

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS )

ex rel. GARY W. PACK, )

McHenry County State's Attorney, )

Complainant, )

Vs. )

MICHAEL STRINGINI, )

Respondent. )

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MAY 28 2003

PCB 01-43

(RCRA Enforcement)

STATE OF ILLINOIS  
*Pollution Control Board*

**COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT**

Complainant, the People of the State of Illinois, Ex. Rel. Gary W. Pack, McHenry County State's Attorney, by David N. Stone, Assistant State's Attorney pursuant to 35 Ill. Admin. Code, Section 101.244; and 35 Ill. Admin. Code, Section 103, respectfully moves the Pollution Control Board for entry of summary judgment on Counts I through Count XI of the Complaint for Civil Penalties. Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to the Illinois Administrative Code, Title 35: Environmental Protection. In support of said motion, the Complainant states as follows:

**ATTACHMENTS**

1. The complaint herein was filed on August 30, 2000 on behalf of the People of the State of Illinois by the McHenry County State's Attorney, Gary W. Pack at the request of the Environmental Protection Agency (IEPA) for violations of the Illinois Environmental Protection Act and the regulations promulgated pursuant to said Act.

2. No answer was filed by the Respondent and all allegations of the complaint are taken as denied pursuant to Section 103.123.

3. Attached hereto as Exhibit A is a copy of Complainant's REQUEST TO ADMIT PURSUANT TO 35 Ill. Adm. Code Section 101.618.

4. Attached hereto as Exhibit B is a copy of Respondent's RESPONSE to said REQUEST TO ADMIT.

5. Attached hereto as Exhibit C is a copy of Complainant's FIRST SET OF INTERROGATORIES.

6. Attached hereto as Exhibit D is a copy of Respondents' ANSWERS to the FIRST SET OF INTERROGATORIES.

7. Attached hereto as Exhibit E is a copy of Complainant's REQUEST FOR PRODUCTION.

8. Attached hereto as Exhibit F is a copy of Respondent's RESPONSE to REQUEST FOR PRODUCTION.

9. Attached hereto as Exhibit G is a copy of a TRANSCRIPT OF DEPOSITION OF RESPONDENT taken on the 18th day of March, 2003.

10. Attached hereto as Exhibit H is a copy of the SITE EVALUATION ZIMMERMAN PROPERTY UNION, ILLINOIS Prepared by Enviropact Northeast, Inc. dated February 10, 1988.

11. Attached hereto as Exhibit I is a copy of the Remedial Investigation Report for RCRA Closure Project Prepared by Residuals Management Technology, Inc. dated July 1996.

12. Attached hereto as Exhibit J is a copy of the Waste Volume Investigation Report and Revised Closure Plan Prepared by Residuals Management Technology, Inc. dated January 1997.

13. Attached hereto as Exhibit K is the Affidavit of Tina Kovaszny.

14. Attached hereto as Exhibit L is the AFFIDAVIT of Richard Zimmerman.

15. Attached hereto as Exhibit M is the AFFIDAVIT of Michael Slattery.

### **UNDISPUTED FACTS**

#### **Background Allegations of Complaint:**

1. This complaint is brought on behalf of the People of the State of Illinois by McHenry County State's Attorney, GARY W. PACK and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(a) (d) (e) and (f) of the Illinois Environmental Protection Act ("Act") 415 ILCS 5/42(a) (d) (e) and (f), as amended.

1. There is no dispute over who the plaintiff in this cause is and the board should take judicial notice of the interest of the IEPA in this matter

2. The Illinois Environmental Protection Agency ("Agency") is an administrative agency of the State of Illinois created by Section 4 of the Act, 415 ILCS 5/4, and is charged with the duty of enforcing the Act.

2. The Board should take judicial notice of the fact that the IEPA is an administrative agency of the State of Illinois.

3. At all times relevant to this Complaint, Norman Zimmerman ("Zimmerman") has owned and operated a facility located on McCue Road, south of Illinois Highway 176 in Union, McHenry County, Illinois ("facility" or "site").

3. The affidavit of Richard Zimmerman (Exhibit L) attached hereto affirms this allegation. In addition, the admissions of Respondent indicate that the location of the alleged hazardous waste is not in dispute. See Exhibit A, REQUEST TO ADMIT 3, 4, 5, 6 and 7. See Exhibit B, RESPONSE 3, 4, 5, 6 and 7.

4. On information and belief, from approximately 1980 to 1984, Mr. Zimmerman leased the facility to the Defendant, Michael Stringini (d/b/a M&G Metal Reclaiming) ("Stringini"), who used the property for the purpose of reclaiming metals from foundry sand.

4. Allegations of paragraph 4. are admitted by Respondent.

See Exhibit A, REQUEST TO ADMIT 4: "During the calendar years 1980 through 1984 Stringini orally agreed with Zimmerman to store and extract metal from foundry sand on the Zimmerman Property." See Exhibit B, RESPONSE 4: "True". See also, Exhibit C INTERROGATORY 2: "State the period of time during which you engaged in metal extracting activities on the Zimmerman Property." Exhibit D, ANSWER 2: "About August 1980 I began processing (although I had been at the site setting up for a period of time preceding then) I was shut down In mid 1984, I think late spring or early summer."

5. Sloan Valve Company ("Sloan") is a corporation organized and existing under the laws of the State of Illinois. Sloan generated some of the foundry sand stored at the site.

5. Allegations of paragraph 5. are admitted by Respondent

See Exhibit A, REQUEST TO ADMIT 5: "During the calendar years 1980 through 1984 Michael Stringini arranged for foundry sand from Sloan Valve Company to be hauled by Zimmerman to the Zimmerman Property." See Exhibit B RESPONSE 5: "Not true it was 1981-1984 as in #3 (the answer does not deny the substance of the request to admit but only changes the years by one year) See also Exhibit A, REQUEST TO ADMIT 3: "During the calendar years 1980 through 1984 Michael Stringini, received foundry sand at the Zimmerman Property from the facility of Sloan Valve Company located in Melrose Park, Illinois." See Exhibit B RESPONSE 3: "Not true: I believe I began receiving the sand from Sloan in late 1981, Sloan sand did not come to the site in 1980."

6. On information and belief, Mr. Stringini abandoned the property in the mid-1980's, leaving 170 drums of foundry sand, 2600 cubic yards of foundry sand in piles and 120 cubic yards of sand in surface impoundments that were stored at the facility.

6. Allegations of Paragraph 6. are admitted by Respondent.

See Exhibit H, Enviropact Report Introduction Tables. See also Exhibit K, Affidavit of Tina Kovaszny. See also Exhibit C INTERROGATORY 8: "What is the quantity or your estimate of the quantity of foundry sand on the Zimmerman Property that was not stored in containers at the time that you ceased operations on said property?" See Exhibit D ANSWER 8: "I do not recall accurately but the number in the Enviropacts seems about right." See Exhibit C INTERROGATORY 9: "What is the number or your estimate of the number of drums containing materials that were present on the Zimmerman Property at the time that you ceased operations on said property?" See Exhibit D ANSWER: 9: "I do not recall accurately but the number in the report by Enviropact seems about right."

7. At all times relevant to this Complaint, site samples that were taken at the facility indicated that the foundry sand contained levels of lead, which exceeded regulatory limits.

7. Authenticity of engineering report admitted by Respondent.

See Exhibit A, REQUEST TO ADMIT 1; "That each of the following documents, exhibited with this request is genuine: . . . Item 5: Spiral Bound document entitled "SITE EVALUATION ZIMMERMAN PROPERTY UNION, ILLINOIS" PREPARED BY EVIROPACT NORTHEAST, INC dated February 10, 1988. Exhibit B, RESPONSE TO REQUEST TO ADMIT 1: "Item No. 5: Admit that it is genuine but not that it was entirely correct."

See Exhibit K, Affidavit of Tina Kovaszny regarding lead excesses. Respondent has no evidence to rebut this evidence.

8. From at least May 17, 1982, and continuing to the present, the Defendant has not had a permit to treat, store or dispose of hazardous waste at the facility.

8. Allegations of Paragraph 8. are admitted by Respondent.

See the following:

Exhibit A, REQUEST TO ADMIT 11: "At no time did Stringini have an RCRA permit pursuant to 415 ILCS 5/39(d) for the Zimmerman Property."

Exhibit B, RESPONSE 11: "I was a reclaimer RCRA did not apply to my operations. All my output was product. True"

Exhibit A, REQUEST TO ADMIT 12: "At no time did Stringini have an RCRA permit pursuant to 35 Ill. Adm. Code 703.121 for the Zimmerman Property."

Exhibit B, RESPONSE 12: "I was a reclaimer RCRA did not apply to my operations. All my output was product. True"

Exhibit A, REQUEST TO ADMIT 15: "At no time did Stringini have a permit issued by the Illinois Environmental Protection Agency pursuant to 415 ILCS 5/39(a) for the Zimmerman Property."

Exhibit B, RESPONSE 15: "I was a reclaimer and did not require an IEPA permit for my operations. True"

Exhibit A, REQUEST TO ADMIT 16: "At no time did Stringini have a solid waste management site permit pursuant to 35 Ill. Adm. Code Sections 807.201 and 807.202 for the Zimmerman Property."

Exhibit B, RESPONSE 16: "I was a reclaimer and did not require a solid waste permit for my operations. All my output was product. True"

See also, Exhibit K, AFFIDAVIT Tina Kovasznay.

9. From at least May 17, 1982, and continuing to the present, the Defendant has not had a permit from the IEPA to develop or operate a solid waste management site.

9. Allegations of Paragraph 9. are admitted by Respondent.

See paragraph 8. above.

10. On information and belief, Sloan, with the assistance of Mr. Zimmerman, performed a closure of the site under 35 Ill. Adm. Code Part 725, Subpart G. On June 9, 1998, the Illinois EPA approved a certification of closure of the site submitted by Sloan after the objectives set forth in 35 Ill. Adm. Code Part 742, Tiered Approach to Corrective Action Objectives were achieved.

10. Allegations of Paragraph 10. are proved by Exhibit K AFFIDAVIT Tina Kovasznay and Exhibit L, AFFIDAVIT, Richard Zimmerman.

**Count I Allegations:**

1. through 10. Incorporated by reference. See information above.

11. Section 21(f) of the Act, 435 5/21(f), provides, in pertinent part as follows: (quoted language omitted for this motion)

12. Section 703.121 of the Illinois Pollution Control Board ("Board") Waste Disposal Regulations, 35 Ill. Adm. Code 703.121, provides, in pertinent part, as follows: : ( quoted language omitted for this motion)

13. Section 703.150 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.150, provides: : ( quoted language omitted for this motion)

14. Section 724.101(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 724.101(a), provides as follows: : ( quoted language omitted for this motion)

15. Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. 702.110, provides in pertinent part, the following definitions: (quoted language omitted for this motion)

16. Section 721.102 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102, provides in pertinent part, as follows: : (quoted language omitted for this motion)

17. Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.103, provides, in pertinent part, as follows: : (quoted language omitted for this motion)

11. through 17. The statute and regulations speak for themselves and need no further evidentiary proof.

18. The foundry sand is material that was abandoned on Defendant Zimmerman's property.

18. Allegations of Paragraph 18. are admitted by Respondent.

See Exhibit A REQUEST TO ADMIT 7: "Sometime after or during the calendar year 1984 Stringini ceased all activities on the Zimmerman Property. See Exhibit B RESPONSE 7: "Ceased is not the word I would use, I was locked out. In mid 1984 I made a verbal agreement with Norm Zimmerman to continue operations at the site. But Jerry Zimmerman refused to honor the agreement and secured the property against my entry.

"See also Exhibit A REQUEST TO ADMIT 8: "When Stringini ceased all activities at the Zimmerman Property, there remained piles of foundry sand and barrels of foundry sand and waste materials that had been placed on the Zimmerman Property by Stringini or agents of Stringini." See Exhibit B RESPONSE 8: "There was no waste sand in barrels. There was a metal concentrate from

my processes in the barrels, which were high enough in copper to be sold to a smelter. I would have sold the materials in barrels for a profit, the material in barrels was not waste: this was a valued product. Had I not been locked out I would have sold the barrels. There were two rough groups of sand: processed and unprocessed sand, the processing of the sand yielded two products: metal drums and reclaimed sand. When I had accumulated enough reclaimed sand, it could be sold to a cement kiln."

See also Exhibit A REQUEST TO ADMIT 9: "Since the time that Stringini ceased all activities on the Zimmerman Property, Stringini did not remove any of the stored foundry sand that was then on the Zimmerman Property." See Exhibit B RESPONSE 9: "True". See also Exhibit G DEPOSITION Pages 19 and 20 lines 21-24 and lines 1-18 respectively:

"Q. Was any sand removed from the site?

A. Uh, no.

Q. Why not?

A. I didn't have enough of it. When they buy sand, uh, they would only pay a dollar or two a yard—or I'm sorry—a ton. You have to have maybe at least a thousand tons.

Q. Okay.

A. And they usually like to buy, you know, 10,000, 20,000 tons. Otherwise, they don't want to mess with it.

Q. Okay.

A. And it has to be free of metal.

Q. What would you estimate the number of tons that you had received to the premises over the three years?

A. Oh, yeah. Sorry?

Q. What is your estimate of the number of tons of foundry sand that you received over the three—

A. You know, I'd be guessing.

Q. What would your guess be?

A. Five hundred tons. Maybe a thousand. . ."

19. The foundry sand located at the facility constituted solid waste as that term is defined in the Board Waste Disposal Regulations.

19. Allegations of Paragraph 19. are conclusions based on preceding facts and law and need no further evidentiary proof.

20. Section 721.120(a) of the Subpart C of Part 721 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.120(a), provides, in pertinent part, as follows: (quoted language omitted for this motion)

21. Section 721.124 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 721.124, in effect in 1988, provided as follows: (quoted language omitted for this motion)

22. Effective as of the filing of this complaint, Section 721.124 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 721.124, provides as follows: (quoted language omitted for this motion)

20 through 22. The regulations speak for themselves and need no further evidentiary proof.

23. The foundry sand stored at the facility contained lead which exhibits the characteristic of toxicity as defined in Section 721.124 of the Board Waste Disposal regulations and was a hazardous waste identified by number D008.

23. Proved by engineering reports:

See, Exhibit H, SITE EVALUATION, analyses results.

See also, Exhibit I, REMEDIAL INVESTIGATION REPORT, analyses results.

Respondent has no evidence to the contrary.

24. On information and belief, from at least January 12, 1988 until June 9, 1998, the Defendant stored and/or disposed of foundry sand containing lead, hazardous waste as defined in the Board Waste Disposal Regulations, at the facility.

25. The Defendant conducted a hazardous waste storage and/or hazardous waste disposal operation without a RCRA permit issued by the Agency for the facility, in violation of Section 21(f) of the Act and Sections 703.121 and 703.150 of the Board Waste Disposal Regulations.

26. Plaintiff requires all RCRA storage or disposal sites to post financial assurances pursuant to Section 21(f) of the Act and Sections 725.243, 725.245 and 725.246 of the Board Waste Disposal



## **Regulations.**

24. through 26. Allegations of Paragraphs 24. though 26. are conclusions based on preceding allegations and law and need no further evidentiary proof than that offered in the prior allegations.

### **Count II Allegations:**

1. through 10. Incorporated by reference. See information above.
11. Section 725.271 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.271(a) provides as follows: (quoted language omitted for this motion)
12. Section 725.273(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.273(a) and (b) provides as follows: (quoted language omitted for this motion)
13. Section 728.150(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 728.150(a), provide as follows: (quoted language omitted for this motion)

11. through 13. The regulations speak for themselves and need no further evidentiary proof.

14. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant failed to maintain the drums of hazardous waste in good condition and keep the drums closed during storage in violation of Sections 725.271 and 725.273(a) of the Board Waste Disposal Regulations.

14. Allegations of Paragraph 14. are admitted by Respondent.

See information provided in Count I Paragraph 18 above.

See also, Exhibit G, DEPOSITION Page 27 lines 12-23:

"Q. Where did these drums come from?

A. I'm sorry? The empty drums?

Q. Yeah.

A. The empty drums were scrap metal empty drums.

Q. Where did you get them from?

A. It could have been from the smelter H. Kramer.

Q. Were they new drums?

A. They were used drums.

Q. Were they lids?

A. No. . . ."

See also, Exhibit G, DEPOSITION Page 39 lines 16-20:

"Q. Okay. So as far as you're concerned, during the time that you were operating on the property, the proper way of storing those—that material was to have it in open drums?

A. Yeah. Scrap metal."

15. On information and belief, from at least April 14, 1992 until at least November 3, 1994, the Defendant stored hazardous waste at the facility in violation of Section 728.150(a) of the Board Waste Disposal Regulations.

15. Allegations proved by information provided in Count I, Paragraph 18.

See also, Exhibit I, REMEDIAL INVESTIATION REPORT.

See also, Exhibit K, AFFIDAVIT, Tina Kovaszny.

**Count III Allegations:**

1. through 10. Incorporated by reference. See information above.

11. Section 725.114 of the Board Waste Disposal Regulations 35 Ill. Adm. Code 725.114, provides as follows: (quoted language omitted for this motion)

11. The regulations speak for themselves and need no further evidentiary proof.

12. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant failed to control entry to the site at all times through the gates or other entrances, failed to post a "Danger-Unauthorized Personnel Keep Out" sign and failed to prevent the unknowing entry and minimize the possibility of unauthorized entry of persons or livestock onto the active portion of the facility in violation of Section 725.114 of the Board Waste Disposal Regulations.

12. Allegations of Paragraph 12. are admitted by Respondent.

See information provided in Count I Paragraph 18 above.

See also Exhibit G DEPOSITION Pages 44 & 45 lines 8-24 and 1-17 respectively:

"Q. Was there any, uh, fencing or other barriers around the—foundry sand that was dumped on the property?

A. Zimmerman had--The only entrance to the property had a gate.

Q. (no audible response.)

A. And he kept it secured. Somebody living up on that hill there.

Q. Was there any other fencing other than the gate where the road was?

A. Un, I don't believe so. I don't really remember if there were any fences around like the farm or anything like that. I don't remember.

Q. But you didn't arrange for any particular fencing..

A. No.

Q. Or boundaries to enclose the foundry sand that was delivered to the site?

A. No. Pretty much it enclosed itself.

Q. Were there any signs posted on the premises as to un-

A. Metal reclaimer.

Q. -inert danger, or anything like that with regard to the materials that were there.

A. There was nothing dangerous about the material. I brought my children there.

Q. Let me ask it this way. Looking at the photograph that you produced to me that says, uh, M. Stringini, Metal Reclaimer, August 1980, is that the only sign that you had?

A. Yeah. There--That was right there by the gate, yeah.

Q. There were no other signs?

A. Not that I remember."

See also, Exhibit F.RESPONSE page 1 (picture at top left).

See also, Exhibit A, REQUEST TO ADMIT 14: "During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not maintain site entry controls on the Zimmerman Property as described in 35 Ill. Adm. Code 725.114." See Exhibit B, RESPONSE 14: "I was a reclaimer the statute did not apply to my operations. And in mid 1984 Zimmerman seized my equipment and materials and secured the property. True"

#### **Count IV Allegations:**

1. through 10. Incorporated by reference. See information above.
11. Section 725.115 of the Board Waste Disposal Regulations 35 Ill. Adm. Code 725.115, provides, in pertinent part, as follows: (quoted language omitted for this motion)
12. Section 725.274 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.274, provides as follows: (quoted language omitted for this motion)

11. through 12. The regulations speak for themselves and need no further evidentiary proof.

13. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant failed to comply with general inspection requirements, maintain an inspection log or summary and inspect the container storage area in violation of Sections 725.115 and 725.274 of the Board Waste Disposal Regulations.

13. Allegations of Paragraph 13. are admitted by Respondent.

See Exhibit A REQUEST TO ADMIT 13: "During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not keep records of inspections as described in 35 Ill. Adm. Code 725.115 for the Zimmerman Property." See Exhibit B RESPONSE 13: "I was a reclaimer the statute did not apply to my operations. All my output was product True"

#### **Count V Allegations:**

1. through 10. Incorporated by reference. See information above.
11. Section 725.173 of the Board Waste Disposal regulations 35 Ill. Adm. Code 725.173, provides, in part, as follows: (quoted language omitted for this motion)
12. Section 725.175 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.175 provides as follows: (quoted language omitted for this motion)
13. Section 725.113(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.113(b), provides as follows: (quoted language omitted for this motion)

11. through 13. The regulations speak for themselves and need no further evidentiary proof.

14. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant failed to have a waste analysis plan available at the site, failed to make waste analysis and dates of waste storage available in the operating record, and failed to submit annual reports in violation of Sections 725.173 and 725.175 of the Board Waste Disposal

## **Regulations.**

### **14. Allegations of Paragraph 14. are admitted by Respondent**

See Exhibit A, REQUEST TO ADMIT 17: "During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not keep at the Zimmerman Property a written operating record and a waste analysis plan as described in 35 Ill. Adm. Code Section 725.173 and Section 725.113." See Exhibit B, RESPONSE 17: "I was a reclaimer and did not require a waste analysis plan for my operations. All my output was product. True"

**15. On information and belief, from at least January 12, 1988 until at least November 1, 1993, the Defendant failed to develop and follow a written waste analysis plan in violation of Section 725.113(b) of the Board Waste Disposal Regulations.**

### **15. Allegations of Paragraph 15 are admitted by Respondent**

See information provided in prior paragraph 14.

## **Count VI Allegations:**

1. through 10. Incorporated by reference. See information above.

**11. Section 725.131 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.131, provides as follows: (quoted language omitted for this motion)**

**12. Section 725.351 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.351, provides as follows: (quoted language omitted for this motion)**

**11-12. The regulations speak for themselves and need no further evidentiary proof.**

**13. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant failed to contain releases of foundry sand in violation of Section 725.131 of the Board Waste Disposal Regulations.**

### **13. Allegations of Paragraph 13. are admitted by Respondent.**

See information provided in Count I Paragraph 18 above. See also Exhibit A, REQUEST TO ADMIT 18: "During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not cover the piles of foundry sand to control wind dispersal and undertake other activities as described in 35 Ill. Adm. Code 725.113 (*typo*

*should have been 725.131) and Section 725.351 for the Zimmerman Property.” See Exhibit B,*  
RESPONSE: “I was a reclaimer the statute did not apply to my operations. All my output was product. True”

14. On information and belief, on or about January 12, 1988, the Defendant failed to protect foundry sand from dispersal by the wind in violation of Section 725.351 of the Board Waste Disposal Regulations.

14. Allegations of Paragraph 14. are admitted by Respondent.

See Exhibit A, REQUEST TO ADMIT 18: “During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not cover the piles of foundry sand to control wind dispersal and undertake other activities as described in 35 Ill. Adm. Code 725.113 and Section 725.351 for the Zimmerman Property.” See Exhibit B,  
RESPONSE: “I was a reclaimer the statute did not apply to my operations. All my output was product. True”

**Count VII Allegations:**

1. through 10. Incorporated by reference. See information above.

11. Section 725.135 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.135, provides as follows: (quoted language omitted for this motion)

12. Section 725.137 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.137, provides as follows: (quoted language omitted for this motion)

13. Section 725.151(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.151(a), provides as follows: (quoted language omitted for this motion)

14. Section 725.155 of the Board Waste disposal Regulations, 35 Ill. Adm. Code 725.155 provides as follows: (quoted language omitted for this motion)

11.-14. The regulations speak for themselves and need no further evidentiary proof.

15. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant failed to make proper emergency arrangements by failing to provide adequate aisle space, failed to inform local authorities of the presence of hazardous waste, failed to have a contingency plan, and failed to identify a person as emergency coordinator in violation of Sections 725.135, 725.137, 725.151(a) and 725.155 of the Board Waste Disposal Regulations.

15. Allegations of Paragraph 15. are admitted by Respondent.

See Exhibit A, REQUEST TO ADMIT 24: "During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not maintain aisle space on the Zimmerman Property as described in 35 Ill. Adm. Code 725.135, did not attempt to make arrangements regarding emergency responses as described in 35 Ill. Adm. Code 725.137, did not have a contingency plan as described in 35 Ill. Adm. Code 725.151 and did not have at least one employee on call for an emergency as described in 35 Ill. Adm. Code 725.155." See Exhibit B, RESPONSE 24: "False, Repeat above, I had not authority to enter the site. I was advised by my lawyers Claussen Miller that I had to stay out."

See also, information provided in Count I Paragraph 18 above.

**Count VIII Allegations:**

1. through 10. Incorporated by reference. See information above.

11. Section 725.190 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.190, provides, in pertinent part, as follows: (quoted language omitted for this motion)

12. Section 725.194(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.194(a) provides as follows: (quoted language omitted for this motion)

11.-12. The regulations speak for themselves and need no further evidentiary proof.

13. On information and belief, on or about June 17, 1993, the Defendant failed to install, operate and maintain a groundwater monitoring system, and failed to report groundwater monitoring information in violation of Sections 725.190 and 725.194 of the Board Waste Disposal Regulations.

13. Allegations of Paragraph 13. are admitted by Respondent.

See Exhibit A, REQUEST TO ADMIT 25: "During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not keep records of groundwater analysis and report to the Illinois EPA groundwater monitoring information as described in 35 Ill. Adm. Code 725.194." See Exhibit B, RESPONSE 25: "True, but I was a reclaimer the statute did not apply to my operations. All my output was product. I was aware of the geology and had accounted for it, the borehole toxicity results testify to that. I did have a well on the site but the statute did not apply."

See also, Exhibit A, REQUEST TO ADMIT 19: "During and after the time that Stringini stored materials or engaged in metal extracting on the Zimmerman Property, Stringini did not implement a ground water monitoring program as described in 35 Ill. Adm. Code 725.190."

Exhibit B, RESPONSE TO REQUEST TO ADMIT 19: "I was a reclaimer the statute did not apply to my operations. All my output was product. True"

**Count IX Allegations:**

1. through 10. Incorporated by reference. See information above.

11. Section 21(d) of the Act, 435 ILCS 5/21(d), provides, in pertinent part as follows: (quoted language omitted for this motion)

11. The statute speaks for itself and need no further evidentiary proof.

12. Section 807.201 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.201 provides, in pertinent part, as follows: (quoted language omitted for this motion)

13. Section 807.202(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.202(a) provides as follows: (quoted language omitted for this motion)

14. Section 807.104 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.104 provides, in pertinent part, the following definitions: (quoted language omitted for this motion)

12.-14. The regulations speak for themselves and need no further evidentiary proof.

15. On information and belief, from at least April 30, 1991 until at least November 3, 1994, the Defendant caused or allowed the development and operation of a new solid waste management site without a permit in violation Section 21(d) of the Act and Sections 807.201 and 807.202 of the Board Waste Disposal Regulations.

15. Allegations of Paragraph 15. are admitted by Respondent.

See Exhibit A, REQUEST TO ADMIT 16: "At no time did Stringini have a solid waste management site permit pursuant to 35 Ill. Adm. Code Sections 807.201 and 807.202 for the Zimmerman Property." See Exhibit B, RESPONSE 16: "I was a reclaimer and did not require a solid waste permit for my operations. All my output was product. True"

**Count X Allegations:**

1. through 10. Incorporated by reference. See information above.

. Section 21(e) of the Act, 435 5/21(e), provides, in pertinent



part as follows: (quoted language omitted for this motion)

11. The statute speaks for itself and needs no further evidentiary proof.

12. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant disposed, treated, stored and abandoned waste without meeting the requirements of the Act or the regulations in violation of Section 21(e) of the Act.

12. Allegations of Paragraph 12. are admitted by Respondent.

See all information provided above.

**Count XI Allegations:**

1. through 10. Incorporated by reference. See information above.

11. Section 21(a) of the Act, 435 5/21(a), provides, in pertinent part as follows: (quoted language omitted for this motion)

11. The statute speaks for itself and needs no further evidentiary proof.

12. On information and belief, from at least January 12, 1988 until at least November 3, 1994, the Defendant caused or allowed the open dumping of waste in violation of Section 21(a) of the Act.

12. Allegations of Paragraph 12. are admitted by Respondent.

See all information provided above.

**AGRUMENT**

**Summary Judgment is warranted when there is no genuine issue of fact.**

Section 101.244 of the Pollution Control Board rules provides that a party may seasonally move for Summary Judgment. A motion for summary judgment should be granted when pleadings, depositions, and admissions on file, together with affidavits, reveal that there is no genuine issue as to any material fact and that moving party is entitled to judgment as a matter of law. . **In re Estate of Herwig**, App. (2 Dist.1992) 178 Ill.Dec. 641, 237 Ill.App.3d 737, 604

N.E.2d 1164, appeal denied 186 Ill.Dec. 381, 151 Ill.2d 564, 616 N.E.2d 334. **Jacobson v. General Finance Corp.**, (App 2 Dist.1992) 170 Ill.Dec. 441, 227 Ill.App.3d 1089, 592 N.E. 2d 1121. **Crum and Forster Managers Corp. v. Resolution Trust Corp.**, 1993, 189 Ill.Dec. 756, 156 ILL.2d 384, 620 N.E.2d 1073, 35 A.L.R.5<sup>th</sup> 813.

### **THERE IS NO GENUINE ISSUE OF FACT IN THIS CASE.**

All of the allegations of Complainant's complaint are either admitted by the Respondent or are proved by undisputed documentation and affidavits. It is clear that the Respondent between 1980 and 1998 stored and/or disposed of foundry sand on the subject premises. The foundry sand was found to be hazardous pursuant to the Environmental Protection Act and Regulations. Such storage and disposa; of the foundry sand was done without any permits from the Illinois Environmental Protection Agency. The foundry sand was addressed through closure activities performed at the site and completed (by persons other than Respondent) in 1998.

Respondent maintains that he was "locked out" of the premises and therefore is not legally responsible for the deposits. He claims that he was a "reclaimer" and therefore not subject to the permitting requirements of the law. Both of these contentions are matters of law and not fact. Complainant asserts that neither contention is supported by law.

### **RESPONDENT'S CLAIM TO BEING "LOCKED OUT" IS NO DEFENSE TO THE VIOLATIONS OF THE ACT.**

Respondent initiated the introduction of the foundry sand on the Zimmerman property pursuant to an agreement he had with Sloan Valve Company and an oral lease agreement with Zimmerman. He collected fees from Sloan Valve to dispose of the foundry sand which he knew to be "special waste". (See Exhibit B RESPONSE TO REQUEST TO ADMIT 20 and Exhibit G DEPOSITION 26:18) He did not pay his rent and also failed to pay Zimmerman for hauling charges. He was in default. (See Exhibit G DEPOSITION 31: 13) Respondent was in violation of

the Environmental Protection Act and the Regulations well before he was told that he was no longer welcome on the Zimmerman property. There is no credible evidence that Respondent was barred from participating in the RCRA closure of the property but there is evidence that he failed to participate. (See, Exhibit A pgs 1-2 to Exhibit L, AFFIDAVIT, Richard Zimmerman and Exhibit B, RESPONSE TO REQUEST TO ADMIT 10) The claim to being "locked out" is a red herring with no basis in fact or law.

**RESPONDENT IS NOT EXEMPT FROM THE ENVIRONMENTAL PROTECTION ACT AND REGULATIONS BY VIRTUE OF BEING A "RECLAIMER".**

The Environmental Protection Act and the Regulations do not define or provide exemption for persons designated as "reclaimers". The regulations do cover materials that are reclaimed. However, the undisputed facts in this case demonstrate that Respondent was accumulating hazardous solid waste "speculatively" as provided for in Section 721.102 (e)(2)(C). In order to fall outside the regulatory framework, Respondent would have to show that 75% by weight or volume of the foundry sand at the beginning of the period (calendar year commencing January 1) was recycled or transferred to a different site for recycling. Section 721.101(c)(8). Respondent clearly admits that except for some metal that he extracted, none of the foundry sand was removed during the three plus years that he engaged in the accumulation of foundry sand on the Zimmerman Property. (See Exhibit G, DEPOSITION 19:21) Respondent admits that the metal extracted was about 2% by volume of the stored and/or disposed foundry sand. (See Exhibit G, DEPOSITION 22:2) Pursuant to Section 721.102, the foundry sand was, therefore, a solid waste.

Respondent states that the foundry sand was non-hazardous when he deposited it on the Zimmerman property. There is no evidence to support this assertion. Regardless, Respondent was required to have a permit from the IEPA for the storage or disposal of the non-hazardous waste. See Section 21(d) of the Act and Sections 807.201, 807.202(a), 807.104; Section 21(e) of the Act and 21(a) of the Act all cited in Counts IX, X, and XI.

The foundry sand is also a solid waste because it was disposed of at the site (See Section 721.102(b)(1)). Most of the foundry sand was piled on the ground at the Zimmerman property. After ceasing operations, Mr. Stringini never removed any foundry sand from the site (See

Exhibit B RESPONSE TO REQUEST TO ADMIT 9). The foundry sand was, therefore, abandoned by being disposed of in that the foundry sand was placed on the land so that such solid waste, and here, hazardous waste, or any constituent thereof may enter the environment (See definition of solid waste at Section 721.102(b)(1), the definition of "disposal(RCRA)" in Section 702.110 and the definition of "disposal" in Section 720.110). In this case, disposal has been demonstrated and the disposal of foundry sand at the site meets the definition of "disposal (RCRA)" since the foundry sand was, by analyses, shown to be hazardous by either the EP Toxicity or Toxicity Characteristic Leaching Procedure ("TCLP") test. Analyses included in the February 10, 1988 Enviropact Northeast, Inc. Site Evaluation Report showed that foundry sand in drums exceeded the EP Toxicity lead level. Analyses included in the July 1996 Remedial Investigation Report for RCRA Closure Project prepared by Residuals Management Technology, Inc. ("RMT") showed that the foundry sand in piles as well as in the surface impoundment ("pond") exceeded the TCLP lead level

#### **SUMMARY JUDGMENT ON COUNTS I THOUGH XI SHOULD BE ALLOWED.**

Complainant has cited statutory and regulatory authority in Counts I through XI that support its contention that Respondent operated a hazardous waste facility without a permit in violation of the Environmental Protection Act and Regulations (Count I); Failed to Properly Store Hazardous Waste (Count II); Failed to Institute Proper Site Entry Controls (Count III); Failed to Conduct Property Inspections and Maintain Proper Inspection Records (Count IV); Failed to Keep and Maintain Proper Records at the Facility (Count V); Failed to Take Hazardous Waste Release containment Measures (Count VI); Failed to Make Proper Emergency and Contingency Plan Arrangements (Count VII); Failed to Properly Implement a Groundwater Monitoring Program (Count VIII); Conducted a Solid Waste Management Site Without a Permit (Count IX) Stored and Abandoned Waste (Count X) and Engaged in Open Dumping (Count XI).

All of the factual allegations of these eleven counts have either been admitted by the Respondent or are undisputed by virtue of documentation and affidavits attached to this motion for summary judgment.

For the foregoing reasons, Complainant should be granted summary judgment on Counts I through XI.

## THE POLLUTION CONTROL BOARD SHOULD ASSESS A REASONABLE CIVIL PENALTY

Section 42 of the Environmental Protection Act provides in relevant parts as follows:

"(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."

"(b) (3) Any person that violates Sections 21(f), 21(g), 21(h) or 21(i) of this Act, or any RCRA permit or term or condition thereof, or any filing requirement, regulation or order relating to the State RCRA program, shall be liable to a civil penalty of not to exceed \$25,000 per day of violation."

"(h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or (b) (5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator."

In this case Respondent is in violation of Section 21(f) of the Act under Count I alone, and is therefore subject to a civil penalty of \$25,000.00 per day for each day of the violation. The evidence shows that the violation occurred from at least August of 1980 to December 1998. The number of days between September 1, 1980 and December 1, 1998 calculates to 6,661 days. Therefore the potential civil penalty for violation of Count I is \$166,525,000.

Under other Counts of the complaint the civil penalty would be limited to \$50,000 plus \$10,000 per day or potential civil penalties of \$66,660,000 for each such count.

The duration and gravity of the violations is quite obvious. While Respondent is arguably the most culpable of the three parties involved, he has had no consequence imposed on him since the IEPA commenced enforcement action. The other two parties, Sloan and Zimmerman took full responsibility for the closure at a cost in excess of \$600,000.00 (See Exhibit L, AFFIDAVIT, Richard Zimmerman and Exhibit M, AFFIDAVIT, Michael Slattery.)

Respondent has waived any financial hardship or poverty plea. (See Exhibit G, DEPOSITION 5:13).

There is a complete absence of diligence on the part of the Respondent to seek permits, to comply with the applicable requirements while operating at the site or to participate in the RCRA closure of the property.

Respondent received an economic benefit in that he was paid by Sloan valve for the material that he stored and/or disposed on the Zimmerman property, did not pay his rent on the property, did not incur any cost that would have been required to operate in compliance with the Act and has incurred no expense for closure of the site.

In reviewing the entire record, it is clear to Complainant that no amount of money would deter respondent from engaging in similar activity in the future and it is unlikely that there are others similarly disposed to openly ignore the Act in the same manner as this Respondent.

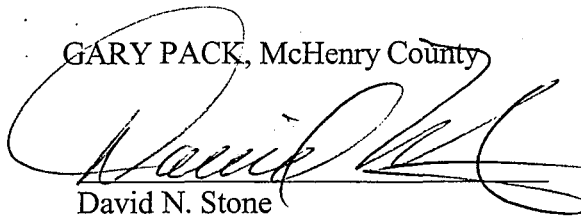
Complainant is not aware of other enforcement actions against this Respondent.

Complainant recommends that the civil penalty be no less than one third of the estimated cost of closure or \$200,000.00

### **Conclusion**

Complainant requests that the Pollution Control Board grant Summary Judgment on Counts I through XI and assess a reasonable civil penalty in an amount to be set by the Board but not less than \$200,000.00 combined for all counts.

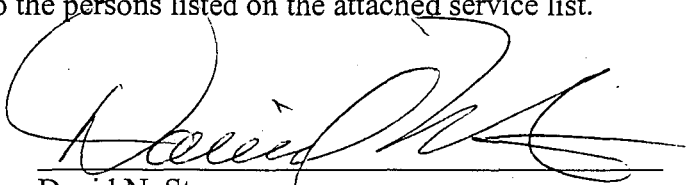
GARY PACK, McHenry County

A handwritten signature in black ink, appearing to read "David N. Stone", is written over a horizontal line.

David N. Stone  
Assistant State's Attorney

CERTIFICATE OF SERVICE

I, David N. Stone, an Assistant State's Attorney in this case, do certify that I caused to be sent by United Parcel Service this 27<sup>th</sup> day of May, 2003, the foregoing COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT to the persons listed on the attached service list.



David N. Stone

**SERVICE LIST**

Case No. PCB 01-43

NAME:

MR MICHAEL STRINGINI  
1108 S WESTOVER LANE  
SCHAUMBURG IL 60193

INTEREST:

Respondent

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**Exhibits  
Available  
on Request**