

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 17-45
)	
MAGNA TAX SERVICE CO., INC.,)	
)	
Respondent.)	

NOTICE OF FILING

To: Claire Manning and William D. Ingersoll, Brown, Hay & Stephens, LLP
205 South Fifth Street, Suite 700, P.O. Box 2459, Springfield, IL 62705-2459
Dennis Ballinger, 381 Greenway Lane, Decatur, IL 62521

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Notice of Filing and Complainant's Motion for Leave to File First, Amended Complaint *Instantly*, a copy of which is herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL, Attorney General of the
State of Illinois

By: s/Rachel Medina
Rachel Medina, #6297171
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: July 24, 2017

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB-2017-045
)	
MAGNA TAX SERVICE CO., INC.,)	
an Illinois Corporation,)	
)	
Respondent.)	

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT, *Instante*

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and hereby moves the Illinois Pollution Control Board ("Board"), pursuant to Section 2-616(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-616(a) (2016), and Sections 101.500 and 103.206 of the Board Regulations, 35 Ill. Adm. Code 101.500 and 103.206, for an order granting it leave to file an amended complaint and accepting the attached First Amended Complaint as filed. In support of its motion, the Complainant states as follows:

1. On February 2, 2017, Complainant filed a complaint alleging violations of the Illinois Environmental Protection Act ("Act"), and Board Regulations, arising from the release of contaminants at the property located at 120 North 14th Street, Mattoon, Coles County, Illinois, ("Site") owned by the Respondent Magna Tax Service Co., Inc. ("Magna Tax").

2. Discovery conducted in this matter suggests that the subject Site was operated in all respects by Dennis Ballinger, and that Magna Tax is merely an alter ego of Dennis Ballinger.

3. Section 2-616(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-616(a) (2016), provides as follows:

Amendments.

- (a) At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.

4. Section 103.206(d) and (e) of the Board Regulations, 35 Ill. Adm. Code 103.206(d) and (e), provide, in pertinent part, as follows:

- d) [I]f a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for permission to file the pleading.
- e) The pleading sought to be filed under subsection (d) must:
 - 1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
 - 2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

4. Section 31(d)(1) of the Illinois Environmental Protection Act, 735 ILCS 5/31(d)(1) (2016), provides, in pertinent part, as follows:

Any person may file with the Board a complaint ... against any person allegedly violating this Act ...

5. The power to allow amendments should be freely exercised so that litigants may freely present their causes of action. *Thomas v. Davenport*, 196 Ill. App. 3d 1042, 1046 (1st Dist. 1990).

6. The causes of action asserted in the First Amended Complaint grew out of the same facts and occurrences alleged about the subject Site in the underlying Complaint. The State now seeks to file a First Amended Complaint to reflect the emergence of facts concerning the responsible parties. It is imperative that the responsible party Dennis Ballinger be added to the action "to assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b) (2016). Judicial economy and efficiency will be served by granting Complainant leave to file the First Amended Complaint, in that filing of the First Amended Complaint will allow the parties to resolve the outstanding alleged violations within the context of a single enforcement action rather than multiple actions.

7. Accordingly, the conditions for an amendment pursuant to Section 2-616(a) of the Code of Civil Procedure, 735 ILCS 5/2-616(a) (2016), and Section 103.206 of the Board Regulations, 35 Ill. Adm. Code 103.206, are satisfied and the amendment should be allowed. Counts I through V of the Complaint have been amended, and Counts VI through X have been added, to join as a party Respondent, DENNIS BALLINGER.

8. A proposed First Amended Complaint is attached hereto and incorporated by reference into this Motion as Exhibit A.

9. No party will be prejudiced by allowing this amendment.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, moves for an order granting it leave to file its First Amended Complaint, *Instantler*, and accepting the First Amended Complaint as filed.

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Attorney General of the State of Illinois

By:



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EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 2017-045
)	
MAGNA TAX SERVICE CO., INC.,)	
an Illinois corporation, and DENNIS)	
BALLINGER, an individual,)	
)	
Respondents.)	

FIRST AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondents, MAGNA TAX SERVICE CO., INC., an Illinois corporation, and DENNIS BALLINGER, an individual, as follows:

COUNT I
OPEN DUMPING VIOLATIONS

1. This Count is brought by the Attorney General on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2016).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2016), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2016), after providing Respondent, MAGNA TAX SERVICE CO., INC. ("Magna Tax"), with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent MAGNA TAX is an active Illinois corporation in good standing as of the date of this filing. The president, secretary and registered agent of Magna Tax is Respondent Dennis D. Ballinger. The address for the registered agent is 119 W. Williams St., Suite 300, Decatur, IL 62523.

5. Respondent MAGNA TAX does not receive income.

6. Respondent MAGNA TAX does not file tax returns.

7. Respondent MAGNA TAX is solely owned by Respondent DENNIS BALLINGER.

8. Respondent MAGNA TAX is merely an alter ego and business conduit of Respondent DENNIS BALLINGER.

9. Respondent MAGNA TAX owns the former Young Radiator factory property, located at 120 North 14th Street, Mattoon, Coles County, Illinois ("the Site").

10. Respondent DENNIS BALLINGER operates the Site.

11. Respondent DENNIS BALLINGER has made all decisions regarding environmental compliance at the Site on behalf of Respondent MAGNA TAX since at least 2011.

12. On October 5, 2011, the Illinois EPA inspected the Site. Along the west half of the northern edge of the Site, a dark stain was located on the north end of a concrete pad and an area of dark liquid was located on the surface of the soil adjacent to the concrete pad ("Contaminated Area"). The Contaminated Area comprised approximately a few square feet.

13. On November 15, 2011, the Illinois EPA took a soil sample from the Contaminated Area ("Sample SV01"). While taking the soil sample at a depth of approximately one foot, a dark liquid was discharging from the surrounding soil into the bottom of the sampling hole. An unknown object existed at a depth of approximately one foot, which prevented the Illinois EPA inspector from sampling at depths greater than one foot. The soil in the Contaminated Area was saturated with a dark liquid.

14. A laboratory analysis of Sample SV01 identified several semi-volatile compounds, metals, and volatile organic compounds in the sample. The following table provides a summary of the contaminants detected in the sample:

Chemical Name	Result
Semivolatiles by GC/MS	ug/kg
4-Methylphenol	3,200
Naphthalene	180,000
2-Metyhlnaphthalene	1,400,000
Acenaphthylene	38,000
Acenaphthene	85,000
Dibenzofuran	80,000
Fluorene	180,000
Phenanthrene	540,000
Anthracene	49,000
Carbazole	8,000
Fluoranthene	16,000
Pyrene	140,000
Benzo(a)anthracene	36,000
Chrysene	51,000
Benzo(b)fluoranthene	9,500
Benzo(k)fluoranthene	3,300
Benzo(a)pyrene	22,000
Benzo(ghi)perylene	8,900
Metals	mg/kg
Cyanide	0.30
Mercury	0.13
Aluminum	5,640
Arsenic	19.6
Barium	184

Boron	16.4
Cadmium	5.44
Calcium	28,300
Chromium	51.3
Cobalt	5.55
Copper	399
Iron	27,100
Lead	779
Magnesium	11,900
Manganese	200
Nickel	28.4
Potassium	830
Sodium	277
Strontium	36.1
Vanadium	57.3
Zinc	4,080
Selenium	4.70
Laboratory pH	6.7
<i>TCLP Metals</i>	<i>mg/L</i>
Barium	0.64
Beryllium	0.001
Cadmium	0.04
Chromium	0.06
Lead	2.12
Nickel	0.10
Selenium	0.06
Silver	0.004
Vanadium	0.04
Zinc	77.4
<i>Volatile Organics</i>	<i>ug/kg</i>
Trichloroethene	640
Toluene	1,700
Ethylbenzene	3,900
Isopropylbenzene	1,500
Xylenes, total	27,000

15. On May 2, 2012, the Illinois EPA issued Violation Notice L-2012-01027 to Respondent MAGNA TAX by serving Dennis Ballinger as registered agent, at 119 W. William St., Suite 300, Decatur, IL 62523. The Violation Notice instructed that Respondent MAGNA TAX

enroll the site into the Illinois EPA's Site Remediation Program by July 1, 2012 to obtain review and approval to remediate the site and document the remediation.

16. On August 23, 2012, the Respondents conducted an investigative dig at the Site along a 6-inch metal pipe in the Contaminated Area. During the dig, soil and media uncovered next to the pipe were saturated with dark liquid material. Neither the extent of the full contamination nor the source of the contamination were defined on this date.

17. On September 5, 2012, the Respondents conducted another investigative dig of the Site near the 6-inch metal pipe in the Contaminated Area. During the dig, several pipes were identified below the groundwater level adjacent to the Contaminated Area. At least one of the pipes leaked dark liquid into the soil during the dig.

18. On September 5, 2012, the Illinois EPA took a soil sample from the Site (Sample X101). A laboratory analysis of Sample X101 identified several contaminants, including metals, in the soil sample. The following table provides a summary of the contaminants detected in the sample:

Chemical Name	Result
<i>Metals</i>	<i>mg/kg</i>
Cyanide	.07
Mercury	.23
Aluminum	5560
Arsenic	45.2
Barium	207
Beryllium	1.10
Boron	27.0
Cadmium	16.6
Calcium	11400
Chromium	119
Cobalt	9.53
Copper	962
Iron	39400
Lead	2030
Magnesium	4980

Manganese	242
Nickel	25.2
Potassium	626
Sodium	493
Strontium	33.4
Vanadium	37.6
Zinc	10600
Antimony	10.5
Laboratory pH	7.0
TCLP Metals	mg/L
Arsenic	0.04
Barium	0.76
Cadmium	0.03
Chromium	0.02
Lead	2.96
Nickel	0.02
Selenium	0.04
Zinc	53.3

19. The following calendar year, on September 13, 2013, Respondents conducted another exploratory dig of the Site and located an underground storage tank ("UST"). Field observations indicated the UST had a release. The release was reported to Illinois Emergency Management Agency and assigned IEMA Incident #H2013-1007.

20. On September 17, 2013, the UST was registered with the Office of the State Fire Marshal ("OSFM").

21. On October 16 - 17, 2013, Respondents excavated and removed one (1) 1,500 gallon heating oil UST from the Site. Visible contamination was identified in the soil.

22. On or about October 31, 2013, Respondents submitted a Leaking Underground Storage Tank Fund Eligibility and Deductible Application ("Application") in relation to the UST. The Application noted that the UST piping had leaked.

23. Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2016), provide as follows:

No person shall:

- (a) Cause or allow the open dumping of any waste.

- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of the Act and of regulations and standards thereunder.

24. Section 3.305 of the Act, 415 ILCS 5/3.305 (2016), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

25. Section 3.385 of the Act, 415 ILCS 5/3.385 (2016), provides as follows:

"Refuse" means waste.

26. Section 3.535 of the Act, 415 ILCS 5/3.535 (2016), provides as follows:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities...

27. Section 3.445 of the Act, 415 ILCS 5/3.445 (2016), provides, in pertinent part as follows:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder...

28. Section 3.185 of the Act, 415 ILCS 5/3.185 (2016), provides as follows:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

29. Section 3.315 of the Act, 415 ILCS 5/3.315 (2016), provides as follows:

“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.

30. Respondent MAGNA TAX, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2016).

31. The dark liquid identified in the Contaminated Area and surrounding the UST is a waste, pursuant to Section 3.535 of the Act, 415 ILCS 5/3.535 (2016).

32. By causing or allowing the dark liquid to enter the environment, Respondent MAGNA TAX allowed this waste material to be disposed of at the Site.

33. The Site is not a sanitary landfill or otherwise permitted for the disposal of waste such as the dark liquid.

34. By causing or allowing the dark liquid to be consolidated at the Site, Respondent MAGNA TAX violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2016).

35. By causing or allowing the UST to discharge, deposit, spill or leak waste material into the environment, Respondent MAGNA TAX violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MAGNA TAX SERVICE CO., INC.:

A. Scheduling a hearing in this matter at which time Respondent, MAGNA TAX SERVICE CO., INC., will be required to answer the allegations herein;

B. Finding that Respondent, MAGNA TAX SERVICE CO., INC., has violated Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2016);

C. Ordering Respondent, MAGNA TAX SERVICE CO., INC., to cease and desist from any further violations of Section 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2016);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, MAGNA TAX SERVICE CO., INC., for violating a provision of the Act a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT II
FAILURE TO PERFORM WASTE DETERMINATION

1-33. The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 of Count I as if fully set forth herein as paragraphs 1 through 33 of this Count II.

34. At all times during its ownership of the Site, Respondent MAGNA TAX did not have a permit issued by the Illinois EPA to operate a sanitary landfill on the Site.

35. At all times prior to the removal of the UST, Respondent MAGNA TAX failed to make a determination as to whether the dark liquid in the Contaminated Area and surrounding the UST was a hazardous waste or a special waste.

36. Sections 21(d)(1)-(2) of the Act, 415 ILCS 5/21(d)(1)-(2) (2016), provides, in pertinent part, as follows:

No person shall:

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

- (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder . . .
[or]
- (2) in violation of any regulations or standards adopted by the Board under this Act

37. Section 722.111 of the Board's Hazardous Waste Operating Regulations, 35 Ill.

Adm. Code 722.111, states as follows:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste using the following method:

- a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- b) The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.

BOARD NOTE: Even if a waste is listed as a hazardous waste, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
 - (1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
 - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
- d) If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 721, 724 through 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

38. Section 808.110 of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 808.110, states as follows:

"Special waste" means any hazardous waste, and any industrial process waste or pollution control waste which has not been declassified pursuant to Section 808.245. (Section 3.45 of the Act.)

39. By allowing the release of the dark liquid from the UST, Respondent MAGNA TAX generated a solid waste.

40. By failing to determine whether the waste released from the UST was a hazardous waste or a special waste, Respondent MAGNA TAX violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 722.111.

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MAGNA TAX SERVICE CO., INC.:

A. Scheduling a hearing in this matter at which time Respondent, MAGNA TAX SERVICE CO., INC., will be required to answer the allegations herein;

B. Finding that Respondent, MAGNA TAX SERVICE CO., INC., has violated Sections 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 722.111;

C. Ordering Respondent, MAGNA TAX SERVICE CO., INC., to cease and desist from any further violations of Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 722.111;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, MAGNA TAX SERVICE CO. INC., for violating a provision of the Act and Board

regulations a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

- D. Awarding to Complainant its costs and reasonable attorney's fees; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III
UNPERMITTED WASTE STORAGE OR DISPOSAL

1-39. The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 of Count I, and paragraphs 34-39 of Count II, as if fully set forth herein as paragraphs 1 through 39 of this Count III.

40. At all times relevant to the facts in this Complaint, Respondent MAGNA TAX failed to apply for and maintain a waste disposal permit for the Site.

41. Section 812.101(a) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 812.101(a), states as follows:

- a) All persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021(d)) shall submit to the Agency an application for a permit to develop and operate a landfill. The application must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

42. By failing to apply for a waste disposal permit for the Site, Respondent MAGNA TAX violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 812.101(a).

43. By failing to maintain a waste disposal permit for the Site, Respondent MAGNA TAX violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully

requests that the Board enter an order against Respondent, MAGNA TAX SERVICE CO., INC.:

A. Scheduling a hearing in this matter at which time Respondent, MAGNA TAX SERVICE CO., INC., will be required to answer the allegations herein;

B. Finding that Respondent, MAGNA TAX SERVICE CO., INC., has violated Section 21(d)(1)-(2) of the Act, 415 ILCS 5/21(d)(1)-(2) (2016), and 35 Ill. Adm. Code 812.101(a);

C. Ordering Respondent, MAGNA TAX SERVICE CO., INC., to cease and desist from any further violations of Section 21(d)(1)-(2) of the Act, 415 ILCS 5/21(d)(1)-(2) (2016), and 35 Ill. Adm. Code 812.101(a);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, MAGNA TAX SERVICE CO., INC., for violating a provision of the Act and Board regulations a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT IV
WATER POLLUTION

1-33. The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 of Count I as if fully set forth herein as paragraphs 1 through 33 of this Count IV.

34. Groundwater at the subject Site is located at a depth of approximately 4 feet below ground surface (bgs).

35. Groundwater beneath the Site is a Class I groundwater.

36. Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), 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.

- 37. Section 3.545 of the Act, 415 ILCS 5/3.545 (2016), 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.

- 38. Section 3.165 of the Act, 415 ILCS 5/3.165 (2016), provides as follows:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

- 39. Section 3.550 of the Act, 415 ILCS 5/3.550 (2016), provides as follows:

“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.

- 40. The groundwater beneath the Site is a “water” as that term is defined under Section 3.550 of the Act, 415 ILCS 5/3.550 (2016).

- 41. The dark liquid identified at the Site by Illinois EPA sampling conducted in 2011 and 2012 and by Respondents’ investigations in 2012 and 2013, including the material which leaked from the UST, is a contaminant as defined in Section 3.165 of the Act.

- 42. The dark liquid and its constituent compounds, released on-site and in close proximity to groundwater caused, or tended to cause “water pollution,” as that term is defined in

Section 3.545 of the Act, 415 ILCS 5/3.545 (2016), in that its discharge did or was likely to create a nuisance or render groundwater 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.

43. From at least October 5, 2011 to October 17, 2013, Respondent MAGNA TAX caused, threatened, or allowed a discharge of contaminants in close proximity to groundwater.

44. By so causing, threatening, or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, Respondent MAGNA TAX violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MAGNA TAX SERVICE CO., INC.:

A. Scheduling a hearing in this matter at which time Respondent, MAGNA TAX SERVICE CO., INC., will be required to answer the allegations herein;

B. Finding that Respondent, MAGNA TAX SERVICE CO., INC., has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016);

C. Ordering Respondent, MAGNA TAX SERVICE CO., INC., to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2016);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, MAGNA TAX SERVICE CO., INC., for violating a provision of the Act a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT V
WATER POLLUTION HAZARD

1-43. The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 of Count I, and paragraphs 34 through 43 of Count IV, as if fully set forth herein as paragraphs 1 through 43 of this Count V.

44. Section 12(d) of the Act, 415 ILCS 5/12(d) (2016), 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.

45. By allowing contaminants to leak from the UST and associated piping and remain in and on the soil, Respondent MAGNA TAX deposited contaminants on the Site.

46. By allowing contaminants to be deposited on the Site in close proximity to groundwater, Respondent MAGNA TAX created a water pollution hazard.

47. By depositing contaminants on the Site in such place and manner so as to create a water pollution hazard, Respondent MAGNA TAX violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MAGNA TAX SERVICE CO., INC.:

A. Scheduling a hearing in this matter at which time Respondent, MAGNA TAX SERVICE CO., INC., will be required to answer the allegations herein;

B. Finding that Respondent, MAGNA TAX SERVICE CO., INC., has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016);

C. Ordering Respondent, MAGNA TAX SERVICE CO., INC., to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2016);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, MAGNA TAX SERVICE CO., INC., for violating a provision of the Act a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT VI
OPEN DUMPING VIOLATIONS BY DENNIS BALLINGER

1. This Count is brought by the Attorney General on his own motion, pursuant to the terms and provision of Section 31 of the Act, 415 ILCS 5/31 (2016).

2-31. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 29, 31 and 33 of Count I as paragraphs 2 through 31 of this Count VI.

32. Dennis Ballinger is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2016).

33. By causing or allowing the dark liquid to enter the environment, Respondent DENNIS BALLINGER allowed this waste material to be disposed of at the Site.

34. By causing or allowing the dark liquid to be consolidated at the Site, Respondent DENNIS BALLINGER violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2016).

35. By causing or allowing the UST to discharge, deposit, spill or leak waste material into the environment, Respondent DENNIS BALLINGER violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS BALLINGER:

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

B. Finding that Respondent, DENNIS BALLINGER, has violated Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2016);

C. Ordering Respondent, DENNIS BALLINGER, to cease and desist from any further violations of Section 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2016);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, DENNIS BALLINGER, for violating a provision of the Act a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT VII
FAILURE TO PERFORM WASTE DETERMINATION
BY DENNIS BALLINGER

1. This Count is brought by the Attorney General on his own motion, pursuant to the terms and provision of Section 31 of the Act, 415 ILCS 5/31 (2016).

2-36. Plaintiff re-alleges and incorporates by reference herein paragraphs 2 through 29, 31 and 33 of Count I; paragraphs 36 through 38 of Count II; and paragraphs 32 and 33 of Count VI as paragraphs 2 through 36 of this Count VII.

37. At all times during his management of the Site, Respondent DENNIS BALLINGER did not have a permit issued by the Illinois EPA to operate a sanitary landfill on the Site.

38. At all times prior to the removal of the UST, Respondent DENNIS BALLINGER failed to make a determination as to whether the dark liquid in the Contaminated Area and surrounding the UST was a hazardous waste or a special waste.

39. By allowing the release of the dark liquid from the UST, Respondent DENNIS BALLINGER generated a solid waste.

40. By failing to determine whether the waste released from the UST was a hazardous waste or a special waste, Respondent DENNIS BALLINGER violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 722.111.

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS BALLINGER:

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

B. Finding that Respondent, DENNIS BALLINGER, has violated Sections 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 722.111;

C. Ordering Respondent, DENNIS BALLINGER, to cease and desist from any further violations of Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 722.111;

E. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, DENNIS BALLINGER, for violating a provision of the Act and Board regulations a

civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

- F. Awarding to Complainant its costs and reasonable attorney's fees; and
- G. Granting such other relief as the Board may deem appropriate.

COUNT VIII
UNPERMITTED WASTE STORAGE OR DISPOSAL BY
DENNIS BALLINGER

1. This Count is brought by the Attorney General on his own motion, pursuant to the terms and provision of Section 31 of the Act, 415 ILCS 5/31 (2016).

2-40. Plaintiff re-alleges and incorporates by reference herein paragraphs 2 through 29, 31 and 33 of Count I; paragraphs 36 through 38 of Count II; paragraph 41 of Count III; paragraphs 32 and 33 of Count VI; and paragraphs 37 through 39 of Count VII as paragraphs 2 through 40 of this Count VIII.

41. By failing to apply for a waste disposal permit for the Site, Respondent DENNIS BALLINGER violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016), and 35 Ill. Adm. Code 812.101(a).

42. By failing to maintain a waste disposal permit for the Site, the Respondent violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS BALLINGER:

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

B. Finding that Respondent, DENNIS BALLINGER, has violated Section 21(d)(1)-(2) of the Act, 415 ILCS 5/21(d)(1)-(2) (2016), and 35 Ill. Adm. Code 812.101(a);

C. Ordering Respondent, DENNIS BALLINGER, to cease and desist from any further violations of Section 21(d)(1)-(2) of the Act, 415 ILCS 5/21(d)(1)-(2) (2016), and 35 Ill. Adm. Code 812.101(a);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, DENNIS BALLINGER, for violating a provision of the Act and Board regulations a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT IX
WATER POLLUTION BY DENNIS BALLINGER

1. This Count is brought by the Attorney General on his own motion, pursuant to the terms and provision of Section 31 of the Act, 415 ILCS 5/31 (2016).

2-42. Plaintiff re-alleges and incorporates by reference herein paragraphs 2 through 29, 31 and 33 of Count I; paragraphs 34 through 42 of Count IV; and paragraphs 32 and 33 of Count VI as paragraphs 2 through 42 of this Count IX.

43. From at least October 5, 2011 to October 17, 2013, Respondent DENNIS BALLINGER caused, threatened, or allowed a discharge of contaminants in close proximity to groundwater.

44. By so causing, threatening, or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, Respondent DENNIS BALLINGER violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS BALLINGER:

- A. Scheduling a hearing in this matter at which time Respondent, DENNIS BALLINGER, will be required to answer the allegations herein;
- B. Finding that Respondent, DENNIS BALLINGER, has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016);
- C. Ordering Respondent, DENNIS BALLINGER, to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2016);
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, DENNIS BALLINGER, for violating a provision of the Act a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT X
WATER POLLUTION HAZARD BY DENNIS BALLINGER

- 1. This Count is brought by the Attorney General on his own motion, pursuant to the terms and provision of Section 31 of the Act, 415 ILCS 5/31 (2016).

2-43. Plaintiff re-alleges and incorporates by reference herein paragraphs 2 through 29, 31 and 33 of Count I; paragraphs 34 through 42 of Count IV; paragraphs 32 and 33 of Count VI; and paragraph 43 of Count IX as paragraphs 2 through 43 of this Count IX.

44. Sections 12(d) of the Act, 415 ILCS 5/12(d) (2016) 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.

45 By allowing contaminants to leak from the UST and associated piping and remain in and on the soil, Respondent DENNIS BALLINGER deposited contaminants on the Site.

46. By allowing contaminants to be deposited on the Site in close proximity to groundwater, Respondent DENNIS BALLINGER created a water pollution hazard.

47. By depositing contaminants on the Site in such place and manner so as to create a water pollution hazard, Respondent DENNIS BALLINGER violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS BALLINGER:

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

B. Finding that Respondent, DENNIS BALLINGER, has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016);

C. Ordering Respondent, DENNIS BALLINGER, to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2016);

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016), imposing upon Respondent, DENNIS BALLINGER, for violating a provision of the Act a civil penalty not to exceed fifty thousand dollars (\$50,000), and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day during which the violation continued;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL
Attorney General of the
State of Illinois

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

BY:



ANDREW B. ARMSTRONG, Chief
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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2017; I caused to be served a true and correct copy of the Notice of Filing and Complainant's Motion for Leave to File First Amended Complaint Instantly via electronic mail and/or regular mail as indicated to:

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PEOPLE OF THE STATE OF ILLINOIS,
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