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CLERK'S OFFICE

JUN 18 2003

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

June 13, 2003

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: **People v. Gerald Hewing, d/b/a Hewing Technical Services** *PCB03-233*

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINT and ENTRY OF APPEARANCE in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Sally A. Carter".

Sally A. Carter
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SAC/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

CLERK'S OFFICE

JUN 18 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

GERALD HEWING, d/b/a HEWING
TECHNICAL SERVICES,

Respondent.

No. 03-233

NOTICE OF FILING

To: Gerald Hewing
d/b/a Hewing Technical Services
Rural Route 1, Box 3
Sigel, IL 64262

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 (1994), 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: *Sally A. Carter*
SALLY A. CARTER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 13, 2003

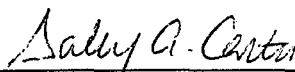
CERTIFICATE OF SERVICE

I hereby certify that I did on June 13, 2003, 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: Gerald Hewing
d/b/a Hewing Technical Services
Rural Route 1, Box 3
Sigel, IL 64262

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
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Sally A. Carter
Assistant Attorney General

This filing is submitted on recycled paper.

RECEIVED

CLERK'S OFFICE

JUN 18 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

GERALD HEWING, d/b/a HEWING
TECHNICAL SERVICES,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

No. 03-233

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, SALLY A. CARTER,
Assistant Attorney General of the State of Illinois, hereby enters her 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: Sally A. Carter
SALLY A. CARTER
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 13, 2003

JUN 18 2003

STATE OF ILLINOIS
Pollution Control Board

Respondent.

No. PCB No. 03-233
(Enforcement)

3. The Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), after providing the Respondent with notice and opportunity for a meeting with the Illinois EPA.

4. The Respondent, Gerald Hewing ("Hewing"), is and was at all times relevant to this Complaint, the owner and operator of a small auto repair shop, Hewing Technical Services ("facility") located in Sigel, Illinois. Hewing's address is Rural Route 1, Box 3, Sigel, Illinois 64262.

5. Section 12 of the Act, 415 ILCS 5/12 (2002), provides, in pertinent part, 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;

* * *

6. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), provides as follows:

"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.

7. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), 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.

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), contains the following definition:

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

9. On June 13, 2000, the Illinois EPA Bureau of Water ("BOW") and the Shelby County Health Department investigated the facility following a complaint regarding discharges from the facility's septic tank. Upon arrival at the facility, a small pile of trash was burning on the property.

10. On June 13, 2000, the Illinois EPA BOW discussed the discharge complaint with Hewing. Hewing initially stated that an agreement existed between the Village of Sigel and him to "split the cost" of connecting the septic tank to the Village of Sigel's collection system. However, when pressed to see the septic tank discharge, the Respondent led the Illinois EPA to a ditch receiving the discharges. The ditch is a water of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

11. The Illinois EPA BOW observed the septic tank is located under a concrete platform; the ditch receiving its discharges is approximately 20 feet from the septic tank. The Illinois EPA BOW noted a sewage odor emanating from water in the ditch where the septic tank discharged.

12. Another discharge pipe was located in the ditch about fifteen feet from the septic tank discharge. The pipe contained a black substance and a black stain existed below the pipe in the ditch.

13. The Illinois EPA inspector asked Hewing where the shop's floor drains discharge. Hewing indicated that the drains are connected to the second pipe after passing through an oil/water separator. The Illinois EPA explained to Hewing that the oil/water separator is only intended to act as a waste pretreatment system prior to discharge to a full treatment facility, and that it in itself does not provide adequate treatment for a direct discharge

to the environment. The oil/water separator, along with the septic tank, should have been connected to the sewage collection system.

14. The Illinois EPA next inquired of Hewing what was done with the waste oil from the cars he repaired. Hewing showed the inspector eight 20-gallon buckets that he uses to store oil; one of which was uncovered. The buckets were not labeled as containing waste oil.

15. On September 12, 2000, the Illinois EPA Bureau of Land ("BOL") conducted a land inspection of the Respondent's facility. During the inspection, the Illinois EPA noted evidence of open burning of refuse on the property.

16. By allowing contaminants to discharge to the ditch from his septic tank and oil/water separator, the Respondent has caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

17. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois, or to violate the Board's regulations or standards, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an Order against the Respondent:

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

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT II

NPDES VIOLATIONS

1-15. Complainant realleges and incorporates herein by reference paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count II.

16. Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), provides as follows:

No person shall:

- f. Cause, threaten or allow the discharge of any contaminants into the waters of the State, as defined herein, including but not limited to, water to any sewage works, or into any well or from any point source with 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 NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board with respect to the NPDES program.

17. The Illinois EPA has not issued the Respondent a National Pollutant Discharge Elimination System ("NPDES") permit for the facility.

18. By allowing contaminants to discharge through buried pipes to the ditch, a point source without a NPDES permit, the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42 (f) (2002), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III

OFFENSIVE CONDITION VIOLATIONS

1-15. Complainant realleges and reincorporates herein by reference paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count III.

16. Section 302.203 of the Pollution Control Board's Regulations, 35 Ill. Adm. Code 302.203, provides:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin . . .

17. The receiving ditch was discolored and malodorous and contained oily, discolored discharges from the septic tank and oil/water separator.

18. By allowing used oil and septic tank discharges to discharge to the ditch, a water of the State, where the unnatural odor and discolored material was noticeable, the Respondent has violated 35 Ill. Adm. Code 302.203.

19. By violating the regulations or standards adopted by the Board, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT IV

WATER QUALITY VIOLATIONS

1-15. Complainant realleges and reincorporates herein by reference paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count IV.

16. Section 304.106 of the Pollution Control Board Regulations, 35 Ill. Adm. Code 304.106 (2002), provides:

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

17. The receiving ditch was discolored and malodorous and contained oily, discolored discharges from the septic tank and oil/water separator.

18. By allowing the discharges of discolored and malodorous waste from its septic tank and oily, discolored discharges from its oil/water separator, the Respondent has violated 35 Ill. Adm. Code 304.106.

19. By violating the regulations or standards adopted by the Board, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT V

AIR POLLUTION VIOLATIONS

1-15. Complainant realleges and reincorporates herein by reference paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count V.

16. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

17. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), provides the following definition:

“AIR POLLUTION” is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

18. At the facility on June 13, 2000, the Illinois EPA observed a small pile of trash burning on the property. On September 12, 2000, the Illinois EPA continued to observe evidence of burned waste piles. As such, on or before June 13, 2000, the Respondent has caused, threatened, or allowed the discharge or emission of a contaminant into the environment so as to cause air pollution.

19. By causing, threatening, or allowing the discharge or emission of a contaminant into the environment so as to cause air pollution, the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT VI

OPEN BURNING VIOLATIONS

1-15. Complainant realleges and incorporates herein by reference paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count VI.

16. Section 9(c) of the Act, 415 ILCS 5/9(c) (2002), provides:

No person shall:

Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning;

17. Section 3.300 of the Act, 415 ILCS 5/3.300 (2002), provides the following definition:

“OPEN BURNING” is the combustion of any matter in the open or in an open dump.

18. At the facility on June 13, 2000, the Illinois EPA observed a small pile of trash burning on the property. On September 13, 2000, the Illinois EPA continued to observe evidence of burned waste piles. As such, on or before June 13, 2000, the Respondent has caused or allowed the open burning of any refuse.

19. By causing or allowing the open burning of any refuse or conducting a salvage operation by open burning, the Respondent has violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and

F. Granting such other relief as the Board may deem appropriate.

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
Assistant Attorney General
Environmental Bureau

Of Counsel

SALLY A. CARTER

Assistant Attorney General

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: 6/13/03