

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement - Water)
)	
WESS WHITTAKER, d/b/a WHITTAKER)	
AUTO SALVAGE, an unincorporated)	
entity,)	
)	
Respondent.)	

TO: Wess Whittaker
c/o Whittaker Auto Salvage
1365 N. 45th Road
Earlville, Illinois 60518

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that today, January 14, 2014, I have filed with the Office of the Clerk of Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

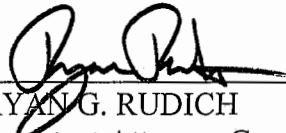
Pursuant to 35 Ill. Adm. Code 103.204 (f), I am required to state that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 35115/1 *et seq.*) to correct the alleged pollution.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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



RYAN G. RUDICH
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-1511

Dated: January 14, 2014

CERTIFICATE OF SERVICE

I, Ryan G. Rudich, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the person listed on the Notice of Filing on January 14, 2014.

By: 
RYAN G. RUDICH

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entity,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, WESS WHITTAKER, d/b/a/ WHITTAKER AUTO SALVAGE, as follows:

COUNT I

VIOLATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM ("NPDES") PERMIT PROGRAM

1. This Complaint 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 Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2012), against Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois created by Section 4 of the Act, 415 ILCS 5/4 (2012), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent Wess Whittaker, an individual, has been doing business as Whittaker Auto Salvage, a metal recycler and automobile

salvage yard covering approximately seven (7) acres, located at 1365 N. 45th Road, Earlville, LaSalle County, Illinois ("Facility").

4. On July 19, 2011, the Illinois EPA conducted an inspection of the Facility.

5. At all times relevant to this Complaint, a concrete pad was located at the southwest corner of the Facility ("Concrete Pad") where automobiles and automobile components purchased by Respondent from the general public were unloaded upon reaching the Facility.

6. At all times relevant to this Complaint, automobiles and automobile components brought to the Facility contained motor oil, gasoline, transmission fluid, brake fluid, power steering fluid, anti-freeze coolant and windshield washer fluid (collectively "Automotive Fluids").

7. At all times relevant to this Complaint, a portion of the Automotive Fluids on and within automobiles and automobile components were drained at a vehicle lift area ("Lift Area") at the Facility.

8. At all times relevant to this Complaint, automobiles, automobile components and other recyclable materials containing Automotive Fluids were stored in a large scrap pile, a large dumpster and several general scrap yard areas ("Scrap Yard Areas") at the Facility.

9. At all times relevant to this Complaint, the Concrete Pad, Lift Area, large scrap pile, large dumpster and Scrap Yard Areas were uncovered and Automotive Fluids were exposed to the environment, including stormwater.

10. At all times relevant to this Complaint, stormwater was channeled from the southwest corner of the Facility and into a low-lying area north of Old Route 34 in Earlville,

Illinois, just south of the Facility ("Low-Lying Area"). The Low-Lying Area is part of the Indian Creek watershed and drains into Indian Creek.

11. At all times relevant to this Complaint, the Facility lacked controls sufficient to prevent stormwater from the Facility from flowing into the Low-Lying Area and draining into Indian Creek.

12. Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), 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.

13. Pursuant to the authority granted in Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2012), the Illinois Pollution Control Board has promulgated rules and regulations to control water pollution in Illinois, codified at 35 Ill. Adm. Code, Subtitle C, Chapter 1 ("Board Water Pollution Regulations")

14. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

NPDES Permit Required

- (a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, 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.

15. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the following definition:

“CWA” means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the “Clean Water Act”, Public Law 95-217, enacted December 12, 1977, as amended.)

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), 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.

17. Wess Whittaker, d/b/a Whittaker Auto Salvage, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides the following definition:

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

19. Automotive Fluids are “contaminants” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), provides the following definition:

“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.

21. Indian Creek is a "water" as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

22. The CWA regulates the discharges of pollutants into navigable waters and prohibits point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State.

23. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including stormwater discharges regulated by 40 CFR §122.26, which requires a person to obtain an NPDES permit and to implement a stormwater pollution prevention plan for stormwater discharges associated with industrial activity.

24. 40 CFR §122.26(a) provides, in pertinent part, as follows:

(a) Permit Requirement

* * *

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

* * *

(ii) A discharge associated with industrial activity

25. 40 CFR §122.26(b) provides, in pertinent part, as follows:

(b) Definitions

* * *

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant . . . material handling site . . . storage areas

(including tank farms) for raw materials. . . . The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

* * *

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards...

26. Respondent is a metal scrapyard and salvage yard involved in the recycling of materials as defined in 40 CFR §122.26(b)(14)(vi) and stormwater discharges from the Facility are therefore discharges associated with industrial activity requiring an NPDES permit.

27. On July 19, 2011, Respondent had not applied for or obtained an NPDES Permit for Stormwater Discharges from Industrial Activity ("General NPDES Permit").

28. On July 25, 2013, the Illinois EPA issued a General NPDES Permit to Respondent.

29. From no later than July 19, 2011 to July 25, 2013, Respondent did not have an NPDES permit allowing the discharge of stormwater from industrial activity.

30. By operating Whittaker Auto Salvage without an NPDES permit, Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, WESS WHITTAKER, d/b/a/ WHITTAKER AUTO SALVAGE, with respect to this Count I:

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

2. Finding that Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering the Respondent to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation of the Act and any NPDES program-related regulation of the Board continued;

5. Ordering Respondent to pay all costs of this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), 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
WATER POLLUTION

1-17. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 11 and 16 through 21 of Count I, as paragraphs 1 through 17 of this Count II.

18. Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), provides as follows:

Actions prohibited. 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.

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), provides the following definition:

“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.

20. The flow of stormwater containing Automotive Fluids into waters of the State is the discharge of a contaminant that will or is likely to create a nuisance or render the water 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. It is therefore “water pollution” as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2012).

21. By exposing Automotive Fluids to stormwater without controls sufficient to prevent stormwater from discharging from the Facility into the Low-Lying Area and draining into Indian Creek, Respondent threatened the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against the Respondent, WESS WHITTAKER, d/b/a WHITTAKER AUTO SALVAGE, with respect to this 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 Section 12(a) the Act, 415 ILCS 5/12(a) (2012);
3. Ordering the Respondent to cease and desist from future violations of the Act;

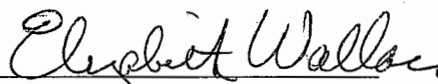
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and an additional Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General of the State of Illinois

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