total, Inc. reported to the IEMA this further evidence of a release of petroleum at the Site. On May 17, 1996, Respondents performed their initial release abatement measure by submitting their "20 day report" to the Illinois EPA on that date. On March 27, 1996, Respondents performed their site characterization by providing their "45 day report" to the Illinois EPA which the Agency received May 1, 1996. However, as of the date of filing this brief, benzene, ethyl benzene, toluene and xylene continue to contaminate the Site as a result of the July 11, 1991 release incident and the

November 7, 1994 release evidence incident. Since respondents have failed to complete the corrective action necessary to adequately address the remaining contamination at the Site, the contamination remains a continuing threat to human health and the environment.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002) provides:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2), (b) (3) or (b) (5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act;
and
5. the number, proximity in time, and gravity

of previously adjudicated violations of this Act by the violator.

In response to these factors Complainant states as follows:

1. From July 11, 1991 to May 1, 1996, Respondents failed to perform initial abatement measures in response to a known petroleum release at the Site. From July 11, 1991 to May 1, 1996, Respondents failed to perform an initial site characterization in response to a known petroleum release at the Site. Respondents began to perform remedial measures in response to the petroleum release six years subsequent to the discovery of the release but to date have not addressed the remaining contamination at the Site. To date, Respondents have failed to demonstrate that they have provided adequate protection for the human health of Illinois citizens and the environment as a result of the July 11, 1991 petroleum release incident and the November 7, 1994 petroleum evidence incident.

2. Respondents did not promptly initiate remediation of the release, thus threatening further migration of benzene, ethyl benzene, toluene and xylene to the environment. Respondents began to perform remedial measures in response to the petroleum release six years subsequent to the discovery of the release. To date, Respondents have not addressed the remaining contamination at the Site.

3. Respondents realized a cost savings by not complying with any of the applicable Board UST remediation regulations for six years. However, any cost savings may be offset by the cost of investigation and remediation to a larger area of petroleum migration over time.

4. A civil penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondents have no known previously adjudicated violations of the Act or Board Regulations.

RELIEF

Respondents submitted to the Illinois EPA documentation summarizing their initial release abatement actions and data regarding an initial site characterization six years subsequent to the discovery of the petroleum release. However, the Site continues to remain contaminated with petroleum which the Board found released and again evidenced in 1991 and 1994, respectively. (See p. 6 of the Board's March 4, 2004, Order). The Complainant's January 8, 1997 Complaint requests not only that the Board find Respondents liable for violations of the Act and the Board's LUST Regulations as a result of the petroleum release, but further that the Board grant to the Complainant

civil penalties, a cease and desist order and any other relief that the Board should deem appropriate and just.

The complainant respectfully requests that the Board grant to it a civil penalty of Fifteen Thousand Dollars (\$15,000.00) against Respondents for violations of the Board's LUST Regulations, but declines to further seek an order requesting that Respondents cease and desist from further violations of those LUST Regulations that were the subject matter of the January 8, 1997 Complaint.

However, Complainant does request that the Board grant to it any such relief that the Board should deem appropriate and just and respectfully requests that the Board deem it appropriate and just to order the respondents to address the remaining petroleum contamination at the Site by ordering the following:

1. That within sixty (60) days of the entry of this Order, Respondents shall submit to the State of Illinois, for review and approval, a Site Investigation Plan for the investigation of contamination on and off of the Site, including a proposed schedule for implementation of the plan.

2. That the Illinois EPA shall review said Site Investigation Plan for approval. If said Site Investigation

Plan is denied, the Respondents shall resubmit the plan within thirty (30) days of receipt of the notice of denial from the Illinois EPA and shall address all comments and denial points of the Illinois EPA. If the Illinois EPA approves the Site Investigation Plan, Defendant shall implement the approved plan according to its terms, including any modifications as directed by Illinois EPA, in accordance with the approved schedule for implementation.

3. That within thirty (30) days of completion of the Site Investigation Plan, Respondents shall submit a Site Investigation Report to the Illinois EPA for review. Upon its review of the Site investigation Report, if the Illinois EPA determines that further investigation is necessary to fully delineate the nature and extent of any on-site and off-site contamination, the Illinois EPA shall advise the Respondents that they must submit a Second Phase Site Investigation Plan for additional investigation. The Respondents shall submit the Second Phase Site Investigation Plan within thirty (30) days of receipt of the Illinois EPA's written determination that further investigation is required. This investigation plan shall include a schedule for its implementation.

4. That upon written approval by the Illinois EPA of the Second Phase Investigation Plan, the Respondents shall implement the approved plan according to its terms, including any modifications as directed by Illinois EPA, in accordance with the approved schedule for implementation. The Respondents shall submit to the Illinois EPA a Second Phase Site Investigation Report within thirty (30) days of completion of the work under the plan.

5. That if the Illinois EPA determines upon its review of the Second Phase Site Investigation Report that further investigation is necessary to fully determine the nature and extent of both on-site and off-site contamination, the Illinois EPA shall advise the Respondents that they must submit a further site investigation plan for a further phase of the investigation. The procedures set forth in paragraphs 3 and 4 above shall govern any further phases of the investigation until such time as the Illinois EPA advises Respondents that the results of the investigation have fully determined the nature and extent of both on-site and off-site contamination.

6. That within forty-five (45) days of receipt of the Illinois EPA's written determination that the results of the investigation fully determine the nature and extent of

contamination, the Respondents shall submit a combined Remediation Objectives Report ("ROR") consistent with 35 Ill. Adm. Code 740.445 and a Corrective Action Plan ("CAP") in accordance with 35 Ill. Adm. Code Part 731.166 for the remediation of soil and groundwater contamination, both on and off of Respondents' site. The CAP shall include a schedule for its implementation. Any off-site remediation objectives shall meet Tier I residential remediation objectives unless the off-site property owner(s) agree to place institutional controls or use engineered barriers pursuant to 35 Ill. Adm. Code 742 to establish different remediation objectives. Any remediation objectives exceeding Tier I residential remediation objectives or that requires an institutional control or engineered barrier requires the approval of the Illinois EPA. Nothing in this Order shall be interpreted to require that persons that are not a party to this Order must accept restrictions on the use of their property.

7. That if the Illinois EPA disapproves the ROR and/or CAP submitted in accordance with the immediately preceding paragraph 6, the Respondents shall submit to the Illinois EPA a modified document to address all of the Illinois EPA's comments within forty-five (45) calendar days of the receipt of the

disapproval letter, unless the Illinois EPA in its disapproval letter grants a longer time period.

8. That upon written approval by the Illinois EPA of the CAP, the Respondents shall implement the CAP in accordance with its Illinois EPA-approved terms and schedules, including any modifications as approved or directed by Illinois EPA, in accordance with 35 Ill. Adm. Code 731.166(c).

9. That if the Illinois EPA approves with conditions any of the documents described in paragraphs 1 to 8 above, the Respondents shall implement the approved document subject to the conditions or modifications contained in the documents in accordance with the approved schedule for implementation. Except as specified in paragraph 8 above, if the Illinois EPA disapproves a document, the Respondents shall submit a modified document addressing the comments and concerns of the Illinois EPA within thirty (30) days of the receipt of the disapproval letter.

10. That if at any time the Illinois EPA determines upon its review of the progress of remediation that further modifications to the CAP are necessary for achieving the Illinois EPA-approved cleanup objectives, both on and off the Site, the Illinois EPA shall advise Respondents in writing that

Respondents must submit a modified CAP within a specified time period. Respondents shall submit the modified CAP within the foregoing time period. The modified CAP shall include a schedule for its implementation. Upon its approval, the Respondents shall implement the modified CAP in accordance with its Illinois EPA-approved terms and schedules.

11. That the Respondents shall give at least fourteen (14) calendar days verbal and written notice to the Illinois EPA prior to the initiation of any construction or implementation of the CAP. Notice shall be directed to:

Lizz Schwartzkopf
Illinois Environmental Protection Agency
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
TEL: 217-524-8763
FAX: 217-524-4193

12. That within sixty (60) calendar days after achieving the Illinois EPA-approved cleanup objectives approved in the CAP, or such later time as specified by the Illinois EPA in writing, the Respondents shall submit a Corrective Action Completion Report, certified by a registered professional engineer in Illinois, to the Illinois EPA. This report shall be consistent with the requirements for a High Priority Corrective Action Completion Report set forth under 35 Ill. Adm. Code

732.409. Upon receipt of the Corrective Action Completion Report, the Illinois EPA shall, pursuant to Parts 731 and 742, review and either approve or disapprove it in writing. The Illinois EPA reserves the right to disapprove the Corrective Action Completion Report if the Respondents have failed to implement the plan of corrective action approved by the Illinois EPA or if the Illinois EPA approved cleanup objectives set forth in the approved Remediation Objectives Report have not been met.

13. That if the Illinois EPA disapproves the Corrective Action Completion Report, the Respondents shall perform to completion additional corrective action as necessary to satisfy the Illinois EPA approved clean-up objectives within the time frame set forth in the Illinois EPA's notice of disapproval.

14. That the parties may, by mutual written consent, extend any compliance date without leave of the Board. A request for any modification shall be made in writing and submitted to the contact persons identified in Section IX.H. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party.

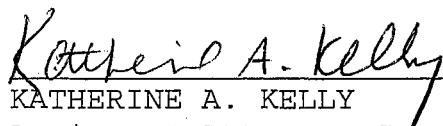
15. Such other and further relief as this Board deems equitable and just.

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
Assistant Attorney General

BY:


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Assistant Attorney General
Environmental Bureau
188 W. Randolph St. - 20th Fl.
Chicago, IL 60601
(312) 814-3153

CERTIFICATE OF SERVICE

I, KATHERINE A. KELLY, an Assistant Attorney General, do certify that I caused to be mailed this 12th day of August, 2004, the foregoing BRIEF 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