

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
MACON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
)
v.)
)
BATH INCORPORATED, an Illinois)
corporation,)
Respondent.)

PCB NO. 05-139
(Cost Recovery)

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NOV 01 2005

STATE OF ILLINOIS
Pollution Control Board

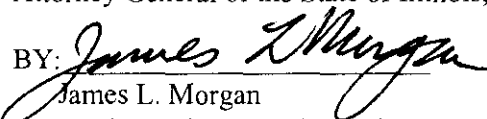
NOTICE OF FILING OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

TO: Margaret B. Cuttill
695 South Crea Street
Decatur, IL 62522

YOU ARE HEREBY NOTIFIED that the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and has filed its motion for summary judgment against Respondent, BATH INCORPORATED with the Illinois Pollution Control Board.

Respectfully submitted,

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

BY: 
James L. Morgan
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/524-7506
Dated: October 28, 2005

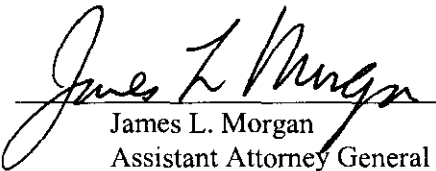
CERTIFICATE OF SERVICE

I hereby certify that I did on the 28th day of October 2005, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Danville, Illinois, a true and correct copy of the instruments entitled Complainant's Motion For Summary Judgment and Notice of Filing

TO:

Margaret B. Cuttill
695 South Crea Street
Decatur, IL 62522

Carol Webb (without Exhibits)
Hearing Officer, Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

A handwritten signature in cursive script, reading "James L. Morgan", written over a horizontal line.

James L. Morgan
Assistant Attorney General
Environmental Bureau/Springfield

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
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PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
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v.) PCB NO. 05-139
) (Cost Recovery)
BATH INCORPORATED, an Illinois)
corporation,)
Respondent.)

COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and moves for summary judgment upon the complaint against Respondent, BATH INCORPORATED. In support of this motion, Complainant states as follows:

STATEMENT OF FACTS

1. Respondent, Bath Incorporated, is an Illinois corporation in good standing and authorized to do business in the State of Illinois. See Exhibit A (Secretary of State Corporate Information Sheet).
2. The Respondent is the owner and operator of a landfill located at 901 Walnut Street, in Decatur, Macon County, Illinois. See Exhibits B (March 9, 1994 Order from *People v. Bath Incorporated*, 85-CH-164), C-1 (November 14, 1974 Permit), and C-2 (December 9, 1988 Permit).
3. During Respondent's operation of the landfill, Respondent disposed of a variety of wastes at the landfill. See Exhibit D (December 2001 Site Investigation Report prepared by Earth Tech, Inc., at p. 3).
4. These wastes and other materials contained Anthracene, Benzo(a)anthracene, Benzo(b)fluoranthene, Benzo(a)pyrene, Chrysene, Di Benzo(a)anthracene, Fluoranthene, PCBs,

Indeno(1,2,3-c, d)pyrene, Pyrene, Lead, Cadmium, and Mercury, each of which are identified by Section 3.215 of the Act, 415 ILCS 5/3.215 (2004), as hazardous substances. See Exhibit D, pp 13-15.

5. For a period of time prior to 2002, contaminants, including Anthracene, Benzo(a)anthracene, Benzo(b)fluoranthene, Benzo(a)pyrene, Chrysene, Di Benzo(a)anthracene, Fluoranthene, PCBs, Indeno(1,2,3-c, d)pyrene, Pyrene, Lead, Cadmium, and Mercury, present in the wastes disposed of at the landfill have leached, escaped, and leaked from the landfill into the adjacent reach of the Sangamon River onto and into the land surface and subsurface strata around and underneath the landfill. See Exhibit D, pp.13-15.

6. On May 13, 2002, Illinois EPA sent Respondent a notice pursuant to Section 4(q) of the Act, 415 ILCS 5/4(q) (2002) requesting that it perform identified remedial actions at the Facility. See Exhibit E.

7. Respondent did not respond to the request. See Exhibit F.

8. The State has incurred and will continue to incur response costs associated with the releases and threatened releases of hazardous substances at the Facility. See Exhibit G (Construction and Documentation Report/Bath Landfill Cover Improvements (Appendices B-H omitted))

9. Through June 30, 2005, those costs are \$2,838,368,53. See Exhibit H (Cost documentation package and affidavit of John Sherrill).

ARGUMENT

The Respondent is liable for all costs incurred by the Illinois EPA to abate the release and threatened release of hazardous substances from the landfill.

Section 22.2 of the Act, 415 ILCS 5/22.2 (2002), provides that:

* * *

f. Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (j) of this Section, the following persons shall be liable for all costs of removal or remedial action incurred by the State of Illinois or any unit of local government as a result of a release or substantial threat of a release of a hazardous substance or pesticide:

1. the owner and operator of a facility or vessel from which there is a release or substantial threat of a release of a hazardous substance or pesticide;

* * *

There are no genuine issues as to any material fact necessary to establish Respondent's liability under Section 22.2(f) of the Act, 415 ILCS 5/22.2(f), for Illinois EPA's response costs.

- Anthracene, Benzo(a)anthracene, Benzo(b)fluoranthene, Benzo(a)pyrene, Chrysene, Di Benzo(a)anthracene, Fluoranthene, PCBs, Indeno(1,2,3-c, d)pyrene, Pyrene, Lead, Cadmium, and Mercury, are hazardous substances as defined by Section 3.215 of the Act, 415 ILCS, 5/3.215.
- The leaching, discharging and seeping of the hazardous substances constitutes a release or threatened release of hazardous substances as defined by Section 3.395 of the Act, 415 ILCS, 5/3.395.
- As the owner and operator of the landfill, the Respondent is a responsible party as described in Section 22.2(f)(1) of the Act, 415 ILCS 4/22.2(f)(1), and is liable for past, present, and future response costs, as defined by the Act, incurred by the State resulting or arising out of the releases and threatened releases at the Landfill.

There are also no genuine issues as to any material fact necessary to establish that Respondent is also liable for treble damages, pursuant to Section 22.2(k) of the Act, 415 ILCS 5/22.2(k), when it did not comply with the May 13, 2002, because it failed to provide sufficient cause for its refusal to comply with the 4(q) notice issued by Illinois EPA.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter a final order:

- A. Granting Complainant's motion for summary judgment;

B. Finding the Respondent, Bath Incorporated, to be liable for past, present, and future removal costs, as defined by the Act, incurred by the Illinois EPA as a result of the releases and threatened releases of hazardous substances at the Facility;

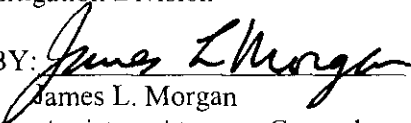
C. Finding Respondent, Bath Incorporated, to be liable for damages equal to three times the past, present, and future removal costs, as defined by the Act, incurred by the Illinois EPA as a result of the releases and threatened releases of hazardous substances at the Facility; because of the Respondent's refusal to perform the work set forth in the Section 4(q) notice issued by Illinois EPA; and

D. Awarding to Complainant its costs.

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: 
James L. Morgan
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/524-7506
Dated: October 27, 2005