

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	No.
)	
MAGELLAN PIPELINE COMPANY, L.P.,)	
a limited partnership,)	
)	
)	
)	
Respondent.)	

NOTICE OF FILING
(VIA ELECTRONIC FILING)

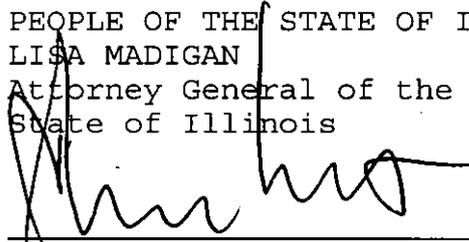
PLEASE TAKE NOTICE that we have today, September 6, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the 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.

Respectfully submitted,

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

BY:



CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
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(312) 814-5388

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, MAGELLAN PIPELINE COMPANY, L.P., as follows:

Count I
IMPROPER DISPOSAL OF HAZARDOUS WASTE

1. This Complaint is brought on behalf of THE PEOPLE OF THE STATE OF ILLINOIS by LISA MADIGAN, Attorney General of the State of Illinois, 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 (2004).

2. Illinois EPA is an administrative agency of the State of Illinois, established by Section 4 of the Act, 415

ILCS 5/4 (2004), and is charged, *inter alia*, with the duty of enforcing the Act, and regulations promulgated by the Illinois Pollution Control Board ("Board").

3. Respondent, MAGELLAN PIPELINE COMPANY, L.P. ("Magellan") is a limited partnership. The general partner of Magellan is Magellan Midstream Management, LLC, a Delaware limited liability company, duly authorized to transact business in the State of Illinois.

4. Respondent Magellan owns and operates a petroleum products distribution terminal located at 1222 U.S. Route 30, Amboy, Lee County, Illinois ("Site").

5. At the Site, Magellan operates petroleum product storage and distribution tanks, pipelines, and other equipment.

6. During June and July 2004, Magellan was engaged in equipment replacement and rehabilitation of its gasoline storage tanks at the Site.

7. As part of its tank rehabilitation project, the Respondent arranged for the removal of an internal floating roof vapor barrier, consisting of a metal framework and laminated Styrofoam 'pontoons'. The vapor barrier was designed to prevent migration of gasoline fumes. However, the Styrofoam 'pontoons' also absorb petroleum components

from the stored fuel.

8. During the June-July, 2004, Site rehabilitation, the Respondent and its contractors removed Styrofoam pontoons from tanks at the Site, and deposited the discarded material (herinafter "waste Styrofoam") into disposal containers.

9. On or about July 2, 2004, the Respondent tested the waste Styrofoam using the Toxicity Characteristic Leaching Procedure ("TCLP"). The test results indicated that the waste Styrofoam had a benzene concentration of 6.3 milligrams per liter ("mg/l").

10. On July 16, 2004, Magellan arranged for two disposal containers to be picked up by Waste Management of Illinois, Inc. ("WMI"), and transported to Prairie Hill Recycling & Disposal ("Prairie Hill"), a municipal solid waste landfill located in Whiteside County, Illinois. The two disposal containers held a total of 2,680 pounds of discarded waste Styrofoam.

11. The permitted owner of Prairie Hill is the County of Whiteside, Illinois. WMI, a Delaware corporation, is the permitted operator of Prairie Hill. Prairie Hill is not permitted by Illinois EPA for the storage, treatment or disposal of hazardous waste, and, at all times relevant to

this Complaint, had not been assigned a USEPA hazardous waste identification number.

12. On July 20, 2004, WMI picked up two container loads of waste Styrofoam from the Site. The waste Styrofoam was transported to, and disposed of, in an active disposal cell of the Prairie Hill landfill. At the end of daily operations on July 20, 2004, the waste Styrofoam was covered with soil.

13. On July 22, 2004, WMI reported to Illinois EPA that Prairie Hill had accepted and disposed of hazardous waste. The hazardous waste was identified as the two loads of waste Styrofoam accepted from the Respondent on July 20, 2004.

14. Section 21 of the Act, 415 ILCS 5/21(2004), 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.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides, as follows:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

16. The Respondent is a "person" as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

17. Section 3.535 of the Act, 415 ILCS 5/3.535 (2004) provides, in pertinent part, as follows:

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

18. The waste Styrofoam was discarded by the Respondent, and is "waste" as that term is defined by Section 3.535 of the Act, 415 ILCS 5/3.535 (2004).

19. Pursuant to authority granted under the Act, and in conformance with the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq., the Illinois Pollution Control Board has promulgated regulations applicable to the disposal of solid waste, codified at 35 Ill. Adm. Code Subtitle G, Chapter I ("Board Waste Disposal regulations").

20. Section 721.102 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 721.102, provides, in

pertinent part, as follows:

721.102 Definition of Solid Waste

a) Solid waste.

1) A solid waste is any discarded material that is not excluded by Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131.

2) A discarded material is any material that is described as follows:

A) Abandoned, as explained in subsection (b) of this Section;

* * *

b) A material is a solid waste if it is abandoned in one of the following ways:

1) It is disposed of;

* * *

21. The waste Styrofoam was abandoned through disposal in a landfill, and was therefore 'discarded'. The waste Styrofoam is therefore 'solid waste' as that term is defined and used in the Board Waste Disposal regulations.

22. Section 721.120 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 721.120, provides, in pertinent part, as follows:

a) A solid waste, as defined in Section 721.102, which is not excluded from regulation as a hazardous waste under Section 721.104(b), is a hazardous waste if it exhibits any of the characteristics identified in this Subpart C.

* * *

23. Section 721.124 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 721.124, provides, in pertinent part, as follows:

Section 721.124 Toxicity Characteristic

- a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure (TCLP)...the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) of this Section at a concentration equal to or greater than the respective value given in that table....
- b) A solid waste that exhibits the characteristic of toxicity has the USEPA 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 CHARACTERISTIC

<i>USEPA Hazardous Waste No.</i>	<i>Contaminant</i>	<i>CAS No.</i>	<i>Regulatory Level (mg/L)</i>
	*	*	*
<i>DO18</i>	<i>Benzene</i>	<i>71-43-2</i>	<i>0.5</i>
	*	*	*

24. The waste Styrofoam had a TCLP-tested benzene concentration of 6.3 mg/L, greatly exceeding the maximum benzene concentration listed in 35 Ill. Adm. Code 721.124.

The waste Styrofoam was therefore 'hazardous waste', with the USEPA Hazardous Waste number of D018.

25. Section 3.185 of the Act, 415 ILCS 5/3.185(2004), provides, as follows:

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

26. Respondent's arrangement for the transport and disposal of hazardous waste at the Prairie Hill facility constituted 'disposal' as that term is defined by Section 3.185 of the Act, 415 ILCS 5/3.185 (2004).

27. The Respondent disposed of hazardous waste at Prairie Hill, a facility not permitted for the disposal of hazardous waste, and therefore not meeting the requirements of the Act. The Respondent thereby violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, MAGELLAN PIPELINE COMPANY, L.P., on Count I:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the

allegations herein;

2. Finding that the Respondent has violated Section 21(e) of the Act;

3. Ordering the Respondent to cease and desist from any further violation of Section 21(e) of the Act;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 21(e) of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondent to pay all costs, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

Count II

FAILURE TO PREPARE A HAZARDOUS WASTE MANIFEST

1-25. Complainant realleges and incorporates by reference herein, paragraphs 1 through 13, and paragraphs 15 through 26 of Count I, as paragraphs 1 through 25 of this Count II.

26. The Respondent arranged for the transportation of the waste Styrofoam to Prairie Hill for disposal. However, the Respondent failed to prepare a manifest for the waste

Styrofoam prior to its July 20, 2004 shipment off-Site, and delivery to Prairie Hill.

27. Section 21(f) of the Act, 415 ILCS 5/21(f) (2004) provides, in pertinent part, as follows:

No Person Shall:

* * *

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

* * *

(2) in violation of any regulations or standards adopted by the Board under this Act;

* * *

28. The Respondent disposed of the waste Styrofoam at Prairie Hill, and therefore 'conducted a hazardous waste disposal operation'.

29. Section 3.205 of the Act, 415 ILCS 5/3.205(2004), provides, as follows:

"Generator" means any person whose act or process produces waste.

30. The Respondent's tank rehabilitation activities produced the waste Styrofoam, a solid waste and a hazardous waste. Magellan is therefore a 'generator' of hazardous waste.

31. Section 722.120 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 722.120, provides, in pertinent part, as follows:

- a) A generator that transports hazardous waste or offers hazardous waste for transportation for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site.

* * *

32. The Respondent failed to prepare a hazardous waste manifest prior to transport and disposal of the waste Styrofoam off-Site. The Respondent thereby violated Section 722.120(a) of the Board Waste Disposal regulations, 35 Ill. Adm. Code 722.120(a), and thereby also, violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, MAGELLAN PIPELINE COMPANY, L.P., on Count II:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 21(f)(2) of the Act, and 35 Ill. Adm. Code 722.120(a);
3. Ordering the Respondent to cease and desist from

any further violation of Section 21(f)(2) of the Act, and 35 Ill. Adm. Code 722.120(a);

4. Assessing against the Respondent a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) for each day of violation of Section 21(f)(2) of Act, and 35 Ill. Adm. Code 722.120(a);

5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

Count III
OFFERING HAZARDOUS WASTE TO A FACILITY
THAT DOES NOT HAVE AN EPA IDENTIFICATION NUMBER

1-28. Complainant realleges and incorporates by reference herein, paragraphs 1 through 25, paragraph 27, and paragraphs 29 through 30 of Count II, as paragraphs 1 through 28 of this Count III.

29. Section 722.112 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 722.112, provides, in pertinent part, as follows:

USEPA Identification Numbers

* * *

- c) A generator must not offer its hazardous waste to transporters or to treatment, storage or disposal facilities that have not received a USEPA identification number.

30. On July 20, 2004, the Respondent offered hazardous waste for transport and disposal to Prairie Hill, a facility that had not been assigned a USEPA hazardous waste identification number. The Respondent thereby violated Section 722.112(c) of the Board Waste Disposal regulations, 35 Ill. Adm. Code 722.112(c), and thereby also, violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, MAGELLAN PIPELINE COMPANY, L.P., on Count III:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 21(f)(2) of the Act, and 35 Ill. Adm. Code 722.112;
3. Ordering the Respondent to cease and desist from any further violation of Section 21(f)(2) of the Act, and 35 Ill. Adm Code 722.112;
4. Assessing against the Respondent a civil penalty

Twenty Five Thousand Dollars (\$25,000.00) for each day of violation of the Section 21(f)(2) of Act, and 35 Ill. Adm Code 722.112;

5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

Count IV
VIOLATION OF BOARD WASTE EVALUATION REQUIREMENTS

1-28. Complainant realleges and incorporates by reference herein paragraphs 1 through 28 of Count III, as paragraphs 1 through 28 of this Count IV.

29. On or about July 2, 2005, the Respondent tested the waste Styrofoam, and determined the waste had a TCLP-tested benzene concentration of 6.3 mg/l. However, the Respondent failed to evaluate its test results to determine whether the waste Styrofoam was a characteristic hazardous waste, pursuant to 35 Ill. Adm. Code, Part 721, Subpart C. The Respondent also failed to determine the appropriate USEPA hazardous waste number for the waste Styrofoam.

30. 35 Ill. Adm. Code 722.111 provides, in pertinent part, as follows:

Hazardous Waste Determination

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

* * *

- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
 - 1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
 - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
- d) If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

31. Section 728.109 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 728.109, provides, in pertinent part, as follows:

Special Rules for Characteristic Wastes

- a) The initial generator of a solid waste must determine each USEPA hazardous waste number (waste code) applicable to the waste in order to determine the applicable treatment standards under Subpart D of this Part....

* * *

- c) In addition to any applicable standards determined from the initial point of generation, no prohibited waste that exhibits a characteristic under Subpart C of 35 Ill. Adm. Code 721 must be land disposed, unless the waste complies with the treatment standards under Subpart D of this Part.

32. The Respondent tested the waste Styrofoam and determined that it contained a TCLP-tested benzene concentration of 6.3 mg/l. However, the Respondent failed to compare its test results to the toxicity characteristic standards contained in 35 Ill. Adm. Code 721.124, which would have identified the material as hazardous waste.

34. By failing to fully evaluate the waste Styrofoam, as alleged herein, the Respondent violated Section 722.111 of the Board Waste Disposal regulations, 35 Ill. Adm. Code 722.111, and thereby also, violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004).

35. By failing to determine the USEPA hazardous waste number applicable to the waste Styrofoam prior to sending the waste off-site for disposal, the Respondent violated Section 728.109(a) of the Board Waste Disposal regulations, 35 Ill. Adm. Code 728.109(a), and thereby also, violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2004)

36. As a direct result of the Respondent's failure to

determine that the waste Styrofoam was a characteristic hazardous waste, and its failure to assign the waste a USEPA hazardous waste number, the waste Styrofoam was improperly land-disposed at Prairie Hill. The Respondent thereby violated Section 728.109(c) of the Board Waste Disposal regulations, 35 Ill. Adm Code 728.109(c), and thereby also, violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, MAGELLAN PIPELINE COMPANY, L.P., on Count IV:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 21(f)(2) of the Act, and 35 Ill. Adm. Code Sections 722.111, 728.109(a), and 728.109(c);
3. Ordering the Respondent to cease and desist from any further violation of Section 21(f)(2) of the Act, and 35 Ill. Adm. Code Sections 722.111, 728.109(a), and 728.109(c);
4. Assessing against the Respondent a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) for each day of

violation of Section 21(f)(2) of the Act, and 35 Ill. Adm.

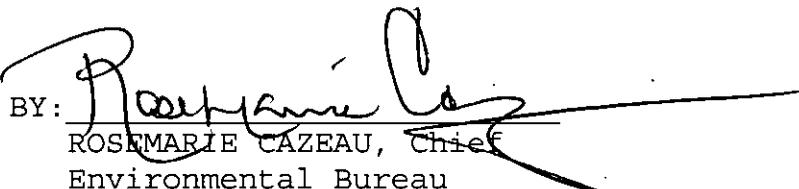
Code Sections 722.111, 728.109(a), and 728.109(c);

5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

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: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

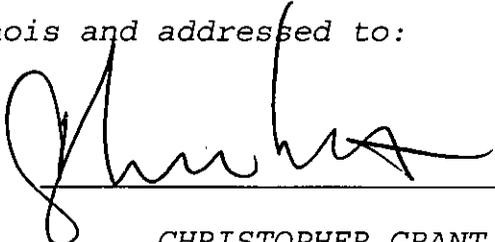
OF COUNSEL:
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188 West Randolph Street, 20th Floor
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a limited partnership,)	
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Respondent.)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 6th day of September, 2005, the foregoing Complaint and Notice of Filing upon person listed below, by registered certified mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois and addressed to:



CHRISTOPHER GRANT

Service List:

Magellan Midstream Management, LLC
C/O CT Corporation System
208 S. La Salle Street, Suite 814
Chicago, IL 60604-1101