

Service List

For Markham Transfer & Recycling, Inc.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 11-
)	(Enforcement - Land)
MARKHAM TRANSFER &)	
RECYCLING, L.L.C., an Illinois limited)	
liability company,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, MARKHAM TRANSFER & RECYCLING, L.L.C., as follows:

COUNT I
OPEN DUMPING OF WASTE

1. This count is brought on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, 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 (2010).

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 (2010), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with enforcement of the Illinois Pollution Control Board ("Board") Waste Disposal Regulations ("Board Waste Disposal Regulations"), at 35 Ill. Adm. Code Subtitle G, Chapter I.

3. At all times relevant to this Complaint, Respondent, MARKHAM TRANSFER & RECYCLING, L.L.C. ("MTR"), has been an Illinois limited liability company registered in good standing with the Illinois Secretary of State.

4. At all times relevant to the Complaint, MTR owned and operated, and continues to own and operate, a general construction or demolition debris recycling facility located at 2300 West 167th Street, Markham, Cook County, Illinois ("Site").

5. On February 2, 2009, two Illinois EPA inspectors conducted an inspection of the Site ("February 2, 2009 Inspection").

6. During the February 2, 2009 Inspection, the inspectors observed approximately 600 cubic yards of drywall at the Site.

7. On November 13, 2009, the Illinois EPA inspectors returned to the Site to conduct an inspection ("November 13, 2009 Inspection").

8. During the November 13, 2009 Inspection, the Illinois EPA inspectors observed the same 600 cubic yards of drywall that was observed during the February 2, 2009 inspection of the Site.

9. During the November 13, 2009 Inspection, the Illinois EPA inspectors observed landscape debris, including residual leaves and tree trunks, at the Site. Records provided to the Illinois EPA by the Respondent indicate that approximately 1,786 tons of leaves had been removed from the Site between October and November of 2009. No documentation pertaining to the origin of the leaves was provided.

10. During the November 13, 2009 Inspection, cans of paint were found co-mingled with scrap metal at the Site.

11. During the November 13, 2009 Inspection, Illinois EPA inspectors observed

railroad ties at the Site that were not chipped or mulched.

12. Records provided to the Illinois EPA by the Respondent show that approximately 7,160 pounds of tires were shipped off-site in November 2009. That weight corresponds to approximately 286 small car and truck tires. No documentation pertaining to the origin of the tires was provided.

13. Records provided to the Illinois EPA by Respondent show that 666 tons of garbage had been shipped from the Site to Liberty Landfill in Monticello, Indiana. The documentation provided does not indicate whether this was non-recyclable construction and demolition debris that had to be disposed of or whether it was refuse that should not have been accepted at the Site.

14. On May 3, 2010, an Illinois EPA inspector inspected the Site. The Illinois EPA inspector observed a considerable volume of municipal solid waste, landscape waste, and waste tires at the Site.

15. On May 14, 2010, three Illinois EPA inspectors and an Illinois EPA GPS specialist observed a roll-off box being picked up from a restaurant in Markham, Illinois. The roll-off box had the name "Brackebox Roll-Off Service" painted on it ("Brackebox truck"). Jim Bracken is the owner of Brackebox Roll-Off Service and a principal of MTR.

16. On May 14, 2010, two of the Illinois EPA inspectors followed the Brackebox truck to the Site. The roll-off box contents were examined by the Illinois EPA inspectors and found to be food waste and discarded materials from a restaurant. The driver was instructed by the Illinois EPA inspectors to dispose of the food waste and discarded materials at a proper facility. It is unknown if the driver did so.

17. On August 13, 2010, two Illinois EPA inspectors were in the area of the Site

conducting an unrelated inspection when they observed a City of Harvey Public Works truck containing tree branches and brush travelling south on Dixie Highway and turning west onto 167th Street. They followed the Harvey Public Works truck to the Site. Once at the Site, the Illinois EPA inspectors instructed the truck driver to return the landscape waste to the Harvey Public Works facility. It is believed that the driver did as instructed.

18. On August 13, 2010, while at the Site after following the Harvey Public Works truck, the Illinois EPA inspectors observed 150 to 200 cubic yards of landscape waste at the Site.

19. On December 20, 2010, MTR submitted an application to the Illinois EPA for a permit to operate a portion of the Site as a landscape waste transfer station.

20. On March 1, 2011, an Illinois EPA inspector inspected the Site. The Illinois EPA inspector observed that the site conditions noted during the February 2, 2009, November 13, 2009, May 3, 2010, and August 13, 2010 inspections had been remedied.

21. On March 21, 2011, the Illinois EPA granted MTR a permit to operate a landscape waste transfer station on a portion of the Site.

22. Section 21(a) of the Act, 415 ILCS 5/21(a) (2010), provides as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

23. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides the following definition:

“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.

24. MTR is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

25. Section 3.305 of the Act, 415 ILCS 5/3.305 (2010), provides the following definition:

“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.

26. Section 3.535 of the Act, 415 ILCS 5/3.535 (2010) provides, in pertinent part, the following definition:

“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, ...

27. Section 3.385 of the Act, 415 ILCS 5/3.385 (2010), provides the following definition:

“REFUSE” means waste.

28. The landscape debris, paint cans, tires, railroad ties, municipal solid waste and other materials located at the Site are “waste” and “refuse” as those terms are defined in the Act.

29. Section 3.185 of the Act, 415 ILCS 5/3.185 (2010), provides the following definition:

“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 or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

30. The deposition and placing of landscape debris, paint cans, tires, railroad ties, municipal solid waste and other materials at the Site constitutes “disposal”, as that term is defined by Section 3.185 of the Act, 415 ILCS 5/3.185 (2010).

31. Section 3.445 of the Act, 415 ILCS 5/3.445 (2010), provides the following definition:

“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.

32. Previous to March 21, 2011, the Site had never been permitted by the Illinois EPA for the disposal of the waste found thereon, and therefore the Site did not fulfill the requirements of a sanitary landfill.

33. From at least February 2, 2009, or a date better known to the Respondent, through at least March 1, 2011, the Respondent consolidated waste including landscape debris, paint cans, tires, railroad ties, municipal solid waste and other materials at the Site, a site that does not fulfill the requirements of a sanitary landfill.

34. By causing and allowing the open dumping of waste at the Site, Respondent has thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, MARKHAM TRANSFER & RECYCLING, L.L.C., with respect to Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(a) of the Act, 415 ILCS 5/21(a) (2010);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against

Respondent for each violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II
CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT

1. This count is brought on behalf of the 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 EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010).

2-32. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 21 and 23 through 33 of Count I as paragraphs 2 through 32 of this Count II.

33. Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010), provide, in pertinent part, as follows:

No person shall:

* * *

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, no permit shall be

required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated, or (ii) a facility located in a county with a population over 700,000 as of January 1, 2000, operated and located in accordance with Section 22.38 of this Act, and used exclusively for the transfer, storage, or treatment of general construction or demolition debris, provided that the facility was receiving construction or demolition debris on the effective date of this amendatory Act of the 96th General Assembly;

- (2) in violation of any regulations or standards adopted by the Board under this Act; or

* * *

34. Section 807.104 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code

807.104, provides, in pertinent part, as follows:

“Site” means any location, place or tract of land used for waste management. A site may include one or more units.

“Solid waste” means waste.

“Solid waste management” means “waste management”.

“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, or from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under 35 Ill. Adm. Code 309.102 or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C.A. 2011 et seq.) 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 (Ill. Rev. Stat. 1983 ch. 96 1/2, par. 7901.01 et seq. and 62 Ill. Adm. Code 1700 through 1845) (Section 3 (11) of the Act).

“Waste management” means the process of storage, treatment or disposal of waste, not including hauling or transport.

35. The disposal and storage of landscape debris, paint cans, tires, railroad ties, municipal solid waste and other materials constitutes "waste management" as that term is defined in Section 807.104 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.104.

36. Section 807.201 of the Board Waste Disposal Regulations, 35 Ill. Adm. 807.201, provides as follows:

Development Permits

Subject to such exemption as expressly provided in Section 21(e) (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1021(e)) of the Act as to the requirement of obtaining a permit, no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a Development Permit issued by the Agency.

37. Section 807.202(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.202(a), provides as follows:

Operating Permits

a) New Solid Waste Management Sites.

Subject to such exemption as expressly provided in Section 21(e) of the Act (Ill. Rev. Stat. 1982, ch. 111 1/2, par. 1021(e)) as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any solid waste management site for which a Development Permit is required under Section 807.201 without an Operating Permit issued by the Agency, except for such testing operations as may be authorized by the Development Permit.

38. The Site was not subject to the exemptions contained in Section 21(e) of the Act, 415 ILCS 5/21(e) (2010), and therefore was required to have a permit.

39. By causing or allowing landscape debris, paint cans, tires, railroad ties, municipal solid waste and other materials to be deposited and stored on the ground at the Site, Respondent

caused or allowed the development of a new waste management site, for which a Development Permit was required under Section 807.201, 35 Ill. Adm. Code 807.201, and an Operating Permit is required under Section 807.202(a), 35 Ill. Adm. Code 807.202(a).

40. From at least February 2, 2009, or a date better known to the Respondent, through the filing date of this Complaint, Respondent has not obtained a Development Permit or an Operating Permit for its waste management site.

41. By causing or allowing the development and operation of a waste management site without obtaining a Development Permit or an Operating Permit, in violation of Sections 807.201 and 807.202(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.201 and 807.202(a), Respondent thereby violated Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, MARKHAM TRANSFER & RECYCLING, L.L.C., with respect to Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010), and Sections 807.201 and 807.202(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.201 and 807.202(a);
3. Ordering the Respondent to cease and desist from any further violations of Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010), and Sections 807.201 and 807.202(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.201 and 807.202(a);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010), and Sections 807.201 and 807.202(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.201 and 807.202(a), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT III
DISPOSAL AND STORAGE OF WASTE AT AN UNPERMITTED FACILITY

1-40. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 40 of Count II, as paragraphs 1 through 40 of this Count III.

41. Section 21(e) of the Act, 415 ILCS 5/21(e) (2010), provides as follows:

No person shall

* * *

(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 thereunder.

42. The Site has never been permitted by the Illinois EPA for the disposal or storage of waste, in violation of Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010).

43. By violating Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010), the Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, MARKHAM TRANSFER & RECYCLING, L.L.C., with respect to Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2010);
3. Ordering the Respondent to cease and desist from any further violations of Section 21(e) of the Act, 415 ILCS 5/21(e) (2010);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 21(e) of the Act, 415 ILCS 5/21(a) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
FAILURE TO COMPLY WITH GENERAL CONSTRUCTION AND DEMOLITION
DEBRIS REQUIREMENTS

1-32. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 32 of Count II, as paragraphs 1 through 32 of this Count IV.

33. Sections 22.38(b)(4) and (6) of the Act, 415 ILCS 5/22.38(b)(4) and (6) (2010), provide, in pertinent part, as follows:

* * *

(b) An owner or operator of a facility accepting exclusively general construction or demolition debris for transfer, storage, or treatment shall:

* * *

(4) Transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the facility.

* * *

(6) Employ tagging and record keeping procedures to demonstrate compliance with this section and identify the source and transporter of materials accepted by the facility.

34. Section 3.160 of the Act, 415 ILCS 5/3.160 (2010), provides the following definition:

"General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: ... drywall; ...

35. During the February 2, 2009 Inspection, the Illinois EPA inspectors observed approximately 600 cubic yards of drywall at the Site.

36. During the November 13, 2009 Inspection, conducted nine (9) months after the February 2, 2009 Inspection, the Illinois EPA inspectors observed the same 600 cubic yards of drywall that was observed during the February 2, 2009 Inspection of the Site.

37. By failing to transport the drywall for recycling or disposal within 6 months of its receipt at the Site, Respondent violated Section 22.38(b)(4) of the Act, 415 ILCS 5/22.38(b)(4) (2010).

38. During the November 13, 2009 Inspection, the Illinois EPA inspectors noted that

MTR failed to keep records identifying the source of leaves, tires and garbage that were accepted at the Site and later sent off for disposal.

39. By failing to employ tagging and record keeping procedures to identify the source and transporter of materials accepted at the Site, Respondent violated Section 22.38(b)(6) of the Act, 415 ILCS 5/22.38(b)(6) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, MARKHAM TRANSFER & RECYCLING, L.L.C., with respect to Count IV:

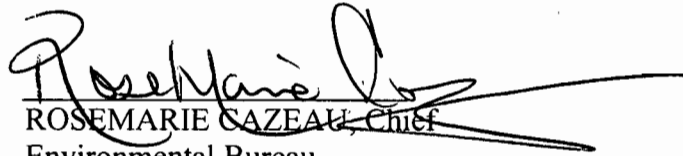
1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Sections 22.38(b)(4) and (6) of the Act, 415 ILCS 5/22.38(b)(4) and (6) (2010);
3. Ordering the Respondent to cease and desist from any further violations of Sections 22.38(b)(4) and (6) of the Act, 415 ILCS 5/22.38(b)(4) and (6) (2010);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Sections 22.38(b)(4) and (6) of the Act, 415 ILCS 5/22.38(b)(4) and (6) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

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

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

BY:



ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

JENNIFER A. VAN WIE
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CERTIFICATE OF SERVICE

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 24th day of June 2011, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Complaint, Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Notice of Filing to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JENNIFER A. VAN WIE

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