



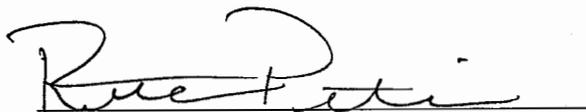
Service List

John Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601  
(by electronic filing)

Mr. Samuel Harrod  
Meltzer Purtil & Stelle, LLC  
1515 E. Woodfield Road, Second Floor  
Schaumburg, Illinois 60173

**CERTIFICATE OF SERVICE**

I, Robert W. Petti, an Assistant Attorney General, certify that on the 14th day of June 2013, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Notice of Filing, Complaint and Certificate of Service to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



Robert W. Petti  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-2069



5. The Site consists of office buildings, asphalt paved parking lots, and a retention pond with fish. The parking lots contain storm sewers that discharge storm water runoff into the retention pond.

6. The retention pond flows to a small channel, then into Buffalo Creek, which is a tributary of the Wheeling Drainage Ditch. The Wheeling Drainage Ditch is a tributary of the Des Plaines River.

7. Prior to May 26, 2012, on a date better known to Respondent, Hamilton Partners, Inc. hired RAPCO to sealcoat portions of the asphalt parking lots located at the Site.

8. From May 26, 2012 through May 28, 2012, RAPCO performed the asphalt sealcoating work, which involves the application of coal-tar liquid asphalt sealcoating material, on the parking lots at the site.

9. On information and belief, during the application of the sealcoating to the parking lots at the Site, RAPCO did not place any runoff protection device into or around the storm sewer inlets servicing the parking lot at the south end of the retention pond ("South Parking Lot").

10. The failure to place any protection devices into or around the storm sewer inlets of the South Parking Lot allowed asphalt sealcoating materials to enter the storm sewers in the South Parking Lot.

11. On May 30, 2012, a property manager employed by Hamilton Partners, Inc., was at the Site. At that time a sheen was present on the water surface at the south end of the retention pond and asphalt sealcoating material was present inside the inlets to the storm sewers in the South Parking Lot.

12. Also on May 30, 2012, there were as many as 150 dead fish in the retention pond and along the banks of the retention pond.

13. On May 31, 2012, the Illinois EPA inspected the Site.

14. At the time of the Illinois EPA inspection, remediation of the Site was ongoing and an environmental consultant retained by Hamilton Properties had placed absorbent booms in all inlets and outlets of the retention pond. Numerous dead fish were still present in the retention pond at the time of the inspection.

15. On June 4, 2012, the environmental consultant hired by Hamilton Properties completed its work at the Site. The retention pond was pronounced clear of contamination and all dead fish had been removed for disposal from the retention pond at the Site.

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

17. 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.

18. RAPCO, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

19. 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.

20. Liquid asphalt sealcoating material is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

21. 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.

22. 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.

23. The storm sewers and retention pond are “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

24. By causing or allowing application of liquid asphalt sealcoating materials to the parking lot without placing any device into the storm sewer inlets, which resulted in runoff of asphalt sealcoating material into the retention pond, the Respondent caused or allowed the discharge of contaminants into waters of the State such that it 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.

25. By allowing the discharge of liquid asphalt sealcoating material into the storm sewers in the parking lot and the retention pond, Respondent caused, threatened, or allowed "water pollution" as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2012).

26. The Respondent, by causing, threatening, or allowing the discharge of liquid asphalt sealcoating material at the Site so as to cause water pollution, has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board ("Board") enter an order against Respondent, R.A. PETERSON, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
4. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
5. Order Respondent to pay all costs, 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. Grant such other relief as the Board deems appropriate and just.

**COUNT II**  
**CREATING A WATER POLLUTION HAZARD**

1-23. Complainant realleges and incorporates by reference Paragraphs 1 through 15, and paragraphs 17 through 24 of Count I as Paragraphs 1 through 23 of this Count II.

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

No person shall:

\* \* \*

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

25. By applying liquid asphalt sealcoating material to the parking lot without placing any device into the storm sewer inlets to prevent runoff of asphalt sealcoating material into the retention pond, Respondent deposited contaminants on the land so as to create a water pollution hazard.

26. By depositing contaminants on the land so as to create a water pollution hazard, Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, R.A. PETERSON, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);
3. Order Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);

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

5. Order Respondent to pay all costs, 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. Grant such other relief as the Board deems appropriate and just.

**COUNT III**  
**VIOLATION OF THE GENERAL USE WATER QUALITY STANDARDS**

1-24. Complainant realleges and incorporates by reference Paragraphs 1 through 24 of Count I as Paragraphs 1 through 24 of this Count III.

25. Part 302 of the Board Water Pollution regulations, 35 Ill. Adm. Code Part 302, establishes general use water quality standards for non-specified waters of the State of Illinois.

26. Section 302.203 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

**Offensive Conditions**

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.

27. From May 26, 2012 through June 4, 2012, Respondent's discharge of asphalt sealcoating material caused the waters of the retention pond to display a visible sheen on the water surface and approximately 150 dead fish in and around the retention pond. Respondent's discharge resulted in offensive conditions in the retention pond, as that term is defined in Section 302.203 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203.

28. By allowing the discharge of asphalt sealcoating material into the retention pond, Respondent violated Section 302.203 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203.

29. By causing, threatening or allowing the discharge of a contaminant into waters of the State so as to violate Board regulations, Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, R.A. PETERSON, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 302.203 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203;
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 302.203 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203;
4. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

5. Order Respondent to pay all costs, 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. Grant such other relief as the Board deems appropriate and just.

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

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

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