

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

FEB 15 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
J & S COMPANIES, INC., a Missouri)
corporation, and FIRST CHOICE)
CONSTRUCTION, INC., an Illinois)
corporation,)
)
Respondents.)

PCB No. 06-33
(Enforcement)

NOTICE OF FILING

To: Mike Bowman
First Choice Construction, Inc.
1932 Townsley Lane
East St. Louis, IL 62204

Tom LeChien
Registered Agent for First Choice
Construction, Inc.
120 W. Main Street, Ste. 110
Belleville, IL 62220

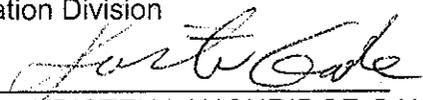
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR DEFAULT FOR FIRST CHOICE CONSTRUCTION, INC., a copy of which is attached hereto and herewith served upon you.

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: 
KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 10, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on February 10, 2006, send by First Class 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 and MOTION FOR DEFAULT FOR FIRST CHOICE CONSTRUCTION, INC.,

To: Mike Bowman
First Choice Construction, Inc.
1932 Townsley Lane
East St. Louis, IL 62204

Tom LeChien
Registered Agent for First Choice
Construction, Inc.
120 W. Main Street, Ste. 110
Belleville, IL 62220

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

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

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


KRISTEN LAUGHRIDGE GALE
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
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 vs.)
)
 J & S COMPANIES, INC., a Missouri)
 corporation, and FIRST CHOICE)
 CONSTRUCTION, INC., an Illinois)
 corporation,)
)
 Respondents.)

No. PCB 06-33
(Enforcement - Land)

MOTION FOR DEFAULT FOR FIRST CHOICE CONSTRUCTION, INC.

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, pursuant to pursuant to Section 2-1301 of the Code of Civil Procedure, 735 ILCS 5/2-1301 (2004) and Section 101.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.204(d), hereby moves for Default Judgment against the Respondent, FIRST CHOICE CONSTRUCTION, INC. In support of this Motion, Complainant states as follows:

1. On September 1, 2005, the Complainant filed a Complaint with the Board, stating a cause of action against the Respondent, FIRST CHOICE CONSTRUCTION, INC. for Waste Disposal Violations and Demolition Debris Violations.
2. The complaint was signed for receipt on August 31, 2005 by the Respondent's Agent. A copy of the executed certified mail receipt is attached.
3. On February 1, 2006, the Complainant filed a Motion for Default with the Board for J & S Companies, Inc. Attached to the Motion was the affidavit of IEPA Inspector Christopher Cahnovsky, and the December 30, 2003 inspection report. Since the complaint alleges identical violations, the Complainant respectfully requests that the previously entered affidavit and inspection report be referenced for this Motion.

4. The Respondent, FIRST CHOICE, INC., has not filed an Answer or other responsive pleading and has therefore failed to timely appear, answer or otherwise plead as required by Section 101.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.204(d).

5. Due to Respondent's failure to answer, or otherwise respond to Complainant's Complaint, Complainant is entitled, pursuant to Section 2-1301 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1301 (2004), to have a finding of default entered against Respondent.

6. The Illinois Attorney General is authorized by Section 42 of the Act, 415 ILCS 5/42 (2004), pursue civil penalties for violations of the Act:

(a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any determination or order of the Board pursuant to this Act, shall be liable to a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues; such penalties may, upon order of the Board or a court of competent jurisdiction, be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act.

The uncontested allegations of the Complaint as well as the affidavits filed with this Motion demonstrate that Respondent has committed violations of the Act.

7. By violating the Illinois Environmental Protection Act, the Respondent, FIRST CHOICE CONSTRUCTION, INC. is subject to civil penalties under Section 42(a) of the Act, 415 ILCS 5/42(a) (2004) and to injunctive relief under Section 42(e) of the Act, 415 ILCS 5/42(e) (2004). The People request a civil penalty of \$18,000 based upon the facts cited above.

8. The Illinois General Assembly has recognized specific threats posed by improper waste disposal. In section 20 of the Act, 415 ILCS 5/20 (2004), the Act in pertinent part states as follows:

Sec. 20 (a) The General Assembly finds:

(1) that economic and population growth and new methods of manufacture, packaging, and marketing, without the parallel growth of facilities enabling an

ensuring the recycling, reuse and conservation of natural resources and solid waste, have resulted in a rising tide of scrap and waste materials of all kinds; (2) that excessive quantities of refuse and inefficient and improper methods of refuse disposal result in scenic blight, cause serious hazards to public health and safety, create public nuisances, divert land from more productive uses, depress the value of nearby property, offend the sense, and otherwise interfere with community life and development;

* * *

9. In this case, the improper disposal of demolition waste presented a real and serious threat to the health and general welfare of the general public in addition to degrading the quality of the land of the State. As noted in the complaint, the previously entered affidavit of IEPA Inspector Christopher Cahnovsky, and the previously entered December 30, 2003 inspection report, the demolition debris was improperly disposed of at a site which was not permitted by the Illinois EPA as a sanitary landfill nor met the requirements of the Act and regulations and the standards promulgated thereunder.

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Court enter a default order and, after proper notice, following a hearing if necessary, enter a default judgment and assess a penalty against the Respondent, FIRST CHOICE CONSTRUCTION, INC.

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

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

BY: 
KRISTEN LAUGHRIDGE GALE
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