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MAY 23 2005

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 19, 2005

PLB05-199

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

Re: ***People v. Champion Environmental Services, Inc.***

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 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

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MAY 23 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

CHAMPION ENVIRONMENTAL
SERVICES, INC., a Wisconsin
corporation,

Respondent.

PCB No. 05-199
(Enforcement - Air)

NOTICE OF FILING

To: CHAMPION ENVIRONMENTAL SERVICES, INC.
c/o Barbara J. Gorniak, R.A.
38 West End Drive
Gilberts, IL 60136

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: May 19, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on May 19, 2005, 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: CHAMPION ENVIRONMENTAL SERVICES, INC.
c/o Barbara J. Gorniak, R.A.
38 West End Drive
Gilberts, IL 60136

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

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MAY 23 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF
ILLINOIS,

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vs.

CHAMPION ENVIRONMENTAL
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corporation,

Respondent.

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(Enforcement - Air)

ENTRY OF APPEARANCE

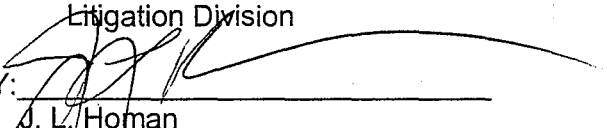
On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, J. L. HOMAN,
Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of
record.

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: May 19, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD MAY 23 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)

Complainant,)

vs.)

PCB No. 05- 199
(Enforcement-Air)

CHAMPION ENVIRONMENTAL)
SERVICES, INC., a Wisconsin)
corporation,)

Respondent.)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, complains of the Respondent, CHAMPION ENVIRONMENTAL SERVICES, INC., as follows:

COUNT I

VIOLATIONS OF THE NATIONAL EMISSIONS STANDARDS FOR ASBESTOS

1. This count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois Environmental Protection Agency ("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 investigating and enforcing violations of the Act.

3. CHAMPION ENVIRONMENTAL SERVICES, INC. ("Champion"), is a Wisconsin corporation that has filed a certificate of authority to transact business in Illinois in

good standing. The registered agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois 60136.

4. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street in East Moline, Rock Island County, Illinois. The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand linear feet of regulated asbestos containing material ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand (2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

5. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and demolition project to the Illinois EPA on March 23, 2005.

6. On May 4, 2005, the Illinois Attorney General's Office was contacted by local citizens with complaints alleging improper asbestos removal activity at the facility. The Illinois EPA was requested to investigate the complaints.

7. The Illinois EPA subsequently provided its investigatory reports to Illinois Attorney General's Office.

8. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2002) provides as follows:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto;

9. The regulations on National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M, were adopted pursuant to Section 112 of the Clean Air Act, 42 USC §7412. Asbestos is regulated as a hazardous air pollutant because it is a carcinogen. RACM contains more than one percent asbestos and is generally "friable," which means such materials, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

10. 40 CFR §61.141 provides the following pertinent definitions:

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. . . . As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building. . . .

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763 section

1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Outside air means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open air ferry dock.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Visible emissions means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material. . . . This does not include condensed, uncombined water vapor.

11. 40 CFR §61.145 provides in pertinent part as follows:

Standard for demolition and renovation.

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is

- (i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or
- (ii) At least 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously.

* * *

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

* * *

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

* * *

(6) For all RACM, including material that has been removed or stripped:

- (i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with §61.150; and
- (ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.
- (iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.
- (iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

* * *

12. 40 CFR §61.150 provides in pertinent part as follows:

Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of §§61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material. . . .

* * *

(5) As applied to demolition and renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of §61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of §61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

* * *

13. The former Case building in East Moline is a "facility" and the Respondent is an "operator" of a "demolition" as these terms are defined at 40 CFR 61.141.

14. Transite is a cementitious product classified as "Category II nonfriable ACM" as that term is defined at 40 CFR 61.141. Category II materials that have a high probability of being crumbled, pulverized, or reduced to powder as part of demolition must be removed before

demolition begins.

15. On May 5, 2005, during the Illinois EPA inspection of the facility, Champion was removing transite panels from the roof of the facility. The Respondent's removal methods rendered much of this formerly non-friable material friable. Specifically, some of the transite was being struck with hammers, dropped from the roof to the concrete floor, and run over by heavy equipment. Due to the Respondent's improper work practices as to removal, the transite materials became crumbled, pulverized, or reduced to powder during demolition.

16. During the May 5, 2005, inspection, large amounts of dry friable asbestos-containing waste materials were on the floor of the facility and scattered around on the site. Champion was not using water to suppress or control emissions. Eight open bins and three partially covered thirty cubic yard containers with dry friable asbestos-containing waste materials were located on site. Suspected asbestos-containing waste materials and construction debris were scattered on the banks of the Mississippi River near the facility. Analytical testing of samples taken of the transite at the site revealed the presence of approximately 30 to 35 percent asbestos.

17. The Respondent failed to properly remove Category II nonfriable ACM from the facility and thereby ensure that such materials would not become crumbled, pulverized, or reduced to powder during demolition, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR §61.145(c)(1).

18. The Respondent failed to adequately wet and keep wet all RACM removed during renovation operations until collected and contained in leak-tight wrapping in preparation for disposal, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR

§61.145(c)(6).

19. The Respondent failed to deposit as soon as practicable all RACM and asbestos containing waste material at a site permitted to accept such waste, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR §61.150(b)(1).

20. The Respondent failed to collect, contain and deposit as soon as practicable all RACM and asbestos-containing waste materials generated during the removal at a site permitted to accept such waste, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002), 40 CFR § 61.145(c)(6), and 40 CFR §61.150(b)(1).

21. Champion has previously been adjudicated in violation of Sections 9(a) and 9.1(d) of the Act in PCB 97-135. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), and Complainant is thereby authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that the 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil

penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

F. Grant such other and further relief as the Board deems appropriate.

43(a)(2002), ORDER the Respondent to alleviate the threat of additional emissions or other

COUNT II

AIR POLLUTION VIOLATIONS

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

17. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

18. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 (2002), provides:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

19. Section 3.115 of the Act, 415 ILCS 3.115 (2002), provides the following definition:

“Air pollution” is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

20. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines contaminant as:

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

21. Asbestos is a contaminant as that term is defined in Section 3.165 of the Act.

22. Due to the Respondent’s improper work practices as to both removal and the collection or processing of the asbestos-containing waste materials, the transite materials became crumbled, pulverized, or reduced to powder during demolition and resulted in “visible emissions” as that term is defined at 40 CFR 61.141.

23. By causing or allowing visible emissions from asbestos-containing waste materials, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR §61.150(a).

24. The Respondent has caused, threatened, or allowed the discharge or emission of dry friable asbestos, a contaminant and hazardous air pollutant, into the environment so as to tend to cause air pollution, thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and 35 Ill. Adm. Code 201.141.

25. Champion has previously been adjudicated in violation of Sections 9(a) and 9.1(d) of the Act in PCB 97-135. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), and Complainant is thereby authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT III

OPEN DUMPING

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 21 of the Act, 415 ILCS 5/21 (2002), provides, in pertinent part, as follows:

No person shall:

- a. Cause or allow the open dumping of any waste.

* * *

- e. Dispose, treat, store or abandon any waste . . . except at a site which meets the requirements of this Act and of regulations and standards thereunder.

* * *

- p. In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

- 1. litter;

* * *

- 18. Section 3.385 of the Act, 415 ILCS 5/3.385 (2002), provides as follows:

"Refuse" means waste.

- 19. Section 3.535 of the Act, 415 ILCS 5/3.535 (2002), provides as follows:

"Waste" means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities,

* * *

- 20. Section 3.305 of the Act, 415 ILCS 5/3.305 (2002), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

- 21. Since on or before May 4, 2005, and at times known better to the Respondent, Champion has caused or allowed the open dumping of asbestos-containing waste and other refuse at the site. Such dumping has resulted in litter and, due to the presence of asbestos-containing waste, has created a danger to the public health and environment. The site does not

meet the requirements of the Act, and the regulations and standards thereunder, for a waste disposal site.

22. By causing or allowing the open dumping of refuse and waste, and by disposing or abandoning wastes at a site that does not meet the requirements of the Act and the regulations and standards thereunder, the Respondent, Champion, has violated Sections 21(a) and 21(e) of the Act, 415 ILCS 5/21(a), 21(e) (2002). By causing or allowing open dumping in a manner resulting in litter, the Respondent has also violated Section 21(p) of the Act, 415 ILCS 5/21(p) (2002).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that the 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

F. Grant such other and further relief as the Board deems appropriate.

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: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Javonna L. Homan
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 5/19/05