

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE

SEP 13 2010

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,))
))
v.))
))
MARION METAL & ROOFING)
and C & T RECYCLING,)
))
Respondents.)

AC 11-7
(IEPA No. 232-09-AC)

ORIGINAL

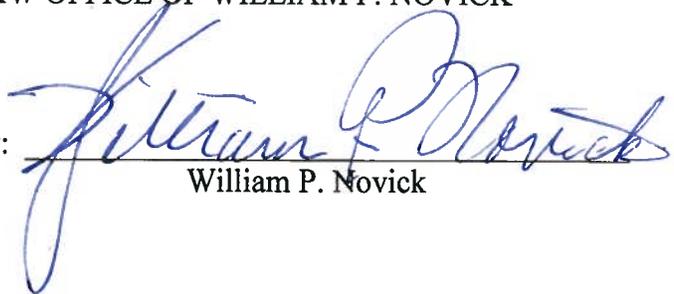
NOTICE OF FILING

Now come the Respondent, Marion Metal & Roofing, and the current owners of the subject property, Thomas E. Porter and Beverly Bible, by and through their attorney, William P. Novick, and for their Notice of Filing, state as follows:

1. On September 11, 2010, the undersigned forwarded by regular mail a Petition for Review for filing in the above-captioned matter.

LAW OFFICE OF WILLIAM P. NOVICK

By:



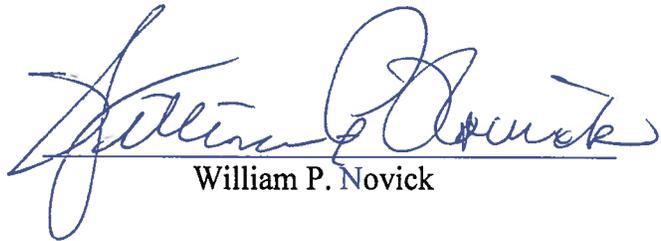
William P. Novick

WILLIAM P. NOVICK
ARDC NO. 6182947
LAW OFFICE OF WILLIAM P. NOVICK
501 West DeYoung, Suite 1
P. O. Box 1083
Marion, Illinois 62959
Telephone: (618) 993-1600
Facsimile: (618) 993-1601
E-mail: billnovick1952@yahoo.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Filing was served upon the entity named below by enclosing same in an envelope addressed to said entity at its business address as shown below, with postage fully prepaid, and by depositing said envelope in a U. S. Post Office mailbox in Marion, Illinois on the 11th day of September, 2010, as follows:

Clerk, Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601



William P. Novick

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AC

11-1

(IEPA No. 232-09-AC)

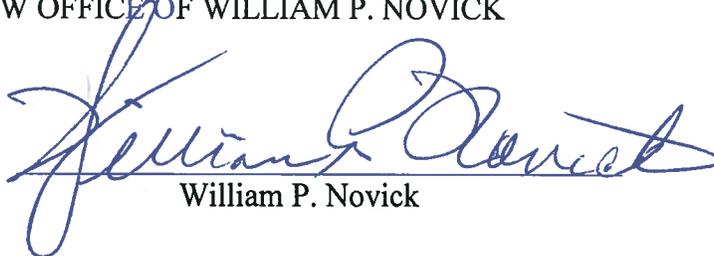
ORIGINAL

NOTICE OF APPEARANCE OF COUNSEL

The undersigned, William P. Novick, hereby files his appearance in the above-captioned matter on behalf of the Respondent, Marion Metal & Roofing, and on behalf of the current owners of the subject premises, Thomas E. Porter and Beverly Bible.

LAW OFFICE OF WILLIAM P. NOVICK

By:

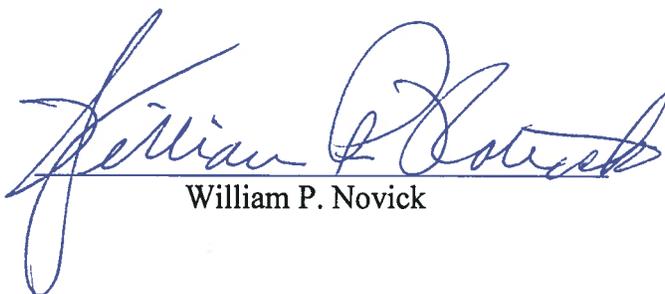

William P. Novick

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appearance of Counsel was served upon the entity named below by enclosing same in an envelope addressed to said entity at its business address as shown below, with postage fully prepaid, and by depositing said envelope in a U. S. Post Office mailbox in Marion, Illinois on the 11th day of September, 2010, as follows:

Clerk, Illinois Pollution Control Board
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Chicago, Illinois 60601



William P. Novick

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11-1

(IEPA No. 232-09-AC)

ORIGINAL

PETITION FOR REVIEW

Now come the Respondent, Marion Metal & Roofing, and the current owners of the subject property, Thomas E. Porter and Beverly Bible, by and through their attorney, William P. Novick, and for their Petition for Review, state as follows:

1. The reasons to contest this agency's administrative citation are set forth in 35 Illinois Administrative Code, Section 108.206, and include the following:

- a) The AC Recipient does not own the property;
- b) The AC Recipient did not cause or allow the alleged violation;
- c) The AC was not timely filed or properly served; or
- d) The alleged violation was the result of uncontrollable circumstances.

2. The undersigned attorney verily believes that any or all of the foregoing reasons may provide a sufficient defense to the administrative citation issued against the named Respondent, Marion Metal & Roofing, as well as to the current owners of the subject property, Thomas E. Porter and Beverly Bible, husband and wife.

3. The subject property was at one time owned by the corporation known as Marion Metal & Roofing Company, Inc. Said corporation was involuntarily dissolved on June 1, 2001, as demonstrated by "Exhibit A" attached hereto and incorporated herein by reference as if set forth verbatim. The named Respondent, Marion Metal & Roofing, was at no time a legal entity recognized under the laws of the State of Illinois and was never

the owner of the subject premises. Further, said named Respondent was a misnomer, and service of any administrative citation on Thomas E. Porter personally was invalid and should be quashed. While this may be a legal technicality, this agency is nonetheless bound by proper procedure under Illinois law. In addition, due to the fact that said named Respondent was not a legal entity and at no time owned the subject property, it is fair to say that the named Respondent "did not cause or allow the alleged violations." Finally, an administrative citation issued against an entity which does not exist is a nullity as a matter of law.

4. The current owners of the subject property, Thomas E. Porter, M.D. (retired) and Beverly Bible, his wife, are voluntarily responding to the administrative citation issued by this agency, both to clear the record as to the ownership of the subject property and, further, to attempt to prevent any administration citation being issued against them. Both of said individuals have retained the undersigned to evict from the subject premises Todd and Tabatha Booten, d/b/a C & T Recycling, the other named Respondent herein, for reasons including, but not limited to, their failure to pay rent, failure to enter into any written lease, failure to keep the premises clean and free of debris, failure to conduct their business with proper permits or in compliance with Illinois law, and their failure to repair significant damages which they caused to the subject premises. The undersigned attorney will be filing a Forcible Entry and Detainer action in the Circuit Court of the First Judicial Circuit, Williamson County, Illinois, as soon as time permits, but not later than next week.

5. Said current owners of the subject property have repeatedly complained to both Todd & Tabatha Booten, d/b/a C & T Recycling, to clean up the property or face eviction from the premises, well prior to the issuance of this agency's administrative citation. Neither of the current owners have caused or allowed the alleged violations to occur, but rather, have consistently attempted to "correct" any alleged violations which were visibly noticeable to them. It might also be argued that the alleged violations were caused solely by Todd & Tabatha Booten, d/b/a C & T Recycling, under circumstances beyond the current owners' control.

6. Thomas E. Porter and Beverly Bible, the owners of the subject premises, merely lease their property to Todd & Tabatha Booten, d/b/a C & T Recycling, and are not personally familiar with the rules and regulations promulgated by this agency and rely on their tenants to comply with Illinois law in all respects.

7. The current owners of the subject property intend to personally "correct" any alleged violations pertaining to the premises by both evicting the persons responsible for same and, further, cleaning up the property themselves, if same becomes necessary. Under the circumstances presented herein, it would be an injustice to hold the current owners responsible for any alleged violations pertaining to the subject premises.

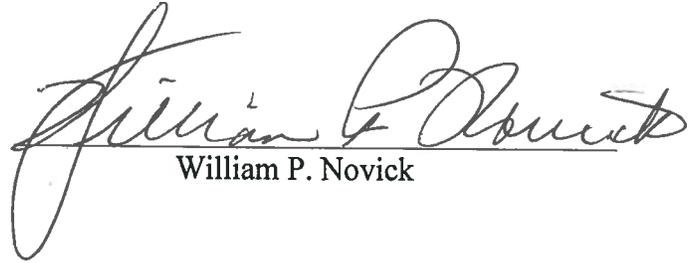
8. In the opinion of the undersigned attorney, only Todd & Tabatha Booten, d/b/a C & T Recycling, should be held directly responsible for any alleged violations

pertaining to the subject property and for any fines related thereto.

WHEREFORE, the Respondent, Marion Metal & Roofing, as well as Thomas E. Porter and Beverly Bible, respectfully request a review of this agency's administrative citation issued herein on August 9, 2010 and, further, pray that said administrative citation be considered void and of no effect against them.

LAW OFFICE OF WILLIAM P. NOVICK

By:


William P. Novick

VERIFICATION

Under penalties as provided by law under Section 1-109 of the Code of Civil Procedure, the undersigned certify that the statements set forth in the foregoing instrument are true and correct, except as to those matters which may constitute legal conclusions by their attorney.



Thomas E. Porter



Beverly Bible

WILLIAM P. NOVICK
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E-mail: billnovick1952@yahoo.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Petition for Review was served upon the entities named below by enclosing same in an envelope addressed to said entities at their business addresses as shown below, with postage fully prepaid, and by depositing said envelope in a U. S. Post Office mailbox in Marion, Illinois on the 11th day of September, 2010, as follows:

Clerk, Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

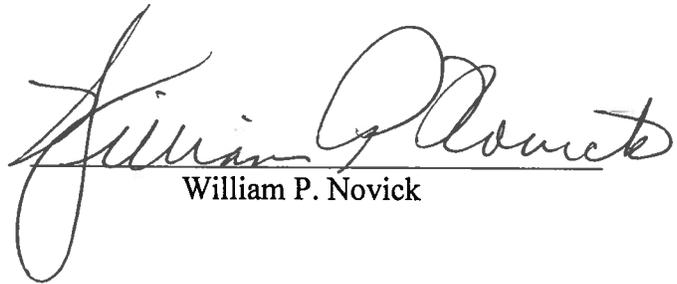
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

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Pollution Control Board

ORIGINAL



William P. Novick



SERVICES PROGRAMS PRESS PUBLICATIONS DEPARTMENTS CONTACT

CORPORATION FILE DETAIL REPORT

Entity Name	MARION METAL & ROOFING COMPANY, INC.	File Number	36660210
Status	DISSOLVED		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	01/18/1957	State	ILLINOIS
Agent Name	EUGENE H PORTER	Agent Change Date	02/07/1992
Agent Street Address	1107 W BOULEVARD PO BOX 850	President Name & Address	EUGENE H PORTER 1107 W BOULEVARD MARION 62959
Agent City	MARION	Secretary Name & Address	INVOLUNTARY DISSOLUTION 06 01 01
Agent Zip	62959	Duration Date	PERPETUAL
Annual Report Filing Date	00/00/0000	For Year	2001

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