

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BOARD RECEIVED
CLERK'S OFFICE
JAN 17 1997
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

MATTESON WHP PARTNERSHIP,)
an Illinois general partnership,)
Complainant,)
v.)
JAMES W. MARTIN AND EVA D. MARTIN,)
individually and d/b/a MARTIN'S)
OF MATTESON,)
Respondents.)

PCB 97-121

NOTICE OF FILING

To: DOROTHY GUNN, Clerk
Illinois Pollution Control Board
James R. Thompson Center, 11-500
100 West Randolph Street
Chicago, Illinois 60601

JAMES W. MARTIN
EVA D. MARTIN
1625 Double Arrow Place
Las Vegas, Nevada 89128

MARTIN'S OF MATTESON
5603 W. Vollmer Road
Matteson, Illinois 60443

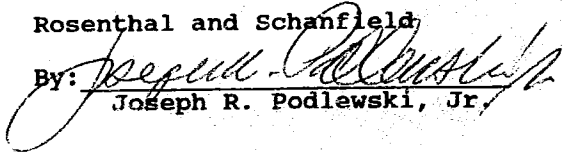
PLEASE TAKE NOTICE that I have today filed with the Clerk of the Illinois Pollution Control Board the Complainant's Appearance and Complaint, a copy of which is attached hereto and served upon you. You may be required to attend a hearing at a date set by the Illinois Pollution Control Board.

Pursuant to 415 ILCS 5/31(c)(1), please take notice that financing may be available through the Illinois Environmental

Facilities Financing Act (20 ILCS 3515/1 et seq.) to correct the violations alleged in the attached complaint.

MATTESON WHP PARTNERSHIP

By: Rosenthal and Schanfield

By: 
Joseph R. Podlewski, Jr.

DATED: *January 17, 1997*

Joseph R. Podlewski, Jr.
ROSENTHAL AND SCHANFIELD
55 East Monroe, 46th Floor
Chicago, Illinois 60603
(312) 236-5622

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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PCB 97-121

APPEARANCE

Joseph R. Podlewski, Jr. hereby files his appearance and the appearance of Rosenthal and Schanfield on behalf of the Complainant, Matteson WHP Partnership.

Joseph R. Podlewski, Jr.

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ROSENTHAL AND SCHANFIELD
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Respondents.)

PCB 97-121
(Enforcement)

COMPLAINT

Complainant, MATTESON WHP PARTNERSHIP, an Illinois general partnership, complains of Respondents JAMES W. MARTIN and EVA D. MARTIN, individually and doing business as MARTIN'S OF MATTESON, as follows, pursuant to Section 31(d) of the Illinois Environmental Protection Act (415 ILCS 5/31(d)):

COUNT I

VIOLATIONS OF SECTION 21(e) OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT (415 ILCS 5/21(e))

1. Complainant Matteson WHP Partnership is an Illinois general partnership and at all times relevant herein the operator of a certain parcel of real property commonly known as 5601-5617 W. Vollmer Road, Matteson, Cook County, Illinois (the "Property").
2. The general partners of Complainant are the sole beneficiaries of an Illinois land trust holding legal title to the Property.
3. The legal description of the Property is as follows:

Lot 1 in Woodgate Commercial Subdivision being a subdivision of the Northeast 1/4 of the Northeast 1/4 of Section 17, Township 36 North, Range 13, East of the Third Principal Meridian in Cook County, Illinois.

4. In 1980-81, Complainant constructed a retail shopping center at the Property. Prior to the construction of the shopping center, the Property was used for agricultural purposes.

5. Among the first commercial tenants of the Property were Respondents James W. Martin and Eva D. Martin, who entered into a lease of a portion of the Property commonly known as 5603 W. Vollmer Road on March 6, 1981 (the "Leased Premises").

6. James W. Martin and Eva D. Martin have been in continuous possession of the Leased Premises since 1981.

7. During their tenancy, James W. Martin and Eva D. Martin operated a dry cleaning business at the Leased Premises.

8. On information and belief, James W. Martin and Eva D. Martin first operated the dry cleaning business at the Leased Premises as a franchisee of Martin Franchises, Inc. of Cincinnati, Ohio, under the name "One Hour Martinizing." Later in their tenancy of the Leased Premises, James W. Martin and Eva D. Martin operated the dry cleaning business at the Leased Premises under the name "Martin's of Matteson."

9. The Respondents' dry cleaning business uses tetrachloroethene (also known as tetrachloroethylene or perchloroethylene), a chlorinated solvent which is classified as a hazardous substance under the Illinois Environmental Protection Act (the "Act") (415 ILCS 5/3.14).

10. The Respondents' dry cleaning business is the only business at the Property since the shopping center was constructed to use tetrachloroethene.

11. Analyses of soil samples taken in 1995 and 1996 from and in the immediate vicinity of, the Leased Premises at the Property reveal chlorinated solvent contamination. Among the compounds detected in the soil samples taken from, and in the vicinity of, the Leased Premises at the Property are tetrachloroethene and its degradation products trichloroethene, 1, 2-dichloroethane and cis-1,2-dichloroethene. Highest concentrations of these chlorinated solvents found in the soil at the Property are as follows:

| Compound | Boring No. | Depth of Sample (in feet) | Concentration |
|------------------------|------------|---------------------------|---------------------------------|
| Tetrachloroethene | B-11 | 7.5-10 | 300.000 parts per billion (ppb) |
| Trichloroethene | B-3, B-9 | 2.5-5 | 100 ppb |
| 1,2-Dichloroethane | B-3 | 2.5-5 | 46 ppb |
| cis-1,2-Dichloroethene | B-13 | 0-2.5 | 100 ppb |

12. Analyses of shallow groundwater samples taken in 1995 from, and in the immediate vicinity of, the Leased Premises at the Property reveal chlorinated solvent contamination. Among the compounds detected in the groundwater samples taken from, and in the vicinity of, the Leased Premises at the Property are tetrachloroethene and trichloroethene. The highest concentration of tetrachloroethene found in the shallow groundwater at the Property is 180,000 parts per billion (ppb). The highest concentration of trichloroethene found in the shallow groundwater at the Property is 730 ppb.

13. The chlorinated solvent contamination of the soil at, and in the vicinity of, the Leased Premises at the Property results from the Respondents' use of tetrachloroethene at the Leased Premises.

14. The chlorinated solvent contamination of the groundwater at, and in the vicinity of, the Leased Premises at the Property results from the Respondents' use of tetrachloroethene at the Leased Premises.

15. Section 3.53 of the Act defines "Waste" as, inter alia, any "discarded material" resulting from commercial operations (415 ILCS 5/3.53).

16. The chlorinated solvents found in the soil and groundwater at the Property constitute "Waste" as that term is defined in Section 3.53 of the Act (415 ILCS 5/3.53).

17. Section 3.08 of the Act defines "Disposal" as follows:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

415 ILCS 5/3.08.

18. The disposal of waste has occurred at the Property, as evidenced by the existence of chlorinated solvents in the soil and groundwater at the Property.

19. Section 21(e) of the Act provides that:

No person shall...[d]ispose, 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 thereunder.

415 ILCS 5/21(e).

20. The Property does not meet the requirements of a waste disposal site or facility under the Act and applicable Illinois Pollution Control Board regulations.

21. By causing or allowing the contamination of soil and groundwater at the Property with chlorinated solvents, the Respondents have engaged in the disposal of waste at the Property in violation of Section 21(e) of the Act.

22. Such violation of Section 21(e) of the Act is continuing, and will continue unless and until abated by order of the Illinois Pollution Control Board.

WHEREFORE, Complainant Matteson WHP Partnership prays for the entry of an order against the Respondents, James W. Martin and Eva D. Martin, d/b/a Martin's of Matteson, pursuant to Sections 33(a) and 33(b) of the Act (415 ILCS 5/33(a), (b)):

A. Directing the Respondents to cease and desist from further violations of Section 21(e) of the Act;

B. Mandating and directing the abatement of the continuing violations of Section 21(e) of the Act by the Respondents through the remediation of Complainant's Property and removal of all contamination on the Property resulting from the disposal of chlorinated solvents thereon; and

C. Granting such other relief as the Illinois Pollution Control Board may deem appropriate.

COUNT II

VIOLATIONS OF SECTION 21(f)(1) OF THE ILLINOIS ENVIRONMENTAL
PROTECTION ACT (415 ILCS 5/21(d)(1))

1-14. Complainant realleges and incorporates by reference Paragraphs 1-14 of the Count I herein as Paragraphs 1-14 of this Count II.

15. Section 3.15 of the Act defines "Hazardous waste" as, inter alia, "a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580¹ or pursuant to Board regulations."

415 ILCS 5/3.15

16. Under the Illinois Pollution Control Board's hazardous waste regulations (35 Ill. Adm. Code Subtitle G, Chapter I, Subchapter c), tetrachloroethene (U210) is deemed to be a hazardous waste if, as a commercial chemical product, it is "discarded" (35 Ill. Adm. Code 721.133(a), (f)).

17. Under the Illinois Pollution Control Board's hazardous waste regulations, a material is "discarded" if it is "abandoned," i.e., "disposed of" (35 Ill. Adm. Code 721.102(a)(2)(A), 721.102(b)(1)). "Disposal" is defined as, inter

alia, the dumping, spilling or leaking of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be discharged to any waters, including groundwaters. (35 Ill. Adm. Code 720.110).

18. The disposal of a hazardous waste - tetrachloroethene - has occurred at the Property, as evidenced by the existence of that chlorinated solvent and its degradation products in the soil and groundwater at the Property.

19. Section 21(f)(1) of the Act provides, in relevant part, that "[n]o person shall...[c]onduct any hazardous waste-storage, hazardous waste-treatment, or hazardous waste-disposal operation... without a RCRA permit for the site issued by the [Illinois Environmental Protection] Agency..." (415 ILCS 5/21(f)(1)).

20. The Respondents do not now possess, nor have they ever possessed, a RCRA permit issued by the Illinois Environmental Protection Agency to conduct a hazardous waste-disposal operation at the Property.

21. By causing or allowing the contamination of the soil and groundwater at the Property with tetrachloroethene - a hazardous waste - the Respondents have conducted a hazardous waste-disposal operation at the Property without possessing a permit from the Illinois Environmental Protection Agency to do so, in violation of Section 21(f)(1) of the Act (415 ILCS 5/21(f)(1)).

22. Such violation of Section 21(f)(1) of the Act is continuing, and will continue unless and until abated by order of the Illinois Pollution Control Board.

WHEREFORE, Complainant Matteson WHF Partnership prays for the entry of an order against the Respondents, James W. Martin and

Eva D. Martin, d/b/a Martin's of Matteson, pursuant to Sections 33(a) and 33(b) of the Act (415 ILCS 5/33(a), (b)):

A. Directing the Respondents to cease and desist from further violations of section 21(f)(1) of the Act;

B. Mandating and directing the abatement of continuing violations of Section 21(f)(1) of the Act by the Respondents through the remediation of Complainant's Property and the removal of all contamination of the Property resulting from disposal of hazardous waste thereon; and

C. Granting such other relief as the Illinois Pollution Control Board may deem appropriate.

COUNT III

VIOLATIONS OF SECTION 12(a) OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT (415 ILCS 5/12(a)) AND 35 ILL. ADM. CODE 620.115

1-10. Complainant realleges and incorporates by reference paragraphs 1-10 of Count I herein as paragraphs 1-10 of this Count III.

11. Complainant realleges and incorporated by reference Paragraph 12 of Count I herein as Paragraph 11 of this Count III.

12. Complainant realleges and incorporates by reference Paragraph 14 of Count I herein as Paragraph 12 of this Count III.

13. The Illinois Pollution Control Board's groundwater quality standards for the chlorinated solvents found in the groundwater at the Property are as follows:

| Compound | Class I Groundwater | Class II Groundwater |
|-------------------|---------------------|----------------------|
| Tetrachloroethene | 5 ppb | 25 ppb |
| Trichloroethene | 5 ppb | 25 ppb |

35 Ill. Adm. Code 620.410(b), 620.420(b)

14. Section 12(a) of the Act provides, in pertinent part, that: "[n]o person shall...[c]ause or threaten or allow the discharge of contaminants into the environment in any State so as to... violate regulations or standards adopted by the Pollution Control Board under this Act."

415 ILCS 5/12(a)

15. Section 620.115 of the Board's groundwater quality regulations (35 Ill. Adm. Code Part 620) provides, in pertinent part, that "[n]o person shall cause, threaten or allow a violation of the Act, ... or regulations adopted by the Board thereunder, including but not limited to this Part."

35 Ill. Adm. Code 620.115.

16. By causing or allowing the discharge of tetrachloroethene and trichloroethene to the groundwater at the Property in excess of applicable groundwater quality standards, the Respondents have violated Section 12(a) of the Act and Part 620.115 of the Illinois Pollution Control Board's groundwater quality regulations.

17. Such violations of Section 12(a) and 35 Ill. Adm. Code 620.115 are continuing, and will continue unabated unless and until abated by order of the Illinois Pollution Control Board.

WHEREFORE, Complainant Matteson WHP Partnership prays for the entry of an order against the Respondents, James W. Martin and Eva D. Martin, d/b/a Martin's of Matteson, pursuant to Section 33(a) and 33(b) of the Act (415 ILCS 33(a), 33(b)):

A. Directing the Respondents to cease and desist from further violations of Section 12(a) of the Act and 35 Ill. Adm. Code 620.115;

B. Mandating and directing the abatement of the continuing violations of Section 12(a) of the Act and 35 Ill. Adm. Code 620.115 by the Respondents through remediation of the groundwater contamination of the Property to within allowable limits; and

C. Granting such other relief as the Illinois Pollution Control Board may deem appropriate.

MATTESON WHP PARTNERSHIP

By: Rosenthal and Schanfield

By: 
Joseph R. Podlewski, Jr.

Joseph R. Podlewski, Jr.
ROSENTHAL AND SCHANFIELD
55 East Monroe, 46th Floor
Chicago, Illinois 60603
(312) 236-5622

PROOF OF SERVICE

I, the undersigned, a non-attorney, on oath depose and state that I have filed an original and ten copies of the attached Appearance and Complaint by delivering the original and ten copies to:

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

and that I served a copy of said Appearance and Complaint on:

James W. Martin
Eva D. Martin
1625 Double Arrow Place
Las Vegas, Nevada 89128

and

Martin's of Matteson
5603 Vollmer Road
Matteson, Illinois 60443

by depositing the same in the U.S. mail at 55 East Monroe Street, Chicago, Illinois, by certified mail, return receipt requested, postage prepaid, before the hour of 5:00 p.m. this 17th day of January, 1997.

Barbara Cernick

Subscribed and sworn to
before me this 17th day of
January, 1997.

Joseph R. Podlewski, Jr.
Notary Public

