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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

PCB04-140

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. Whiteway Sanitation, Inc.***

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,

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

SAC/pp
Enclosures

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB - 9 2004

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

WHITEWAY SANITATION, INC.,
an Illinois corporation,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

No.

PLB 04-140

NOTICE OF FILING

To: Myrtle Pointer
Registered Agent
98 Curtis Street
Jerseyville, IL 62052-2202

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

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: *Sally A. Carter*
SALLY A. CARTER
Assistant Attorney General
Environmental Bureau

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

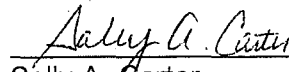
CERTIFICATE OF SERVICE

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: Myrtle Pointer
Registered Agent
98 Curtis Street
Jerseyville, IL 62052-2202

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



Sally A. Carter
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB - 9 2004

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

WHITEWAY SANITATION, INC.,
an Illinois corporation,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

No. *PCB 04-140*

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, SALLY A. CARTER,
Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of
record.

Respectfully submitted,

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

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

BY: *Sally A. Carter*
SALLY A. CARTER
Environmental Bureau
Assistant Attorney General

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

FEB - 9 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

-vs-

WHITEWAY SANITATION, INC.,
an Illinois corporation,

Respondent.

PCB No. 04-140

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, WHITEWAY SANITATION, INC., an Illinois corporation, as follows:

COUNT I

OPEN DUMPING

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

4. The Respondent, Whiteway Sanitation, Inc. ("Whiteway") is an Illinois corporation in good standing. Myrtle Pointer ("Pointer"), is the registered agent for Whiteway and may be reached at 98 Curtis Street, Jerseyville, Illinois 62052-2202. Whiteway's office and garage facility are located on this site at 98 Curtis Street, Jerseyville, Illinois ("site").

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

No person shall:

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

* * *

- 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...
- 2. In violation of any regulations or standards adopted by the Board under this Act.

- 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 there under.

* * *

- p. In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

- 1. Litter.

* * *

- 7. Deposition of general construction or demolition debris as defined in Section 3.78 of the Act.

* * *

6. Section 3.305 of the Act, 415 ILCS 5/3.305 (2002), provides the following definition:

"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.

* * *

7. Section 3.445 of the Act, 415 ILCS 5/3.445 (2002), provides the following definition:

"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, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

* * *

8. Section 3.160 of the Act, 415 ILCS 5/3.160, provides, in pertinent part, the following:

- (a) "GENERAL CONSTRUCTION OR DEMOLITION DEBRIS" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

9. On May 28, 2003, the Illinois EPA received complaints that waste was being stored at the site.

10. On May 28, 2003, the Illinois EPA conducted an inspection of the site. Over thirty dumpsters, some covered and some uncovered, containing trash bags and household refuse were observed. Two inoperable garbage packer trucks, one containing household refuse, and five garbage packer truck beds were noted.

11. One inoperable garbage packer truck referenced in paragraph 10 was located north of the southwest corner of the site. The area around this truck was contaminated with spilled used oil.

12. On the same date, the Illinois EPA observed an inoperable flatbed truck, loaded with old mattresses and furniture exposed to the elements. A panel truck bed containing cardboard and scrap metal were also present at the site.

13. The Illinois EPA further observed eleven 5-gallon plastic buckets of used oil, none properly labeled and four without lids, with evidence of oil spillage.

14. On the same date, the Illinois EPA further noted, scattered throughout the site, scrap metal, old furniture, wood waste, white goods, demolition waste, used and waste tires, and general refuse.

15. Pointer was present at the site during the May 28, 2003, inspection and claimed that most of the waste had come from a village-wide cleanup the previous weekend in Kane, Illinois.

16. While the Illinois EPA found newspapers from May 17 and 18, 2003, in some dumpsters, waste in other dumpsters appeared to be weathered. Pointer stated that the

inoperable garbage packer truck containing household refuse had been sitting there since winter.

17. A Violation Notice ("VN") was issued to Whiteway on June 12, 2003. The VN recommended that all wastes be removed from the site and properly disposed or recycled by August 15, 2003. Whiteway submitted a Compliance Commitment Agreement ("CCA") to the Illinois EPA by facsimile on July 30, 2003, indicating that much of the waste had already been removed from the site, that the used and waste tires would be removed within thirty days, and that a licensed testing company would be addressing the used oil issues.

18. The CCA was rejected by the Illinois EPA on August 15, 2003, since no commitment to complete waste removal was made, other commitments lacked completion deadlines, and the CCA was submitted after the 45-day response period had expired.

19. The Illinois EPA performed a follow-up inspection on July 30, 2003. The Illinois EPA found that most of the waste that caused the previous VN to be issued was still present.

20. A Notice of Intent to Pursue Legal Action was issued to Whiteway on August 29, 2003.

21. The Illinois EPA returned to the site on September 19, 2003. The inspection showed that a considerable amount of the general refuse had been removed and the previously inoperable garbage packer truck containing waste had been repaired. Pointer said that the truck had been sold to a waste disposal company.

22. While at the site on September 19, 2003, the Illinois EPA observed one of the garbage packer truck beds being loaded on to a semi-trailer. Two inoperable trucks, three truck beds, approximately twelve damaged dumpsters, scrap metal, and twelve used or waste tires were still present at the site.

23. The Illinois EPA further noted that the previously observed oil-contaminated soil

had still not been cleaned up by September 19, 2003.

24. On or before May 28, 2003, and continuing through the date on which this Complaint is filed, the Respondent has caused or allowed the open dumping of waste at a disposal site upon its property through the consolidation of refuse from numerous sources. The site is not permitted by the Illinois EPA as a sanitary landfill nor does the disposal site meet the requirements of the Act and of the regulations and the standards promulgated thereunder.

25. By causing or allowing the open dumping of waste, the Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2002).

26. On or before May 28, 2003, and continuing through the date on which this Complaint is filed, the Respondent has conducted a waste-storage or waste-disposal operation upon its property without a permit granted by the Illinois EPA or in violation of any regulations or standards adopted by the Board.

27. By conducting a waste-storage or waste-disposal operation upon its property without a permit granted by the Illinois EPA or in violation of any regulations or standards adopted by the Board, the Respondent has violated Section 21(d) of the Act, 415 ILCS 21(d) (2002).

28. On or before May 28, 2003, and continuing through the date on which this Complaint is filed, the Respondent has disposed or stored waste at a site upon its property, or transported waste for disposal or storage to a site upon its property, and such site does not meet the requirements of the Act and of the standards and regulations promulgated thereunder.

29. By disposing or storing or transporting waste at or to a site which does not meet the requirements of the Act and of the standards and regulations promulgated thereunder, the Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2002).

30. On or before May 28, 2003, and continuing through the date on which this Complaint is filed, the Respondent has caused or allowed the open dumping of waste in a manner which has resulted in litter.

31. By causing or allowing the open dumping of waste in a manner which has resulted in litter at or from the dump site, the Respondent has violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2002).

32. On or before May 28, 2003, and continuing through the date on which this Complaint is filed, the Respondent has caused or allowed the open dumping of waste in a manner which has resulted in the deposition of general construction or demolition debris.

33. By causing or allowing the open dumping of waste in a manner which has resulted in the deposition of general construction or demolition debris, the Respondent has violated Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2002).

PRAYER FOR RELIEF

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

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

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

COUNT II

WASTE DISPOSAL PERMIT VIOLATIONS

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count II.

24. Section 812.101 of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 812.101(a) (1994), provides:

- a) All persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1992, ch. 111 ½, par. 1021(d) [415 ILCS 5/21(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. Admin. Code 817.

25. This site does not have an Illinois EPA permit to develop and operate a landfill.

26. On or before May 28, 2003, and continuing through the date on which this Complaint is filed, the Respondent has developed and operated a landfill without a permit issued by the Illinois EPA, thereby violating 35 Ill. Admin. Code 812.101(a) (1994) and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

PRAYER FOR RELIEF

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

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;

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

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

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

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

COUNT III

WASTE STORAGE PERMIT VIOLATIONS

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count III.

24. Section 3.470 of the Act, 415 ILCS 5/3.470 (2002), provides:

"SOLID WASTE" means waste.

25. Section 807.201 of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 807.201 (1994), provides:

Subject to such exemption as expressly provided in Section 21(e) (Ill. Rev. Stat. 1981, ch. 111 ½, par. 1021(e)) of the Act as to the requirement of obtaining a permit, no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a Development Permit issued by the Agency.

26. Section 807.202(a) of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 807.202(a) (1994), provides:

Subject to such exemption as expressly provided in Section 21(e) of the Act (Ill. Rev. Stat. 1982, ch. 111 ½, par. 1021(e)) as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any solid waste management site for which a Developmental Permit is required under Section 807.201 without an Operating Permit issued by the Agency, except for

such testing operations as may be authorized by the Development Permit.

27. This site does not have an Illinois EPA permit to conduct a waste storage or waste disposal operation.

28. On or before May 28, 2003, and continuing through the date on which this Complaint is filed, the Respondent has developed a solid waste site without a Development Permit issued by the Illinois EPA, thereby violating 35 Ill. Admin. Code 807.201.

29. By allowing the use or operation of any solid waste management site for which a Development Permit is required without an Operating Permit issued by the Illinois EPA, the Respondent has violated 35 Ill. Admin. Code 807.202(a).

30. By violating 35 Ill. Admin. Code 807.201 and 807.202(a), the Respondent has violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

PRAYER FOR RELIEF

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

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

COUNT IV

TIRE VIOLATIONS

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count IV.

24. Section 55(a)(1) of the Act, 415 ILCS 5/55(a)(1) (2002), provides:

No person shall:

1. Cause or allow the open dumping of any used or waste tire.
3. Except at a tire storage site which contains more than 50 used tires, cause or allow the storage of any used tires unless the tire is altered, reprocessed, converted, covered, or otherwise prevented from accumulating water.

25. Section 54.13 of the Act, 415 ILCS 5/54.13 (2002), provides:

"Used tire" means a worn, damaged, or defective tire which is not mounted on a vehicle.

26. Section 54.16 of the Act, 415 ILCS 5/54.16 (2002), provides as follows:

"Waste tire" means a used tire that has been disposed of.

27. The Respondent has caused or allowed the open dumping of used or waste tires thereby violating Section 55(a)(1) of the Act, 415 ILCS 5/55(a)(1) (2002).

28. The Respondent has caused or allowed the storage of any used tires capable of accumulating water, thereby violating Section 55(a)(3) of the Act, 415 ILCS 5/55(a)(3) (2002).

PRAYER FOR RELIEF

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

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;

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

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

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

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

COUNT V

GARBAGE TRANSFER STATION VIOLATIONS

1-23. Complainant realleges and incorporates herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count V.

24. Section 22.14(a) of the Act, 415 ILCS 5/22.14(a), provides:

No person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling, except in counties of at least 3,000,000 inhabitants.

25. Section 3.500 of the Act, 415 ILCS 5/3.500 (2002), provides:

"Transfer station" means a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility. "Transfer station" includes a site where waste is transferred from:

1. a rail carrier to a motor vehicle or water carrier;
2. a water carrier to a rail carrier or motor vehicle;
3. a motor vehicle to a rail carrier, water carrier or motor vehicle;
4. a rail carrier to a rail carrier, if the waste is removed from a rail car; or
5. a water carrier to a water carrier, if the waste is removed from a vessel.

"Transfer station" does not include (i) a site where waste is not removed from the transfer container, or (ii) a site that accepts or

receives open top units containing only clean construction and demolition debris, or (iii) a site that stores waste on a refuse motor vehicle or in the vehicle's detachable refuse receptacle for no more than 24 hours, excluding Saturdays, Sundays, and holidays, but only if the detachable refuse receptacle is completely covered or enclosed and is stored on the same site as the refuse motor vehicle that transported the receptacle to the site.

Nothing in this Section shall be construed to be less stringent than or inconsistent with the provisions of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-480) or regulations adopted under it.

26. Waste brought to this site was dumped on the ground or stored at the site for more than 24 hours in the same receptacle that brought it to the site, making this site a transfer station pursuant to Section 3.500 of the Act, 415 ILCS 5/3.500 (2002). This facility is located within 1000 feet of a dwelling.

27. By establishing a pollution control facility for use as a garbage transfer station, located less than 1,000 feet from the nearest property zoned for primarily residential uses or within 1,000 feet of any dwelling, the Respondent violated Section 22.14(a) of the Act, 415 ILCS 5/22.14(a) (2002).

PRAYER FOR RELIEF

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

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

- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT VI

FAILURE TO CHARACTERIZE A WASTE

1-23. Complainant realleges and incorporates herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count VI.

24. Section 722.111 of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 722.111 (1994) provides:

A person who generates a solid waste, as defined in Section 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. Admin. Code 721.104.
- (b) The person should then determine if the waste is listed as a hazardous waste in 35 Ill. Admin. Code 721 Subpart D.

(Board Note: Even if a waste is listed, the generator still has an opportunity under 35 Ill. Admin. 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. Admin. Code 728, or if the waste is not listed as a hazardous waste in 35 Ill. Admin. Code 721 Subpart D, the generator shall then determine whether the waste is identified in 35 Ill. Admin. Code 721 Subpart C either:
 - (1) Testing the waste according to the methods set forth in 35 Ill. Admin. Code 721 Subpart C, or according to an equivalent method approved by the Board under 35 Ill. Admin. 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. Admin. Code 724, 725, 728, and 733 for possible

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

25. Section 808.121 of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 808.121 (1994), provides:

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

26. By generating a solid waste and failing to determine whether the waste is a hazardous waste, the Respondent has violated 35 Ill. Admin. Code 722.111 (1994) and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

27. By generating a waste and failing to determine whether the waste is a special waste, the Respondent has violated 35 Ill. Admin. Code 808.121 (1994) and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

PRAYER FOR RELIEF

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

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

COUNT VII

LABEL VIOLATIONS

1-23. Complainant realleges and incorporates herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count VII.

24. Section 739.122 of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 739.122 (1994), provides, in pertinent part:

Used oil generators are subject to all applicable federal Spill Prevention, Control and Countermeasures (40 CFR 112) in addition to the requirements of this Subpart. Used oil generators are also subject to the Underground Storage Tank (35 Ill. Admin. Code 731) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

* * *

(c) Labels

- (1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

25. By failing to label the containers storing used oil, the Respondent has violated 35 Ill. Admin. Code 739.122(c) (1994).

26. By violating 35 Ill. Admin. Code 739.122(c), the Respondent has violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

PRAYER FOR RELIEF

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

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;

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

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

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

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

COUNT VIII

FAILURE TO PERFORM CLEANUP OF USED OIL

1-23. Complainant realleges and incorporates herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count VIII.

24. Section 739.122(d) of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 739.122(d), provides:

Used oil generators are subject to all applicable federal Spill Prevention, Control and Countermeasures (40 CFR 112) in addition to the requirements of this Subpart. Used oil generators are also subject to the Underground Storage Tank (35 Ill. Admin. Code 731) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirement of this Subpart.

* * *

- (d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the federal requirements of 40 CFR 280, Subpart F and which has occurred after October 4, 1996, a generator shall perform the following cleanup steps:

BOARD NOTE: Corresponding 40 CFR 279.22(d) applies to releases that "occurred after the effective date of the authorized used oil program for the State in which the release is located." The Board adopted the used oil standards in docket R93-4 at

17 Ill. Reg. 20954, effective November 22, 1993. USEPA approved the Illinois standards at 61 Fed. Reg. 40521 (Aug. 5, 1996), effective October 4, 1996. The Board has interpreted "the effective date of the authorized used oil program" to mean the October 4, 1996 date of federal authorization of the Illinois program, and we substituted that date for the federal effective date language. Had USEPA written something like "the effective date of the used oil program in the authorized State in which the release is located," the Board would have used the November 22, 1993 effective date of the Illinois used oil standards,

- 1) Stop the release;
- 2) Contain the released used oil;
- 3) Properly clean up and manage the released used oil and other materials; and
- 4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

25. Upon detection of a release of used oil to the environment, the Respondent failed to stop the release, contain the released used oil, clean-up and properly manage the released used oil and other material, and repair or replace any leaking used oil storage containers or tanks prior to returning them to service. By so doing, the Respondent has violated Section 739.122(d) of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 739.122(d).

26. By violating Section 739.122(d) of the Board's Waste Disposal Regulations, 35 Ill. Admin. Code 739.122(d), the Respondent has violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

PRAYER FOR RELIEF

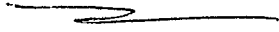
WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

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

Respectfully submitted,

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

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