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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

PLB04-139

February 4, 2004

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Decatur Foundry***

Dear Clerk Gunn:

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

Thank you for your cooperation and consideration.

Very truly yours,

Delbert D. Haschemeyer
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

DDH/pp
Enclosures

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

DECATUR FOUNDRY, INC.,
an Illinois corporation,

Respondent.

No.

PCB 04-139

NOTICE OF FILING

To: Terry R. Young
Registered Agent
6525 Majors Lane
Decatur, IL 62521

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:



DELBERT D. HASCHEMEYER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: February 4, 2004

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FEB - 6 2004

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I hereby certify that I did on February 4, 2004, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Terry R. Young
Registered Agent
6525 Majors Lane
Decatur, IL 62521

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Delbert D. Haschemeyer
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB - 6 2004

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

DECATUR FOUNDRY, INC.,
an Illinois corporation,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

No. PCB 04-139

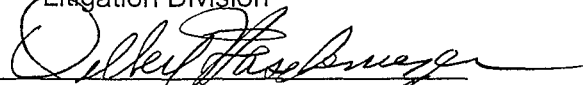
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, DELBERT D. HASCHEMEYER, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

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

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

BY: 
DELBERT D. HASCHEMEYER
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 4, 2004

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB - 6 2004

PEOPLE OF THE STATE OF ILLINOIS,)

STATE OF ILLINOIS
Pollution Control Board

Complainant,)

vs.)

No. PCB 04-139
(Enforcement)

DECATUR FOUNDRY, INC.,)

an Illinois corporation,)

Respondent.)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, DECATUR FOUNDRY, INC., as follows:

COUNT I

HAZARDOUS WASTE

**VIOLATIONS OF THE ACT AND PART 722 - STANDARDS
APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

1. This Complaint is brought by the Attorney General on her 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 (2002).

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 (2002), 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 (2002), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent, Decatur Foundry, Inc., is an Illinois corporation in good standing and authorized to do business in the State of Illinois. At all times relevant to this Complaint, the Respondent was the operator of a foundry located at 1745 North Illinois Street, Decatur, Macon

County, Illinois (the "facility"). The registered agent is Terry R. Young, 1745 North Main Street, Decatur, Illinois.

5. At all times relevant to this Complaint, Respondent's primary business at the facility is the manufacture of gray and ductible iron castings using a Whiting 5-ton per hour cupola equipped with scrubbers for emission control. The cupola has a capacity of 1000 tons per month. Mold casting range from 1 to 5000 pounds for gray iron and from 1 to 3000 pounds from ductible iron. The facility is equipped for shot blasting, grinding, inspection and prime painting.

6. Respondent's facility generates a small amount of waste foundry sand which cannot be reused and particulate matter (bag-house dust) from two mechanical foundry sand reclaimers, a thermal foundry sand reclaimer and a shot blaster finishing process. Cupola scrubber waste and slag are produced from the cupola operation. The paint room generates some paint filters and liquid paint waste.

7. The Illinois EPA conducted a RCRA compliance evaluation inspection on April 12, April 19, May 9 and May 30, 2001. During the course of the Agency's inspections, the Illinois EPA determined that the Respondent had taken composite samples of several waste streams and used the composite to make hazardous waste determinations. All of the waste streams except paint-related waste had been certified as nonhazardous, non-special waste and were being shipped offsite for disposal. The paint waste was being manifested and shipped as a hazardous waste.

8. Section 3.15 of the Act, 415 ILCS 5/3.15 (2002), defines "hazardous waste" as follows:

"HAZARDOUS WASTE" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics of listing, as hazardous pursuant to Section 3001 of the Resources

Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations.

9. Section 721.103 of the Pollution Control Board's Hazardous Waste Regulations 35,

III. Adm. Code 721.103 provides, in relevant part:

Section 721.103 Definition of Hazardous Waste

- a) Solid waste, as defined in Section 721.102 is a hazardous waste if:

* * *

- 2) It meets any of the following criteria:

- A) It exhibits any of the characteristics of hazardous waste identified in Subpart C of this Part.

* * *

10. Section 721.124 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 721.124 (2000) provides , in relevant part:

Section 721.124 Toxicity Characteristic

- a) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure (TCLP), test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. EPA Publication SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111, the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) below at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this Section.

BOARD NOTE: The reference to the "EP toxicity test" in 35 Ill. Adm. Code 808.410(b)(4) is to be understood as referencing the test required by this Section.

- b) A solid waste that exhibits the characteristic of toxicity has the U.S. EPA Hazardous Waste Number specified in the following table that corresponds to the toxic contaminant causing it to be hazardous.

MAXIMUM CONCENTRATION OF CONTAMINANTS
FOR THE TOXICITY CHARACTERISTICS

U.S. EPA Hazardous Waste No.		Contaminant CAS	Note
No.	Regulatory Level (mg/L)		
D008	Lead	7439-92-1	5.0

11. Following directions from the Illinois EPA that the analysis for hazardous waste determinations must be made for each waste at the point of generation, on May 9, 2001, a split sample of the cupola scrubber waste was taken. The samples show a TCLP concentration of lead in the amount of 130 mg/l and 142 mg/l, respectively, thereby demonstrating the cupola scrubber waste was a hazardous waste pursuant to Sections 721.103 and 721.124 of the Pollution Control Board's Hazardous Waste Regulations 35 Ill. Adm. Code Section 721.103 and 721.124 (2000), and Section 3.15 of the Act, 415 ILCS 5/3.15 (2002).

12. Section 3.08 of the Act, 415 ILCS 5/3.08 (2002) defines "disposal" 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.

13. Section 21 of the Act, 415 ILCS 5/21 (2002), provides, in pertinent part, as follows:

No person shall:

- (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 this Act and of regulations and standards thereunder.
- (f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
 - 1. without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition 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.

* * *

- (i) Conduct any process or engage in any act which produces hazardous waste in violation of any regulations or standards adopted by the Board under subsections (a) and (c) of Section 22.4 of this Act.

14. Section 722.111 of the Pollution Control Board's Hazardous Waste Regulations, 35

Ill. Adm. Code 722.111 (2000), provides:

Hazardous Waste Determination

A person who generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, shall 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 35 Ill. Adm. Code 721.Subpart D. (Board Note: Even if a waste is listed, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 and 40 CFR 260.22 (1986) 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 35 Ill. Adm. Code 721.Subpart D, the generator shall then determine whether the waste is identified in 35 Ill. Adm. Code 721.Subpart C by either:
 - 1) Testing the waste according to the methods set forth in 35 Ill. Adm. Code 721.Subpart C, 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 shall refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for

possible exclusions or restrictions pertaining to the management of the specific waste.

15. Section 722.120 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 722.120 (2000), provides:

General Requirements

- (a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal must prepare a manifest before transporting the waste off-site.
- (b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.
- (c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.
- (d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.
- (e) The requirements of this Subpart do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:
 - 1. The waste is reclaimed under a contractual agreement pursuant to which:
 - A) The type of waste and frequency of shipments are specified in the agreement;
 - B) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and
 - 2. The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.
- (f) The requirements of this Subpart B and Section 722.132(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is

divided by a public or private right-of-way. Notwithstanding 35 Ill. Adm. Code 723.110(a), the generator or transporter shall comply with the requirements for transporters set forth in 35 Ill. Adm. Code 723.130 and 723.131 in the event of a discharge of hazardous waste on a public or private right-of-way.

16. Section 722.134(a)(1), (2) and (3) of the Pollution Control Board's Hazardous Waste Regulations 35 Ill. Adm. Code 722.134(a)(1), (2) and (3), (2000), provides:

Accumulation Time

(a) Except as provided in subsection (d), (e), (f), (g), (h), or (i) of this Section, a generator is exempt from all the requirements in 35 Ill. Adm. Code 725.Subparts G and H, except for 35 Ill. Adm. Code 725.211 and 725.214, and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the following conditions are fulfilled.

(1) The Waste is placed in or on one of the following:

(A) In containers, and the generator complies with 35 Ill. Adm. Code 725.Subparts I, AA, BB, and CC;

(B) In tanks, and the generator complies with 35 Ill. Adm. Code 725.Subparts J, AA, BB, and CC, except 35 Ill. Adm. Code 725.297(c) and 725.300;

(C) On drip pads, and the generator complies with 35 Ill. Adm. Code 25.Subpart W and maintains the following records at the facility:

i) A description of the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; or

(D) In containment buildings, and the generator complies with 35 Ill. Adm. Code 725.Subpart DD (has placed its Professional Engineer (PE) certification that the building complies with the design standards specified in 35 Ill. Adm. Code 725.1101 in the facility's

operating record prior to the date of initial operation of the unit). The owner or operator shall maintain the following records at the facility:

- i) A written description of the waste generation and management practices for the facility showing that they are consistent with respect to the 90 day limit, and documentation that the procedures are complied with; or
- ii) Documentation that the unit is emptied at least once every 90 days;

BOARD NOTE: The "in addition" hanging subsection that appears in the Federal rules after 40 CFR 262.34(a)(1)(iv)(B) is in the introduction to subsection (a) of this Section.

- (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
- (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and
- (4) The generator complies with the requirements for owners or operators in 35 Ill. Adm. Code 725. Subparts C and D and with 35 Ill. Adm. Code 725.116 and 728.107(a)(5).

17. Section 722.140(a) and (b) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.140(a) and (b) (2000), provides as follows:

Recordkeeping

- (a) A generator must keep a copy of each manifest signed in accordance with Section 722.123(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.
- (b) A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1).

18. Section 722.141(a) and (b) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.141(a) and (b) (2000), provides as follows:

Annual Reporting

- (a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall prepare and submit a single copy of an annual report to the Agency by March 1 for the preceding calendar year. The annual report must be submitted on a form supplied by the Agency, and must cover generator activities during the previous calendar year, and must include the following information:
1. The USEPA identification number, name and address of the generator;
 2. The calendar year covered by the report;
 3. The USEPA identification number, name and address for each off-site treatment, storage or disposal facility in the United States to which waste was shipped during the year;
 4. The name and USEPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;
 5. A description, USEPA hazardous waste number (from 35 Ill. Adm. Code 721.Subpart C or D), DOT hazard class and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by USEPA identification number of each off-site facility to which waste was shipped;
 6. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;
 7. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984;
 8. The certification signed by the generator or the generator's authorized representative.

- (b) Any generator who treats, stores or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with the provisions of 35 Ill. Adm. Code 702, 703, 724, 725 and 726. Reporting for exports of hazardous waste is not required on the annual report form. A separate annual report requirement is set forth at Section 722.156.

19. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility in such a manner so as to produce a waste from its cupola scrubber and not determine if the waste was a hazardous waste in violation of Section 722.111 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.111 (2000), and Section 21 of the Act, 415 ILCS 5/212 (2002).

20. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent generated hazardous waste, cupola scrubber waste and paint waste without placing the waste in containers, without marking on the containers the date on which accumulation of hazardous waste began, and without marking the containers with the words "hazardous waste," in violation of Section 722.134(a)(1), (2) and (3) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.134(a)(1), (2) and (3), and Section 21 of the Act, 415 ILCS 5/21 (2002).

21. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent caused to be transported from its facility hazardous scrubber waste generated by its cupola scrubber without a manifest, without keeping copies of the manifest, and without submitting annual reports of hazardous waste shipped, in violation of Section 722.120, 722.140 and 722.141 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.120, 722.140 and 722.141 (2000), and Section 21 of the Act, 415 ILCS 5/21(2002).

22. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility so as to store and dispose

of a hazardous waste, its cupola scrubber waste, in such a manner so as to violate Section 21(e) of the Act, 415 ILCS 5/21(e) (2002).

PRAYER FOR RELIEF

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

- A. Authorizing a hearing in this matter, at which time, the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;
- 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

HAZARDOUS WASTE

**VIOLATIONS OF THE ACT AND PART 725 INTERIM STANDARDS
FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE
TREATMENT STORAGE AND DISPOSAL FACILITIES**

1-13. Plaintiff realleges and incorporates by reference paragraphs 1 through 13 of Count 1 as paragraphs 1 through 13 of this Count II.

14. Section 725.113(a) and (b) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.113(a) and (b) (2000), provides as follows:

General Waste Analysis

(a) Waste analysis:

1. Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under Section 725.213(d), the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information that must be known to treat, store, or dispose of the waste in accordance with this Part and 35 Ill. Adm. Code 728.
2. The analysis may include data developed under 35 Ill. Adm. Code 721 and existing published or documented data on the hazardous waste or on waste generated from similar processes.

BOARD NOTE: For example, the facility's record of analyses performed on the waste before the effective date of these regulations or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility may be included in the data base required to comply with subsection (a)(1) of this Section, except as otherwise specified in 35 Ill. Adm. Code 728.107(b) and (c). The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by subsection (a)(1) of this Section. If the generator does not supply the information and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this Section.

3. The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:
 - A. When the owner or operator is notified or has reason to believe that the process or operation generating the hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), has changed; and
 - B. For off-site facilities, when the results of the inspection required in subsection (a)(4) of this Section indicate that the hazardous waste received at

the facility does not match the waste designated on the accompanying manifest or shipping paper.

4. The owner or operator of an off-site facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.
- (b) The owner or operator shall develop and follow a written waste analysis plan that describes the procedures that the owner or operator will carry out to comply with subsection (a) of this Section. The owner or operator shall keep this plan at the facility. At a minimum, the plan must specify:
1. The parameters for which each hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a) of this Section.
 - ~~2. The test methods that will be used to test for these parameters.~~
 3. The sampling method that will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:
 - A. One of the sampling methods described in 35 Ill. Adm. Code 721.Appendix A, or
 - B. An equivalent sampling method.

BOARD NOTE: See 35 Ill. Adm. Code 720.120(c) for related discussion.

4. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.
5. For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.
6. Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods, as specified in Sections 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475,

725.502, 525.934(d), 725.963(d), and 725.984, and 35 Ill. Adm. Code 728.107.

7. For surface impoundments exempted from land disposal restrictions under 35 Ill. Adm. Code 728.104(a), the procedures and schedules for:
 - A. The sampling of impoundment contents;
 - B. The analysis of test data; and
 - C. The annual removal of residues that are not delisted under 35 Ill. Adm. Code 720.122 or that exhibit a characteristic of hazardous waste and either:
 - i. Do not meet the applicable treatment standards of 35 Ill. Adm. Code 728.Subpart D, or
 - ii. Where no treatment standards have been established. Such residues are prohibited from land disposal under 35 Ill. Adm. Code ~~728.132 or 728.139.~~
8. For owners and operators seeking an exemption to the air emission standards of 724. Subpart CC in accordance with Section 725.983:
 - A. If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.
 - B. If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator, or by the generator of the waste if the waste is received from off-site, that is used as the basis for knowledge of the waste.

13. Section 725.115(a), (b) and (d) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.115(a), (b) and (d) (2000), provides as follows:

General Inspection Requirements

- (a) The owner or operator shall inspect the facility for malfunctions and deterioration, operator errors and discharges that may be causing - or may lead to - the conditions listed below. The owner or operator

shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment:

1. Release of hazardous waste constituents to the environment;
or
2. A threat to human health.

(b) Written schedule:

1. The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.
2. The owner or operator shall keep this schedule at the facility.
3. The schedule must identify the types of problems (e.g., malfunctions or deterioration) that are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).
4. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in Sections 725.274, 725.293, 725.295, 725.326, 725.360, 725.378, 724.404, 725.447, 725.477, 725.503, 725.933, 725.952, 725.953, 725.958 and 725.984 through 725.990, where applicable.

- (d) The owner or operator shall record inspections in an inspection log or summary. The owner or operator shall keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made and the date, and nature of any repairs or other remedial actions.

15. Section 725.116 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 725.116 (2000), provides as follows:

Personnel Training

- (a)
 - 1. Facility personnel must successfully complete a program of classroom instruction or on the job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.
 - 2. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.
 - 3. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including where applicable:
 - A. Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment.
 - B. Key parameters for automatic waste feed cut-off systems;
 - C. Communications of alarm systems;
 - D. Response to fires or explosions;
 - E. Response to groundwater communication incidents; and
 - F. Shutdown of operations.
- (b) Facility personnel must successfully complete the program required in paragraph (a) of this section upon the effective date of these regulations or six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations

must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

- (c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.
- (d) The owner or operator must maintain the following documents and records at the facility.
 - 1. The job title for each position at the facility related to hazardous waste management and the name of the employee filling each job;
 - 2. A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education or other qualifications and duties of facility personnel assigned to each position;
 - 3. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;
 - 4. Records that document that the training or job experience required under paragraphs (a), (b) and (c) of this section has been given to and completed by facility personnel.
- (e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

16. Section 725.133 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 725.133 (2000), provides as follows:

Testing and Maintenance of Equipment

All facility communications or alarm systems, fire protection equipment, spill control equipment and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

18. Section 725.137 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 725.137 (2000), provides as follows:

Arrangements with Local Authorities.

- (a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:
 - 1. Arrangements to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes;
 - 2. Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to specific police and specific fire department and agreements with any others to provide support to the primary emergency authority;
 - 3. Agreements with State emergency response teams, emergency response contractors and equipment suppliers; and
 - 4. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fire, explosions or releases at the facility.
- (b) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

19. Section 725.151 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 725.151 (2000), provides as follows:

Purpose and Implementation of Contingency Plan

- (a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.

20. Section 725.153 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 725.153 (2000), provides as follows:

Copies of contingency Plan

A copy of the contingency plan and all revisions to the plan must be:

- (a) Maintained at the facility; and
- (b) Submitted to all local police departments, fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services.

21. Section 725.155 of the Pollution Control Board's Hazardous Waste Regulations, 35

III. Adm. Code 725.1555 (2000), provides as follows:

Emergency Coordinator

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: The emergency coordinator's responsibilities are more fully spelled out in Section 725.156. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility and type and complexity of the facility.

22. Section 725.173(a) of the Pollution Control Board's Hazardous Waste Regulations,

35 III. Adm. Code 725.173(a) (2000), provides as follows:

Operating Record

- (a) The owner or operator shall keep a written operating record at the facility.
- (b) The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility.

- (1) A description and the quantity of each hazardous waste received and the method or methods and date or dates of its treatment, storage, or disposal at the facility as required by Section 725. Appendix A;
- (2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities this information must include: cross-references to specific manifest document numbers if the waste was accompanied by a manifest;

BOARD NOTE: See Sections 725.219, 725.379, and 725.409 for related requirements.

- (3) Records and results of waste analysis, waste determinations, and trial tests performed as specified in Sections 725.113, 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475, 725.502, 725.934, 725.963, and 725.984 and 35 Ill. Adm. Code 728.104(a) and 728.107;
- (4) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 725.156(j);

- (5) Records and results of inspections as required by Sections 725.115(d) (except these data need be kept only three years);

- (6) Monitoring, testing, or analytical data where required by Subpart F of this Part or Sections 725.119, 725.190, 725.194, 725.291, 725.293, 725.295, 725.322, 725.323, 725.326, 725.355, 725.359, 725.360, 725.376, 725.378, 725.380(d)(1), 725.402 through 725.404, 725.447, 725.477, 725.934(c) through (f), 725.935, 725.963(d) through (i), 725.964, and 725.1083 through 725.990;

BOARD NOTE: As required by Section 725.194, monitoring data at disposal facilities must be kept throughout the post-closure period.

- (7) All closure cost estimates under Section 725.242 and, for disposal facilities, all post-closure cost estimates under Section 725.244;
- (8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units

under an extension of the effective date of any land disposal restriction granted pursuant to 35 Ill. Adm. Code 728.104, a petition pursuant to 35 Ill. Adm. Code 728.106, or a certification under 35 Ill. Adm. Code 728.108 and the applicable notice required of a generator under 35 Ill. Adm. Code 728.107(a);

- (9) For an off-site treatment facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;
- (10) For an on-site treatment facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;
- (11) For an off-site land disposal facility, a copy of the notice and the certifications and demonstration, if applicable, required of the generator or the owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107 or 728.108;
- (12) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107, except for the manifest number, and the certification and demonstration, if applicable, required under 35 Ill. Adm. Code 728.107 or 728.108;
- (13) For an off-site storage facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108; and
- (14) For an on-site storage facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108.

23. Section 725.175 of the Pollution Control Board's Hazardous Waste Regulations, 35

Ill. Adm. Code 725.175 (2000), provides:

Annual Report.

The owner and operator shall prepare and submit a single-copy of an annual report to the Agency by March 1 of each year. The report form and instructions supplied by the Agency must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

- (a) The USEPA identification number (Section 725.111), name and address of the facility;
- (b) The calendar year covered by the report;
- (c) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year for imported shipments, the report must give the name and address of the foreign generator,
- (d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities this information must be listed by USEPA identification number of each generator;
- (e) The method of treatment, storage or disposal for each hazardous waste;
- (f) Monitoring data under Section 725.194(a)(2)(B) and (C) and (b)(2) where required;
- (g) the most recent closure cost estimate under Section 725.242 and for disposal facilities the most recent post-closure cost estimate under Section 725.244;
- (h) For generators which treat, store or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;
- (i) For generators which treat, store or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, to the extent such information is available for years prior to 1984; and
- (j) The certification signed by the owner or operator of the facility or the owner or operator's authorized representative.

24. Section 725.212(a) of the Pollution Control Board's Hazardous Waste Regulations,

35 Ill. Adm. Code 725.212(a) (2000), provides as follows:

Closure Plan; Amendment of Plan

- (a) Written plan. Within six months after the effective date of the rule that first subjects a facility to provisions of this Section, the owner or operator of a hazardous waste management facility shall have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215, a copy of the most current plan must be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the day of inspection to any officer, employee, or representative of the Agency.

25. Section 725.218(a) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.218(a) (2000), provides:

Post-Closure Care Plan; Amendment of Plan

- (a) Written Plan. The owner or operator of a hazardous waste disposal unit shall have a written post-closure care plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure shall prepare a post-closure care plan and submit it to the Agency within 90 days after the date that the owner or operator or Agency determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of Sections 725.217 through 725.220.

26. Section 725.242(a) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.242(a) (2000), provides:

Cost Estimate for Closure

- (a) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.21 through 725.215 and applicable closure requirements of Sections 725.278, 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504 and 725.1102.

27. Section 725.243(a) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.243(a) (2000), provides:

Financial Assurance for Closure

An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (e), below:

28. Section 725.274 of the Pollution Control Board's Hazardous Waste Regulations, 35

Ill. Adm. Code 725.274 (2000), provides:

Inspections

The owner or operator shall inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

29. Section 725.401(a) of the Pollution Control Board's Hazardous Waste Regulations,

35 Ill. Adm. Code 725.401(a) (2000), provides:

Design Requirements

- (a) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992, shall install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with 35 Ill. Adm. Code 724.401(c), unless exempted by 35 Ill. Adm. Code 724.401(d), (e) or (f). "Construction commences" is as defined in 35 Ill. Adm. Code 720.110 under "existing facility."

30. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent failed to analyze the waste produced by the cupola scrubber as required by Section 725.113(a) and (b) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.113(a) and (b) (2000), and in violation of Section 21 of the Act, 415 ILCS 5/21 (2002).

31. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent failed to inspect its facility, failed to have a schedule for inspections and failed to maintain an inspection as required and in violation of Section

725.115(a)(b) and (d) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.115(a)(b) and (d) (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

32. Commencing on some date prior to April 12, 2002, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without first training its personnel as required by and in violation of Section 725.116 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.116 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

33. Commencing on some date prior to April 12, 2002, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without testing and maintaining its equipment as required by and in violation of Section 725.133 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.133 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

34. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without first attempting to make arrangements with local authorities as required by and in violation of Section 725.137 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.137 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

35. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without first developing and providing and maintaining for a contingency plan as required by and in violation of Section 725.151 and 725.153 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.151 and 725.153 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

36. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without providing for an on

scene Emergency Coordinator as required by and in violation of Section 725.155 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.155 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

37. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without keeping a written operating record as required by and in violation of Section 725.173 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.173 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

38. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without submitting an annual report as required by and in violation of Section 725.175 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code Section 725.175 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

39. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without providing a closure plan, a post-closure care plan, and without providing a cost estimate and financial assurance for closure as required by and in violation of Sections 725.212(a), 725.218(a), 725.242(a) and 725.243(a) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.212(a), 725.218(a), 725.242(a) and 725.243(a) (2000), and Section 21 of the Act, 415 ILCS 5/21(a) (2002).

40. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without conducting inspections as required by and in violation of Section 725.274 of the Pollution Control Board's

Hazardous Waste Regulations, 35 Ill. Adm. Code 725.274 (2000), and Section 21 of the act, 415 ILCS 5/21 (2002).

41. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated its facility without installing two or more liners and a leachate collection and removal system beneath the scrubber sludge as required by and in violation of Section 725.401(a) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 725.401(a) (2000), and Section 21 of the Act, 415 ILCS 4/21 (2002).

PRAYER FOR RELIEF

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

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

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

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

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;

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

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

COUNT III

SPECIAL WASTE

FAILURE TO MANAGE WASTE AS A SPECIAL WASTE

1-7. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count III.

8. Section 22.48 of the Act, 415 ILCS 5/22.48 (2002), provides, in pertinent part, as follows:

Non-special waste certification; effect on permit.

- (a) An industrial process waste or pollution control waste not within the exception set forth in subdivision (2) of subsection (c) of Section 3.45 of this Act must be managed as special waste unless the generator first certifies in a signed, dated, written statement that the waste is outside the scope of the categories listed in subdivisions (1) of subsection (c) of Section 3.45 of this Act.
- (b) All information used to determine that the waste is not a special waste shall be attached to the certification. The information shall include but not be limited to:
 - (1) the means by which the generator has determined that the waste is not a hazardous waste;
 - (2) the means by which the generator has determined that the waste is not a liquid;
 - (3) if the waste undergoes testing, the analytic results obtained from testing, signed and dated by the person responsible for completing the analysis;
 - (4) if the waste does not undergo testing, an explanation as to why no testing is needed;
 - (5) a description of the process generating the waste; and
 - (6) relevant Material Data Safety Sheets.
- (c) Certification made pursuant to this Section shall be effective from the date signed until there is a change in the generator, in the raw materials used, or in the process generating the waste.

- (d) Certification made pursuant to this Section, with the requisite attachments, shall be maintained by the certifying generator while effective and for at least 3 years following a change in the generator, a change in the raw materials used, or a change in or termination of the process generating the waste. The generator shall provide a copy of the certification, upon request by the Agency, the waste hauler, or the operator of the facility receiving the waste for storage, treatment, or disposal, to the party requesting the copy. If the Agency believes that the waste that is the subject of the certification has been inaccurately certified to, the Agency may require the generator to analytically test the waste for the constituent believed to be present and provide the Agency with a copy of the analytic results.

9. Section 808.121(a) of the Board's Land Pollution Regulations, 35 Ill. Adm. Code 808.121(a) (2000), provides as follows:

Generator Obligations

- (a) Each person who generates waste shall determine whether the waste is a special waste.

BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste.

10. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known by the Respondent, Respondent operated its facility so as to dispose of baghouse dust and cupola scrubber waste generated by its facility as non-special waste in and without first certifying the waste is a non-special waste in violation of Section 22.48 of the Act, 415 ILCS 5/22.48 (2002) and Section 808.121(a) of the Board's Land Pollution Regulations, 35 Ill. Adm. Code 808.121(a) (2000).

PRAYER FOR RELIEF

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

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

- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;
- 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

HAZARDOUS WASTE

VIOLATION OF THE ACT AND PART 703 - RCRA PERMIT PROGRAM

1-13. Complainant realleges and incorporates by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count IV.

14. Section 703.121(a) of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 703.121(a) (2000), provides:

RCRA Permits

- (a) No person shall conduct any hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation:
 - (1) Without a RCRA permit for the HWM (hazardous waste management) facility; or
 - (2) In violation of any condition imposed by a RCRA permit;

15. Section 703.150 of the Pollution Control Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 703.150 (2000), provides:

Application by Existing HWM Facilities and Interim Status Qualifications

- (a) The owner or operator of an existing HWM facility or of an HWM facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit must submit Part A of the permit application to the Agency no later than the following times, whichever comes first:
 - (1) Six months after the date of publication of regulations which first require the owner or operator to comply with standards in 35 Ill. Adm. Code 725 or 726; or
 - (2) Thirty days after the date the owner or operator first becomes subject to the standards in 35 Ill. Adm. Code 725 or 726; or
 - (3) For generators which generate greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treat, store or dispose of these wastes on-site, by March 24, 1987.

16. Commencing on some date prior to April 12, 2001, and continuing thereafter to some date known to the Respondent, Respondent operated a hazardous waste facility, storing or disposing of hazardous waste without submitting a RCRA Part A permit application and without a RCRA permit in violation of Section 703.121(a) and 703.150 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 703.121(a) and 703.150 (2000), and Section 21 of the Act, 415 ILCS 5/21 (2002).

PRAYER FOR RELIEF

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

- A. Authorizing a hearing in this matter, at which time, the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;

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

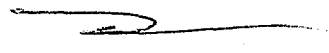
F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

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

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

BY:


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

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Dated: February 4, 2004