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OCT 03 2007

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 28, 2007

PCRB08-29

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: **People v. Gateway Bobcat of Herberer Equipment Co., Inc.**

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Michael D. Mankowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

MDM/pjk
Enclosures

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OCT 03 2007

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 GATEWAY BOBCAT OF HERBERER)
 EQUIPMENT CO., INC. d/b/a BOBCAT)
 OF ST. LOUIS, a Missouri corporation,)
)
 Respondent.)

PCB No. 08-29
(Enforcement)

NOTICE OF FILING

To: GATEWAY BOBCAT OF HERBERER EQUIPMENT CO., INC.
 d/b/a BOBCAT OF ST. LOUIS, a MO corp.
 c/o Steve Gooden
 Bobcat of St. Louis
 401 W. Outer Road
 Valley Park, MO 63088

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 (2004), 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: 
MICHAEL D. MANKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 28, 2007

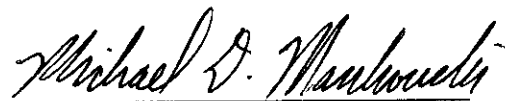
CERTIFICATE OF SERVICE

I hereby certify that I did on September 28, 2007, 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: GATEWAY BOBCAT OF HERBERER EQUIPMENT CO., INC.
d/b/a BOBCAT OF ST. LOUIS, a MO corp.
c/o Steve Gooden
Bobcat of St. Louis
401 W. Outer Road
Valley Park, MO 63088

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

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



Michael D. Mankowski
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
GATEWAY BOBCAT OF HERBERER)
EQUIPMENT CO., INC. d/b/a BOBCAT)
OF ST. LOUIS, a Missouri corporation,)
)
Respondent.)

PCB No. 08-29
(Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, MICHAEL D. MANKOWSKI, Assistant Attorney General of the State of Illinois, hereby enters his 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: Michael D. Mankowski
MICHAEL D. MANKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 28, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 GATEWAY BOBCAT OF HERBERER)
 EQUIPMENT CO., INC. D/B/A BOBCAT OF)
 ST. LOUIS, a Missouri corporation,)
)
 Respondent.)

PCB No. 08-29
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, GATEWAY BOBCAT OF HERBERER EQUIPMENT CO., INC. D/B/A BOBCAT OF ST. LOUIS, a Missouri corporation as follows:

COUNT I

WATER POLLUTION

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 (2006).

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 (2006), and charged *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), after providing the Respondent with notice and the opportunity for a meeting with the Illinois

EPA.

4. Respondent, Gateway Bobcat of Herberer Equipment Co., Inc., d/b/a/ Bobcat of St. Louis ("Bobcat"), is a Missouri corporation in good standing, licensed to do business in Illinois.

5. Bobcat owns and operates a facility located at 9801 W. State Route 161, Fairview Heights, St. Clair County, Illinois ("facility"). The facility includes a wash bay where construction equipment is power washed and cleaned after returning to the facility.

6. Section 12 of the Act, 415 ILCS 5/12(a) (2006), provides, in pertinent part, as follows:

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;

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

* * *

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

* * *

7. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), defines "contaminant" as follows:

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

8. Section 3.465 of the Act, 415 ILCS 5/3.465 (2006), defines "sludge" as follows:

"SLUDGE" means any solid, semi-solid, or liquid waste generated from a

municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

9. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), defines "water pollution" as follows:

"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.

10. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), defines "waters" as follows:

"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.

11. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, prohibits offensive conditions in waters of the State:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal, color or turbidity of other than natural origin. . . .

12. On January 5, 2005, the Illinois EPA received an anonymous complaint letter regarding water pollution at the Bobcat facility. The letter claimed that water from the facility's vehicle wash bay was being discharged into a stream adjacent to the north side of the property.

13. The stream adjacent to the north side of the facility is an unnamed tributary of Schoenberger Creek, both of which are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

14. On information and belief, on a date prior to February 17, 2005, and better known to the Respondent, Respondent installed a discharge pipe from the wastewater treatment system for its wash bay. The pipe ran from the wastewater treatment system to the bank of the unnamed tributary of Schoenberger Creek.

15. On or before February 17, 2005, or a date better known to Respondent, the Respondent discharged wastewater from the facility's wash bay into the unnamed tributary through the pipe connected to the wash bay drain and extending to the stream bank behind the facility.

16. On or before February 17, 2005, or a date better known to Respondent, the Respondent piled sludge from the mudwell attached to the facility's wastewater treatment system next to the stream bank behind the facility.

17. The untreated wastewater and the sludge from the facility's mudwell are contaminants as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

18. On February 17, 2005, in response to the January 5th complaint, the Illinois EPA conducted an inspection of the facility.

19. On February 17, 2005, Illinois EPA inspectors observed the unnamed tributary adjacent to the north side of the facility. Turbid, muddy water was discharging into the stream from a pipe extending through the stream bank behind the facility.

20. The water in the stream was clear above the outfall of the pipe and turbid below where the muddy water was discharging.

21. Illinois EPA inspectors traced the pipe back to the Bobcat facility.

22. Bobcat employees were washing a vehicle in the facility's wash bay. A flow of muddy water on the floor was flowing into a side drain trench.

23. The flow from the pipe in the stream bank decreased immediately after the employees discontinued washing the vehicle.

24. On or before February 17, 2005, or a date better known to Respondent, the Respondent discharged untreated wastewater from its wash bay into waters of the State.

25. By discharging untreated wastewater into waters of the State, the Respondent has caused, threatened, or allowed water pollution in violation of Section 12(a) of the Act, 415

ILCS 5/12(a)(2006).

26. On or before February 17, 2005, or a date better known to Respondent, the Respondent caused, allowed or threatened the discharge of wastewater from the its wash bay into waters of the State so as to cause or tend to cause offensive conditions in the unnamed tributary of Schoenberger Creek in violation of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

27. By violating the water quality standard of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

28. On a date prior to February 17, 2005, and better known to Respondent, the Respondent operated a discharge pipe from the wastewater treatment system for its wash bay without an Illinois EPA issued construction permit.

29. By operating equipment capable of contributing to water pollution without a permit granted by the Illinois EPA, the Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2006).

30. On or before February 17, 2005, or a date better known to Respondent, the Respondent deposited sludge from its mudwell along the stream bank behind its facility.

31. By depositing a contaminant upon the land in such place and manner so as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, GATEWAY BOBCAT OF HERBERER EQUIPMENT CO., INC. D/B/A BOBCAT OF ST. LOUIS:

- 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 a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day that the violations continued;
- E. Granting such other relief as the Board may deem appropriate.

COUNT II

NPDES PERMIT VIOLATIONS

1-24. Complainant realleges and incorporates herein by reference paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count II.

25. Section 12 of the Act, 415 ILCS 5/12(a) (2006), provides, in pertinent part, as follows:

No person shall:

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

26. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code

304.106, provides as follows:

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

27. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code

309.102(a), requires an NPDES permit:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

28. Section 309.103 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code

309.103, requires an applicant for an NPDES Permit to file an application on forms provided by the Illinois EPA.

29. Section 309.243 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code

309.243, provides the following:

In addition to specific conditions authorized under this Subpart B, the Agency may impose such conditions in any permit issued pursuant to this Subpart B as may be necessary to accomplish the purposes of the Act, or this Chapter, or the CWA, provided such conditions are not inconsistent with this Chapter.

30. As of the date of the filing of this Complaint, the Respondent has not applied for and the Illinois EPA has not issued a NPDES stormwater permit to Respondent for discharges from the facility.

31. On or before February 17, 2005, or on a date better known to the Respondent, the Respondent caused, threatened or allowed the discharge of untreated waste water, containing settleable solids and turbidity into waters of the State without an NPDES permit.

32. By causing or allowing or threatening the discharge of contaminants into waters of the State without an NPDES permit, the Respondent has violated Sections 309.102(a) and 309.243 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.243,

and has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

33. By failing to apply for an NPDES permit, the Respondent has violated Section 309.103 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.103, and has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

35. By discharging effluent which contained settleable solids and turbidity in violation of Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, GATEWAY BOBCAT OF HERBERER EQUIPMENT CO., INC. D/B/A BOBCAT OF ST. LOUIS:

- 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 a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day that the violations continued;
- E. Granting such other relief as the Board may deem appropriate.

COUNT III

OPEN DUMPING

- 1-5 Complainant realleges and incorporates herein by reference paragraphs 1

through 5 of Count I as paragraphs 1 through 5 of this Count III.

6. Section 21 of the Act, 415 ILCS 5/21 (2006), 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, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards there under.

* * *

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;

* * *

7. Section 3.305 of the Act, 415 ILCS 5/3.305 (2006), defines "open dumping" 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.

8. Section 3.445 of the Act, 415 ILCS 5/3.445 (2006), defines "sanitary landfill as follows:

"SANITARY LANDFILL" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

* * *

9. Section 3.535 of the Act, 415 ILCS 5/3.535 (2006), defines "waste" as follows:

"WASTE" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility 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, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

10. On information and belief, on or before February 17, 2005, or a date better known to the Respondent, the Respondent piled: debris, sediments from the wash bay floor and sediments that settled out of the waste water treatment system onto the ground at the facility.

11. On or before February 17, 2005, or a date better known to the Respondent, the Respondent placed four (4) drums of used oil on a pallet at the facility. The drums were overfilled and had spilled oil onto the ground beneath and around the pallet.

12. The debris, sediments, and used oil at the facility are all waste as that term is defined in Section 3.353 of the Act, 415 ILCS 5/3.353 (2006).

13. On February 17, 2005, the Illinois EPA inspected the facility.

14. On February 17, 2005, Illinois EPA inspectors observed a pile of soil that appeared to contain debris other than clean soil.

15. An employee of Bobcat informed the inspectors that the pile of soil consisted of clean soil from excavations, sediments from the wash bay floor and sediments that settled out of the facility's wastewater treatment system.

16. On February 17, 2005, Illinois EPA inspectors observed four drums of used oil located on a pallet at the facility. The drums were overfilled and oil had spilled onto the pallet

and the bare ground beneath and around the pallet.

17. On or before February 17, 2005, or a date better known to the Respondent, the Respondent caused or allowed the open dumping of waste at the facility.

18. By causing or allowing the open dumping of waste, the Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2006).

19. On or before February 17, 2005, or a date better known to the Respondent, the Respondent disposed, abandoned or stored waste at a site upon its property, or transported waste for disposal or storage to a site upon its property, and such site does not meet the requirements of the Act and of the standards and regulations promulgated thereunder.

20. By disposing, abandoning, or storing or transporting waste at or to a site which does not meet the requirements of the Act and of the standards and regulations promulgated thereunder, the Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).

21. On or before February 17, 2005, or a date better known to the Respondent, the Respondent caused or allowed the open dumping of waste in a manner which has resulted in litter.

22. By causing or allowing the open dumping of waste in a manner which has resulted in litter at or from the dump site, the Respondent has violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, GATEWAY BOBCAT OF HERBERER EQUIPMENT CO., INC. D/B/A BOBCAT OF ST. LOUIS:

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 a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day that the violations continued;
- E. Granting such other relief as the Board may deem appropriate.

COUNT IV

OPEN BURNING

1-5 Complainant realleges and incorporates herein by reference paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count IV.

6. Section 9 of the Act, 415 ILCS 5/9 (2006), provides, in pertinent part, as follow:

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;

* * *

(c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning;

* * *

7. Section 21(p) of the Act, 415 ILCS 5/21 (2006), provides, in pertinent part, as

follows:

No person shall:

- 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:

* * *

- 3. Open burning;

* * *

- 8. Section 3.300 of the Act, 415 ILCS 5/3.300 (2006), defines "open burning" as

follows:

"OPEN BURNING" is the combustion of any matter in the open or in an open dump.

9. On or before February 17, 2005, or a date better known to the Respondent, the Respondent burned refuse in a burn pit at the rear of the facility.

10. On February 17, 2005, Illinois EPA inspectors observed a pit with smoldering ashes. Metal fittings were present in the burn pit.

11. On or before February 17, 2005, or a date better known to the Respondent, the Respondent burned refuse in a pit located at the rear of the facility. In doing so, the Respondent caused or allowed the open burning of refuse upon its property in violation of Section 9(c) of the Act, 415 ILCS 5/9(c) (2006).

12. On or before February 17, 2005, or a date better known to Respondent, the Respondent caused or allowed the open dumping of waste in a manner which has resulted in open burning in violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, GATEWAY BOBCAT OF

HERBERER EQUIPMENT CO., INC. D/B/A BOBCAT OF ST. LOUIS:

- 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 a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day that the violations continued;
- E. Granting such other relief as the Board may deem appropriate.

COUNT V

WASTE HANDLING VIOLATIONS

1-5 Complainant realleges and incorporates herein by reference paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count V.

6. Section 3.385 of the Act, 415 ILCS 5/3.385 (2006), provides as follows:

"Refuse" means waste.

7. Section 3.445 of the Act, 415 ILCS 5/3.445 (2006), provides as follows:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land ... without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulations.

8. Section 3.470 of the Act, 415 ILCS 5/3.470 (2006), provides as follows:

"Solid waste" means waste.

9. Section 3.535 of the Act, 415 ILCS 5/3.535 (2006), 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....

10. Section 722.111 of the Illinois Pollution Control Board's Waste Disposal Regulations, 35 Ill. Adm. Code 722.111, requires that any person who generates a solid waste shall determine if that waste is a hazardous waste.

11. Section 739.122(d) of the Board's Used Oil Management Regulations, 35 Ill. Adm. Code 739.122(d), requires that used oil generators must respond upon detection of a release of used oil to the environment.

12. Section 808.121(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), requires that any person who generates waste shall determine whether the waste is a special waste.

13. Bobcat is a "generator" as that term is defined by Section 3.205 of the Act, 415 ILCS 5/3.205 (2006), as follows:

"Generator" means any person whose act or process produces waste.

14. Bobcat is a "person" as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

15. On or before February 17, 2005; or a date better known to the Respondent, the Respondent failed to perform a hazardous waste determination on the sludge sediments deposited at the facility.

16. The Respondent violated 35 Ill. Adm. Code 722.111 by failing to make a hazardous waste determination and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006).

17. On or before February 17, 2005, or a date better known to the Respondent, the

Respondent failed to perform a special waste determination on the sludge sediments deposited at the facility.

18. The Respondent violated 35 Ill. Adm. Code 808.121 by failing to make a special waste determination and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006).

19. On or before February 17, 2005, or a date better known to the Respondent, the Respondent failed to perform the proper clean up steps after releasing used oil into the environment and thus caused or allowed used oil to remain upon an in the soil at the facility.

20. The Respondent violated 35 Ill. Adm. Code 739.122(d) by failing to perform the proper clean up steps after releasing used oil into the environment and causing or allowing used oil to remain on and in the soil at the facility and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, GATEWAY BOBCAT OF HERBERER EQUIPMENT CO., INC. D/B/A BOBCAT OF ST. LOUIS:

- 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 a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day that the violations

continued;

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

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
Environmental Bureau
Assistant Attorney General

OF COUNSEL

MICHAEL D. MANKOWSKI
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/557-0586

Dated: 9/27/07