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OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

**Lisa Madigan**  
ATTORNEY GENERAL

November 6, 2008

PCB09-32

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Whalen Manufacturing Co. & Yetter Manufacturing Co.***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Andrew J. Nicholas  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

AJN/pk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )

Complainant, )

vs. )

WHALEN MANUFACTURING COMPANY, )  
an Illinois corporation, and YETTER )  
MANUFACTURING COMPANY, an )  
Illinois corporation, )

Respondent. )

09-32  
PCB No. )  
(Enforcement - Water)

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STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

To: Whalen Manufacturing Company and  
Yetter Manufacturing Company  
c/o William H. Campbell, Registered Agent  
Davis & Campbell L.L.C.  
401 Main Street  
Suite 1600  
Peoria, IL 61602-1241

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 (2006), 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:



Andrew J. Nicholas  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: November 6, 2008

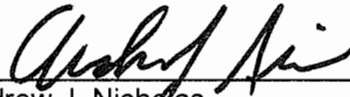
## CERTIFICATE OF SERVICE

I hereby certify that I did on November 6, 2008, 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: Whalen Manufacturing Company and  
Yetter Manufacturing Company  
c/o William H. Campbell, Registered Agent  
Davis & Campbell L.L.C.  
401 Main Street  
Suite 1600  
Peoria, IL 61602-1241

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

To: John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601



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Andrew J. Nicholas  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
)

Complainant, )

vs. )

WHALEN MANUFACTURING COMPANY, )  
an Illinois corporation, and YETTER )  
MANUFACTURING COMPANY, an )  
Illinois corporation, )

Respondents. )

PCB No. 09.32  
(Enforcement - Water)

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STATE OF ILLINOIS  
Pollution Control Board

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, Andrew J. Nicholas, 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: Andrew J. Nicholas  
Andrew J. Nicholas  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: November 6, 2008



Complaint, an Illinois corporation in good standing authorized to do business in the State of Illinois. On information and belief Whalen is located at 1270 East Murray Street, Macomb, Illinois.

4. Yetter Manufacturing Company is, and was, at all times relevant to this Complaint, an Illinois corporation in good standing authorized to do business in the State of Illinois. On information and belief, Yetter is located at 109 S. McDonough, Colchester, Illinois.

5. On information and belief, Whalen and Yetter are corporate affiliates.

6. Whalen manufactures outdoor fire pits and related equipment. Yetter manufactures agricultural equipment.

7. Yetter uses coolants and metal cleaning solutions during its manufacturing process. The coolants are used for a variety of metal working machines. The cleaning solutions contain phosphoric acid and are used in the parts washer and the wash bay to clean and coat metal parts in preparation for painting.

8. On February 8, 2006, the Illinois EPA inspected the Yetter facility. The inspector observed a 300-gallon plastic tank filled with liquid waste. It was learned that wastes from the parts washer and the wash bay were collected into the 300-gallon plastic tank and hauled to the Whalen facility in Macomb, Illinois.

9. As of February 8, 2006, approximately 600 gallons of waste solution was hauled every 30 to 60 days. The liquid waste is dumped into a sanitary sewer that is tributary to the Macomb sanitary system.

10. As of February 8, 2006, Yetter did not have a valid nonhazardous special waste hauling permit issued by the Illinois EPA.

11. On or before February 8, 2006, Yetter hauled nonhazardous special waste for storage and/or disposal to their Whalen facility in Macomb.

12. On or before February 8, 2006, Yetter failed to use a manifest to ship nonhazardous special waste to Whalen.

13. On or before February 8, 2006, Yetter delivered special waste to a person who did not have a valid special waste hauling permit.

14. Section 809.201 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 809.201 (2005), provides:

No person may haul or otherwise transport any nonhazardous special waste generated within Illinois or any nonhazardous special waste to be disposed of, stored, or treated within Illinois without a current, valid nonhazardous special waste hauling permit issued by the Agency in accordance with the requirements of this Subpart unless the transporter participates in the Uniform Program or is exempt from the nonhazardous special waste hauling permit requirements under this Subpart.

15. Section 809.301 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 809.301 (2005), provides:

No person may deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste transporter who holds a current nonhazardous special waste hauling permit or Uniform Program Registration and Permit Issued by the Agency under Subpart B or C of this Part.

16. Section 809.302(b) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 809.302(b) (2005), provides:

\* \* \* \*

(b) No person may deliver special waste in Illinois for disposal, storage or treatment unless the person who accepts the special waste has a current, valid operating permit issued by the Agency and the necessary supplemental permits required by 35 Ill. Adm. Code 807, as well as all other applicable permits as required by the Act and Board regulations.

17. Section 809.501(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 809.301 (2005), provides:

(a) Any person who delivers special waste to a permitted nonhazardous



special or hazardous waste transporter shall complete a uniform hazardous waste manifest to accompany the special waste from delivery to the destination of the special waste. The manifest form will be provided or prescribed by the Agency.

18. Section 21 of the Act, 415 ILCS 5/21 (2006), provides, in pertinent part, as follows:

No person shall:

\* \* \* \*

- (j) "Conduct any special waste transportation operation in violation of any regulations, standards or permit requirements adopted by the Board under this Act...."

19. Yetter is a "person" as that term is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), as follows:

"Person" is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

20. Section 809.103 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 809.103 (2005), defines "nonhazardous special waste" as follows:

"Nonhazardous special waste" means any special waste, as defined in this Section, that has not been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) Or pursuant to Board regulations.

\* \* \* \*

21. Section 809.103 defines a "special waste transporter" as  
any person who transports special waste (as defined in Section 3.475 of the Act) from any location.
22. Section 3.475 of the Act, 415 ILCS 5/3.475 (2006), provides in pertinent part, as

follows:

“Special waste” means any of the following:

\* \* \* \*

(c) industrial process waste or pollution control waste...

\* \* \* \*

23. Yetter is a special waste transporter as that term is defined under Section 809.103 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 809.103 (2005), and Section 3.475 of the Act,, 415 ILCS 5/3.475 (2006).

24. By hauling or otherwise transporting nonhazardous special waste generated within Illinois without a current, valid nonhazardous special waste hauling permit, Yetter violated Section 809.201 of the Board’s Regulations, 35 Ill. Adm. Code 809.201 (2005).

25. By delivering nonhazardous special waste generated within Illinois without concurrently delivering a manifest to a special waste transporter, Yetter violated Section 809.301 of the Board’s Regulations, 35 Ill. Adm. Code 809.301 (2005).

27. By delivering nonhazardous special waste in Illinois for disposal, storage or treatment to a person who does not have a current, valid operating permit issued by the Illinois EPA, Yetter has violated Section 809.302(b) of the Board’s Regulations, 35 Ill. Adm. Code 809.302(b) (2005).

28. By conducting a special waste transportation operation in violation of regulations, standards or permit requirements adopted by the Board under the Act, Yetter has violated Section 21(j) of the Act, 415 ILCS 5/21(j) (2006).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, YETTER MANUFACTURING

COMPANY:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondent a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award to Complainant its costs and reasonable attorney fees; and
- E. Grant such other relief as the Board deems appropriate.

**COUNT II**

**SPECIAL WASTE PERMIT VIOLATIONS - WHALEN MANUFACTURING**

- 1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.
- 23. As of February 8, 2006, Whalen did not have a special waste permit granted by the Illinois EPA to store special waste.
- 24. As of February 8, 2006, Whalen did not have a Development Permit granted by the Illinois EPA.
- 25. As of February 8, 2006, Whalen did not have an operating permit granted by the Illinois EPA to use or operate a new solid waste facility.
- 26. On or before February 8, 2006, Whalen conducted a special waste storage operation and received special waste for storage, treatment or disposal from Yetter.
- 27. On or before February 8, 2006, Whalen accepted waste for storage, disposal or treatment from a special waste hauler who did not have a valid special waste permit.

28. Section 807.201 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 807.201 (2005), provides:

Subject to such exemption as expressly provided in Section 21(e) (Ill. Rev. Stat. 1988, ch. 111 1/2, 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.

29. Section 807.202(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 807.202(a) (2005), provides:

- a) **New Solid Waste Management Sites.** Subject to such exemption as expressly provided in Section 21(e) of the Act (Ill. Rev. Stat. 1982, ch. 111 1/2, 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 Development 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.

\* \* \* \*

30. Section 809.302(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 809.302(a) (2005), provides:

- a) No person may accept any special waste for disposal, storage or treatment within Illinois from a special waste transporter unless the special waste transporter has a valid nonhazardous special waste hauling permit or Uniform Program Registration and Permit issued by the Agency under Subpart B or J of this Part and concurrently presents to the receiver of the special waste, or the receiver's agent, a completed, signed manifest as required by Subpart E of this Part, which manifest designates the receiver's facility as the destination for the special waste.

31. Section 21 of the Act, 415 ILCS 5/21 (2006), provides, in pertinent part:

No person shall:

\* \* \* \*

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

operation:

(1) without a permit granted by the Agency...

\* \* \* \*

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

\* \* \* \*

(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.

32. Section 3.470 of the Act, 415 ILCS 5/3.470 (2006), defines "solid waste" as follows:

"Solid waste" means waste.

33. Section 3.535 of the Act, 415 ILCS 5/3.535 (2006), defines "waste" in pertinent part as follows:

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

34. Whalen is a "person" as that term is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), as follows:

"Person" is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

35. By operating, causing or allowing the development of a solid waste management site without a Development Permit, Whalen has violated Sections 807.201(a) and 807.202(a) of the Board's Regulations, 35 Ill. Adm. Code 807.201(a), 807.202(a) (2005).

36. By accepting special waste for disposal, storage or treatment within Illinois from a special waste transporter who does not have a valid nonhazardous special waste hauling permit, Whalen has violated Section 809.302(a) of the Board's Regulations, 35 Ill. Adm. Code 809.302(a) (2005).

37. By conducting a waste storage operation, Whalen has violated Section 21(d) of the Act, 415 ILCS 5/21(d) (2006).

38. By disposing, treating, storing or abandoning any waste, Whalen has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).

### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, WHALEN MANUFACTURING COMPANY.

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

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

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award to Complainant its costs and reasonable attorney fees; and

E. Grant such other relief as the Board deems appropriate.

### **COUNT III**

#### **NPDES PERMIT VIOLATIONS - WHALEN MANUFACTURING & YETTER MANUFACTURING**

1-22. Complainant realleges and incorporates by reference herein paragraphs 1

through 22 of Count I as paragraphs 1 through 22 of this Count III.

23. As of February 8, 2006, Yetter did not have an National Pollutant Discharge Elimination System ("NPDES") permit.

24. As of February 8, 2006, Whalen did not have an NPDES permit.

25. As of February 8, 2006, Yetter hauled approximately 600 gallons of waste solution every 30 to 60 days to Whalen.

26. On or before February 8, 2006, Whalen dumped the waste solution into a sanitary sewer that is a tributary to the Macomb sanitary system.

27. Section 12(f) of the Act, 315 ILCS 5/12(f) (2006), provides the following prohibitions:

No person shall:

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

28. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), defines "contaminant," as follows:

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

29. Section 309.204(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a) (2005), provides:

- (a) No person shall cause or allow the use or operation of any treatment works, pretreatment works or wastewater source without an operating permit issued by the Agency, except as provided in subsections (b), (c) and (d).

(b) No operating permit is required under this Section for any discharge:

(1) For which an NPDES permit is required; or...

\* \* \* \*

30. By causing, threatening or allowing the discharge of contaminants into waters of the State without a valid NPDES permit, Whalen and Yetter have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

31. By causing or allowing the use or operation of a treatment works, pretreatment works or wastewater source without an NPDES permit, Whalen and Yetter have violated Section 309.204(a) of the Board's Regulations, 35 Ill. Adm. Code 309.204(a) (2005).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondents, WHALEN MANUFACTURING COMPANY and YETTER MANUFACTURING COMPANY:

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

B. Finding that the Respondents have violated the Act and regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondents a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award to Complainant its costs and reasonable attorney fees; and


E. Grant such other relief as the Board deems 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 E. DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:  
ANDREW J. NICHOLAS  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Date: 10/31/08

