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JUL 31 2009

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 30, 2009

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

PCB10-12

Re: ***People v. Hicks Oils & Hicksgas, Inc.***

Dear Clerk:

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,

A handwritten signature in cursive script that reads "Michael D. Mankowski".

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

MDM/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
HICKS OILS & HICKSGAS, INC.,)
an Indiana corporation,)
)
Respondent.)

PCB No. 10-12
(Enforcement)

NOTICE OF FILING

To: Hicks Oils & Hicksgas, Inc.
c/o Elizabeth Harvey
Swanson, Martin & Bell, Ltd.
330 North Wabash, Suite 300
Chicago, IL 60611

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Pollution Control Board

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 (2006), 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: July 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on July 30, 2009, 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: Hicks Oils & Hicksgas, Inc.
c/o Elizabeth Harvey
Swanson, Martin & Bell, Ltd.
330 North Wabash Suite 300
Chicago, IL 60611

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

To: John T. 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.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
vs.)
)
HICKS OILS & HICKSGAS, INC.,)
an Indiana corporation,)
)
Respondent.)

PCB No. 10-1
(Enforcement)

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Pollution Control Board

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: July 30, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 HICKS OILS & HICKSGAS, INCORPORATED,)
 an Indiana corporation,)
)
 Respondent.)

PCB NO. 10-12

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 STATE OF ILLINOIS
 Pollution Control Board

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, complain of Respondent, HICKS OILS & HICKSGAS, INCORPORATED, as follows:

COUNT I

GROUNDWATER POLLUTION

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 Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e).

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4, and which is charged, inter alia, with the duty of enforcing the Act.

3. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31, after providing the Respondent, Hicks Oil & Hicksgas, Incorporated, with notice and the opportunity to meet with the Illinois EPA.

4. The Respondent, Hicks Oil & Hicksgas, Incorporated, ("Hicks Oils") is an Indiana corporation, registered and in good standing with the Illinois Secretary of State.

5. The Respondent is a retailer of bulk petroleum products and liquefied gas and at all times relevant to this Complaint, has owned and operated a bulk petroleum storage and transfer facility located at 1118 Wesley Road, just northwest of State Highway 29 in Creve Coeur, Tazewell County, Illinois ("site or facility").

6. Located on the site are the retention dikes from five (5) previously removed bulk petroleum storage tanks and two partially disassembled distribution pipelines previously used to transfer petroleum products from a barge terminal on the Illinois river to the storage tanks. Also present are an office building, warehouse, and loading rack area where employees filled tanker trucks for transport of petroleum products to customers.

7. Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), provides 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.

* * *

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), contains the following definition:

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

9. Section 3.170 of the Act, 415 ILCS 5/3.170 (2006), contains the following definition:

"CONTAMINATION" or "CONTAMINATE", when used in connection with groundwater, means water pollution of such groundwater.

10. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), contains 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.

11 Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), contains 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.

12. Section 3.210 of the Act, 415 ILCS 5/3.210 (2006), contains the following definition:

"GROUNDWATER" means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure.

13. Section 620.115 of the Illinois Pollution Control Board's ("Board") Groundwater Regulations, 35 Ill. Adm. Code 620.115, prohibits offensive conditions in waters of the State:

No person shall cause, threaten or allow a violation of the Act, the Illinois Groundwater Protection Act [415 ILCS 55] or regulations adopted by the Board thereunder, including but not limited to this Part.

14. Section 620.405 of the Board's Groundwater Regulations, 35 Ill. Adm. Code 620.405, provides a general prohibition against violations of Groundwater Quality Standards as follows:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

15. Section 620.410 of the Board's Groundwater Regulations, 35 Ill. Adm. Code 620.410, provides the Groundwater Quality Standards for Class I: Potable Resource

Groundwater as follows:

- b) Organic Chemical Constituents Except due to natural causes or as provided in Section 620.450 or subsection (c), concentrations of the following organic chemical constituents shall not be exceeded in Class I groundwater:

<u>Constituent</u>		<u>Standard (mg/L)</u>
Benzene*	***	0.005

*Denotes a carcinogen

16. On information and belief, in 2001, the Respondent removed the five (5) petroleum storage tanks, the loading rack, and the majority of the piping between the tanks and the loading area.

17. On information and belief, in 2001, the Respondent hired an engineering firm to conduct remediation work at the site.

18. On information and belief, in May of 2002, the engineering firm tested a sample of groundwater from monitoring well number three (3), located at the site. Analysis of the sample showed a benzene concentration of 1.080 milligrams per liter ("mg/l").

19. On February 24, 2004, the Respondent submitted to the Illinois EPA Division of Water Pollution Control a Coordinated Review Of Permit Application Fact Sheet and Memorandum containing laboratory results collected by the Defendant from on-site monitoring wells. The results showed high levels of benzene, including the concentration of 1.080 mg/t found in monitoring well number three (3).

20. Benzene is a contaminant as defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

21. The facility is located in an area where the groundwater has an intrinsically high vulnerability to contamination due primarily to geological conditions, including permeable soils and a high infiltration rate of groundwater recharge. The groundwater is presently utilized as an

aquifer and source of drinking water for local residences and is therefore a Class I resource groundwater.

22. By causing or allowing the discharge of contaminants to groundwater so as to exceed the Board's Groundwater Quality Standards for a Class I resource groundwater, and to thereby render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, the Respondent has violated Sections 12(a) of the Act, 415 ILCS 5/12(a) (2006), and 35 Ill. Adm. Code 620.115, 620.405 and 620.410.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the state of Illinois, respectfully requests that the Board enter an order against the Respondent Hicks Oil & Hicksgas, Incorporated:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Hicks Oil & Hicksgas, Incorporated has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Hicks Oil & Hicksgas, Incorporated to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondent Hicks Oil & Hicksgas, Incorporated a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a).

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: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

MICHAEL D. MANKOWSKI
Attorney I.D. #06287767
500 South Second Street
Springfield, Illinois 62706
217/557-0586
Dated: 7/29/09

