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DEC 14 2004

STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

December 10, 2004

PCB05-110

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

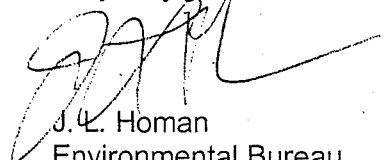
Re: ***People v. J. McDaniel, Inc., an Illinois corporation***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINT and APPEARANCE in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

  
J. L. Homan  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

JLH/pp  
Enclosures

**RECEIVED**  
CLERK'S OFFICE

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**DEC 14 2004**

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
J. McDANIEL, INC., an Illinois )  
corporation, )  
 )  
Respondent. )

PCB No. 05-110  
(Enforcement)

**NOTICE OF FILING**

To: Jerry L. McDaniel  
Registered Agent  
303 S. Hutton  
P.O. Box 126  
Newton, IL 62448

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2002), to correct the pollution alleged in the Complaint filed in this case.

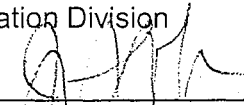
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:



J. L. HOMAN  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: December 10, 2004

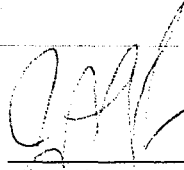
## CERTIFICATE OF SERVICE

I hereby certify that I did on December 10, 2004, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Jerry L. McDaniel  
Registered Agent  
303 S. Hutton  
P.O. Box 126  
Newton, IL 62448

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601



---

J. L. Homan  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD DEC 14 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
J. McDANIEL, INC., an Illinois )  
corporation, )  
 )  
Respondent. )

PCB  
No. 05-110

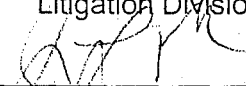
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, J. L. HOMAN, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

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

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

BY:   
\_\_\_\_\_  
J.L. HOMAN  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: December 10, 2004

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CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 14 2004

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 J. McDANIEL, INC., an Illinois corporation, )  
 )  
 Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 05-110  
(Water-Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, J. McDANIEL, INC., an Illinois corporation, as follows:

COUNT I

WATER POLLUTION (VERMILION COUNTY)

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.
4. J. McDaniel, Inc., ("McDaniel"), is an Illinois corporation in good standing and is a trucking company with terminal facilities throughout Illinois.

5. Section 12 of the Act, 415 ILCS 5/12 (2002), provides in pertinent part that:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in 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 so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

\* \* \*

- d. Deposit any contaminants upon the land in such place and manner as to create a water pollution hazard;

\* \* \*

6. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002) provides:

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

7. Section 3.395 of the Act, 415 ILCS 5/3.395 (2002) provides in pertinent part:

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

8. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002) provides:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

9. Section 3.550 of the Act, 415 ILCS 3.550 (2002) provides:

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

10. At about 1:00 p.m. on November 12, 2001, a truck driver employed by the

Respondent was operating a tank truck loaded with gasoline in Danville, Vermillion County,

Illinois. While maneuvering at a Clark service station at the corner of Voorhees and Bowman Streets, the tank truck struck a metal post. A valve on the underside of the tanker was sheared off by the impact and an emergency shut-off valve on the tanker was damaged, resulting in the release of 2,900 gallons of gasoline from the tanker.

11. The Respondent caused or allowed the gasoline to discharge to a storm water drain and then into a drainage way approximately 500 feet from the point of release. The gasoline subsequently discharged from the drainage way into Stony Creek approximately 2,000 feet west of the point of release.

12. Gasoline and dissolved petroleum constituents are "contaminants" as that term is defined in the Act, 415 ILCS 5/3.165 (2002).

13. At approximately 1:15 p.m. on November 12, 2001, the Danville Fire Department arrived on the scene and noted the presence of strong gasoline odors in the area, and reported Lower Explosive Limit (LEL) readings in the storm sewer ranging from 50-70%.

14. To dilute the gasoline, and to prevent a fire or explosion, the Fire Department flushed the storm sewer at a rate of 100 to 200 gallons per minute for five or six hours.

15. At about 2:25 p.m. on November 12, 2001, Bodine Environmental Services ("Bodine") arrived at the site to begin emergency response actions on behalf of the Respondent. Approximately 4,500 gallons of impacted water were collected, including approximately 1,000 gallons of gasoline.

16. During the afternoon and evening of November 12, 2001, the Fire Department received many complaints about the gasoline odors emanating from the drainage way and creek, and in response, resumed flushing of the storm sewer and drainage way that evening.

17. Bodine conducted emergency and post-emergency response actions at the site from November 12, 2001, through November 23, 2001.



18. A second company, Terracon, was also engaged to conduct post-emergency response work on site.

19. On November 13, 2001, the Illinois EPA visited the site along with the Illinois Department of Natural Resources ("Illinois DNR"), the Vermilion EMA, the Danville Fire Department, Bodine and Terracon, and walked along the drainage way. The Illinois DNR representatives observed dead fish and macro invertebrates in the drainage way and beyond the spill barriers in Stony Creek. Dead fish were observed up to three-quarters of a mile downstream from the point where the drainage way enters Stony Creek.

20. On November 14, 2001, the Illinois DNR observed dead fish and a heavy film on the water just upstream of the barriers, approximately one mile downstream in Stony Creek. The Illinois DNR estimated that 6,552 fish were killed by the release within the two and one half mile impacted stretch of Stony Creek.

21. By causing or allowing the discharge of gasoline and dissolved petroleum constituents into a storm sewer, surface water drainage way, and Stony Creek, which are "waters" of the State, and by causing a fish kill, the Respondent has caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. McDaniel, Inc.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate.

## COUNT II

### WATER POLLUTION HAZARD (VERMILION COUNTY)

1-21. Complainant realleges and incorporates herein by reference paragraphs 1 through 21 of Count I as paragraphs 1 through 21 of this Count II.

22. On or about November 13, 2001, Terracon collected soil samples from the drainage way at the direction of the Illinois EPA. The subsequent analytical results indicated levels of benzene, ethyl benzene, toluene, and total xylene (collectively referred to as "BETX") as high as 715 milligrams per liter ("mg/l), 3,120 mg/l, 3,690 mg/l, and 16,900 mg/l, respectively.

23. On April 12, 2002, the Illinois EPA rejected Respondent's proposed compliance commitment agreement because it failed to address the remediation of the sediment in the drainage way and because the proposed compliance commitment agreement was received after the forty-five (45) day statutory period for response to a Violation Notice had elapsed.

24. A report dated August 7, 2002, by Terracon proposed on behalf of the Respondent to achieve remediation pursuant to the Tiered Approach to Corrective Action Objectives ("TACO") regulations in general and site-specific Tier 2 remediation objectives developed by Terracon. The August 7, 2002, report showed levels of benzene in sediments up to three hundred forty-one mg/l (341 mg/l).

25. The dispute as to whether the drainage way impacted by the gasoline release ought to be considered as sediment or soil, for purposes of remedial objectives, was not resolved. The remedial objectives for sediments that have been developed are more stringent than those for soils because they are designed to be protective of sensitive aquatic organisms. The Respondent has subsequently failed to adequately remediate the BETX contamination of the drainage way.

26. By causing or allowing the gasoline and dissolved petroleum constituents to be released from the tanker truck, and deposited upon the land within the drainage way, and by subsequently failing to remove such contaminated soils or sediments, the Respondent has created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. McDaniel, Inc.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

#### **COUNT III**

## WATER POLLUTION (McLEAN COUNTY)

1-9. Complainant realleges and incorporates herein by reference paragraphs 1 through 9 of Count I as paragraphs 1 through 9 of this Count III.

10. At about 7:45 a.m. on April 3, 2001, a truck driver employed by the Respondent was operating a tank truck loaded with gasoline on Route 136 in McLean County, Illinois. The truck crossed into oncoming traffic, struck a car, rolled over and struck a utility pole, killing the driver and resulting in the release of over 8,000 gallons of gasoline.

11. The Respondent caused or allowed the gasoline to discharge into a drainageway over a distance of approximately one hundred (100) feet, after which it ran through a culvert under Route 136.

12. Gasoline and dissolved petroleum constituents are "contaminants" as that term is defined in the Act, 415 ILCS 5/3.165 (2002).

13. At approximately 8:15 a.m. on April 3, 2001, the McLean Fire Department arrived on the scene.

14. To dilute the gasoline, and to prevent a fire or explosion, the Fire Department applied approximately 600 gallons of foam to the tanker and approximately 12,000 gallons of water to flush the gasoline from the area adjacent to the roadway. The Fire Department also closed the roadway to traffic to prevent exposure of the public to the risk of fire or explosion.

15. The gasoline, along with the foam and water, was flushed through the drainage way and into a farm field, and discharged through approximately two miles of field tiles into Sugar Creek.

16. At about noon on April 3, 2001, Bodine Environmental Services ("Bodine") arrived at the site to begin emergency response actions on behalf of the Respondent. Bodine attempted by using booms and an underflow dam to contain the gasoline within the creek and

prevent its further migration downstream; vacuum trucks were employed to recover the gasoline from the surface of Sugar Creek.

17. During the afternoon and evening of April 3, 2001, the Illinois Department of Natural Resources ("Illinois DNR"), observed dead fish in Sugar Creek and located the point of discharge from the field tiles.

18. On April 4, 2001, the Illinois DNR completed its investigation and estimated that 55,374 fish were killed by the release within the four mile impacted stretch of Sugar Creek.

19. From April 4, 2001 through April 16, 2001, Bodine undertook the excavation and removal of an estimated 1,625 tons of contaminated soil. Bodine also installed a recovery trench and recovery pit along a field tile to the north of the release point. Illinois EPA observed petroleum sheens in both the trench and the pit. At the request of the McLean County Health Department, Respondent installed a new septic system for a nearby home since petroleum vapors from a field tile had entered the home through the pre-existing septic system.

20. On April 4, 2001, the Illinois EPA collected surface water samples including the discharge point of the field tiles. The subsequent analytical results indicated levels of benzene, ethyl benzene, toluene, and total xylenes (collectively referred to as "BETX") as high as 36 milligrams per liter ("mg/l"); 3.3 mg/l, 69 mg/l, and 14 mg/l, respectively. Detectable levels of BTEX were reported by Respondent to be present at the discharge point of a field tile for seven weeks after the initial release occurred.

21. By causing or allowing the discharge of gasoline and dissolved petroleum constituents into the surface water drainage way and Sugar Creek, which are "waters" of the State, and by causing a fish kill, the Respondent has caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. McDaniel, Inc.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

#### COUNT IV

##### WATER POLLUTION HAZARD (McLEAN COUNTY)

1-9. Complainant realleges and incorporates herein by reference paragraphs 1 through 9 of Count I as paragraphs 1 through 9 of this Count IV.

10-20. Complainant realleges and incorporates herein by reference paragraphs 10 through 20 of Count III as paragraphs 10 through 20 of this Count IV.

21. A second company, Earth Tech, was also engaged to conduct post-emergency response issues on site. A site investigation report dated November 2001 by Earth Tech provided on behalf of the Respondent analytical results of soil and water samples, some of which exceeded the Tier 1 Soil Remediation Objectives developed pursuant to the Tiered Approach to Corrective Action Objectives ("TACO") regulations.

22. The Illinois EPA construed the November 2001 report as a proposed compliance commitment agreement although it had been received after the forty-five day statutory period for response to a Violation Notice had elapsed. On December 4, 2001, the Illinois EPA rejected the proposed compliance commitment agreement because clean-up objectives for soil and groundwater had not been met in two areas to the north and south of Route 136, and no sampling of a nearby residential well, surface water or sediments had been conducted or proposed.

23. A remedial action plan dated August 2002 by Earth Tech proposed on behalf of the Respondent to continue efforts to mitigate the soil contamination but did not include additional investigation as to impacts upon groundwater or a nearby residential well.

24. As of May 30, 2003, when another remedial action plan was submitted by Respondent to the Illinois EPA, soil and groundwater exceedences still remained, no sampling of the residential well, surface water or sediment had been conducted, and the biosparge system proposed by Respondent to remediate the area around Route 136 had not been implemented. As of October 21, 2003, when another report was submitted by Respondent, soil and groundwater exceedences still remained, and the biosparge system had not been implemented.

25. By causing or allowing the gasoline and dissolved petroleum constituents to be released from the tanker truck, and deposited upon the land within the drainage way along either side of Route 136, and in the area between the release point and the nearby residential well, the Respondent has created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. McDaniel, Inc.:

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Respectfully submitted,

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

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

BY: \_\_\_\_\_  
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

Of Counsel  
J. L. Homan  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: 12/09/07