

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
CHEMETCO, INC., a Delaware corp.)
)
Respondent.)

PCB No. 96-76
(Enforcement-Land)

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Pollution Control Board

NOTICE OF FILING

To: Laura Grady
Trustee
Mathis, Marifian, Richter &
Grady, Ltd.
23 Public Square, Ste. 300
Belleville, IL 62220

Penni S. Livingston
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208


PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S STATUS REPORT AND PROPOSAL FOR RESOLUTION, copies of which are attached hereto and herewith served upon you.

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: 
JAMES L. MORGAN
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 30, 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
MADISON COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB 96-76
)	(Enforcement-Land)
CHEMETCO, INC., a Delaware corporation,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

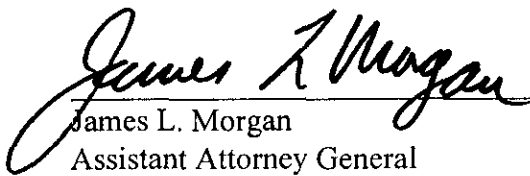
I hereby certify that I did on the 30th day of November, 2007, send by First Class Mail, a true and correct copy of the instrument entitled COMPLAINANT'S STATUS REPORT AND PROPOSAL FOR RESOLUTION to:

Laura Grandy
Trustee
Mathis, Marifian, Richter & Grandy, Ltd.
23 Public Square, Suite 300
Belleville, IL 62220

Penni S. Livingston
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208

and

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9276


James L. Morgan
Assistant Attorney General
Environmental Bureau/Springfield

- c. For the period between April 19, 1981, through May 1992, 35 Ill. Adm. Code 725.213(1997) and 415 ILCS 5/21(f)(2) (*i.e.*, requirements to determine groundwater flow rate and direction);
- d. For the period since 1986, 35 Ill. Adm. Code 725.243(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (regarding financial assurance for closure);
- e. For the period since 1986, 35 Ill. Adm. Code 725.245(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (regarding financial assurance for post-closure); and
- f. For the period since 1986, 35 Ill. Adm. Code 725.247(a) and (b) (1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (liability assurance for bodily injury and property damage to third parties caused by sudden and nonsudden accidental occurrences arising from operations of the facility).

The violations of 35 Ill. Adm. Code 725.243, 725.245, and 725.247(a) (1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) were not corrected before Respondent ceased operations and filed for Chapter 7 bankruptcy.

4. In its order, the Board directed the parties to proceed to hearing on the issue of whether Respondent violated 35 Ill. Adm. Code 725.242(a) by failing to provide detailed written closure cost estimates fully satisfying the requirements of that provision and for resolution of potential factual disputes related to the appropriate civil penalty.

5. On April 6, 1998, the State amended its complaint to allege that Respondent had violated 35 Ill. Adm. Code 725.242(b) and (c), and 725.244(a)-(c) (1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), by failing to maintain a written estimate, in current dollars, of the cost of its hazardous waste management unit post-closure plans or to annually update its cost estimates for inflation or for modification of its hazardous waste management unit closure and post-closure plans.

6. During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent failed to maintain written cost estimates for its Illinois EPA-approved hazardous waste management unit closure plan or the successive amendments of that plan reflecting the additional costs for the modifications required by the conditional approval of such amendments, thereby violating that provision and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2). An amended closure plan and associated cost estimate that has not been submitted to or approved by Illinois EPA cannot serve to fulfill this

requirement.

7. During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not annually update its cost estimates for its hazardous waste management unit closure plans for inflation in violation of 35 Ill. Adm. Code 725.242(b)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) .

8. During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not annually update its cost estimates for its hazardous waste management unit post-closure plans for inflation in violation of 35 Ill. Adm. Code 725.244(b)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) .

9. During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not update its cost estimates for its hazardous waste management unit closure plans to reflect modifications of those plans in violation of 35 Ill. Adm. Code 725.242(c)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) .

10. During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not annually update its cost estimates for its hazardous waste management unit post-closure plans to reflect modifications of those plans in violation of 35 Ill. Adm. Code 725.244(c)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) .

11. During the period of 1988 until Respondent ceased operations and filed for Chapter 7 bankruptcy, Respondent did not prepare written cost estimates for its hazardous waste management unit post-closure plans in violation of 35 Ill. Adm. Code 725.244(a)(1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) .

12. On January 1, 2004, Section 42(h) of the Act, 415 ILCS 5/42(h), was amended to require that any penalty determined by the Board in a contested proceeding must be “at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation” unless it would result in an unreasonable or arbitrary hardship.

13. During the course of the bankruptcy, the Trustee initiated proceedings against a number of Respondent "insiders" to recover money those persons received from Respondent because Respondent underfunded its liabilities. The Trustee alleged that Respondent's liabilities included its failure to provide the financial assurance for closure and post-closure required by 35 Ill. Adm. Code 725.243 and 725.245 and the liability assurance required by 35 Ill. Adm. Code 725.247. The Trustee recovered on those claims.

CURRENT STATUS

The Complainant and the Trustee have conducted settlement negotiations but a settlement agreement has yet to be finalized. The State of Illinois, the United States, and the Trustee have also been engaged in settlement negotiations to resolve the case of U.S. and Illinois v. Chemetco, 00-670 (S.D. Ill.), but a settlement agreement has yet to be finalized.

PROPOSAL FOR RESOLUTION

Pursuant to 11 U.S.C. 726(a), there are only two classes lower than penalties such as those sought in this case in the order of distribution of proceeds from the Bankruptcy Estate during liquidation. The next lowest priority is interest on claims and the lowest priority is for distribution to the debtor. The Trustee contends that the Bankruptcy Estate has assets that she may be unable to process which could be returned to Respondent by abandonment or by distribution of the Estate if all other claims have been satisfied.

The issues that must be resolved to bring this case to a close are:

1. What penalty should be imposed for the previously adjudicated violations?
2. Whether Respondent violated 35 Ill. Adm. Code 725.242(a) as alleged in the original complaint by failing to provide detailed written closure cost estimates fully satisfying the requirements of that provision and what penalty should be imposed for that violation, if proved.
2. Whether Respondent violated 35 Ill. Adm. Code 725.242(b) and (c), and 725.244(a)-(c) (1997) and Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), by failing to maintain a written estimate, in current dollars, of the cost of its hazardous waste management unit post-closure

plans or to annually update its cost estimates for inflation or for modification of its hazardous waste management unit closure and post-closure plans as alleged in the amended complaint and what penalty should be imposed for those violations, if proved.

The issue of whether Respondent committed the alleged violations is ripe for resolution by summary judgment, stipulation of the parties or by a hearing of limited duration. Each violation has occurred if the required "paper trail" has not been created.

The penalty determination may also be resolved by summary judgment, stipulation of the parties or by a hearing of limited duration. The resolution of the violations listed above will fix the applicable closure and post-closure costs and enable a straightforward determination of the economic benefit of non-compliance and other factors set out in Section 42(h) of the Act, 415 ILCS 5/42(h). Since the Trustee has previously pursued Respondent's insiders for diverting Respondent's funds instead of addressing liabilities like the financial assurance obligations and recovered on those claims and 11 U.S.C. 726 places the payment of any penalty imposed after payment of other claims, imposition of a civil penalty equal to the economic benefit represented by the amount of financial assurance left unfunded would not impose an unreasonable or arbitrary financial hardship.

The opportunity remains for the Complainant and Trustee to craft a compromise of these outstanding issues but the interests of the People of the State of Illinois are no longer served by further delay in doing so.

WHEREFORE, Complainant proposes that the following schedule be set in this matter to bring it to a close:

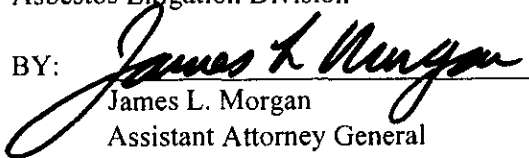
1. Establish a cutoff of February 1, 2008, for filing of motions for summary judgment; and
2. Set a final hearing date for April 15, 2008.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



James L. Morgan
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706
217-524-7506

DATE:

11-30-7