

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
-vs-	)	PCB No.
	)	
MARINO DEVELOPMENT LLC,	)	
an Arizona limited liability company, and	)	
A-W-BENNETT ENTERPRISES, INC.	)	
an Oregon Corporation,	)	
	)	
	)	
Respondents.	)	

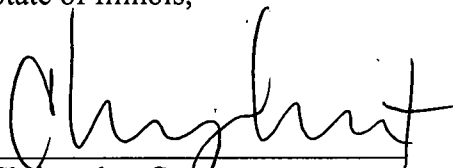
**NOTICE OF FILING**

PLEASE TAKE NOTICE that today, June 7, 2019, Complainant, PEOPLE OF THE STATE OF ILLINOIS, through the undersigned, filed with the Office of the Illinois Pollution Control Board ("Board") the following Complaint, a true and accurate copy is attached hereto and SERVED UPON YOU. You are hereby notified that you may be required to attend a hearing at a date set by the Board.

Failure to file an answer to this Complaint within sixty (60) days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as 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 Illinois Pollution Control Board Clerk's Office or an attorney.

PEOPLE OF THE STATE OF  
ILLINOIS *by* KWAME RAOUL  
Attorney General of the  
State of Illinois,

BY:



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Environmental Bureau  
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an Oregon corporation,	)	
	)	
	)	
Respondents.	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondents, MARINO DEVELOPMENT LLC, and A-W-BENNETT ENTERPRISES, INC., as follows:

**COUNT I**  
**OPEN DUMPING OF WASTE**

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d) and 5/42(e) (2016).

2. The Illinois EPA is an administrative agency of the State of Illinois, established by Section 4 of the Act, 415 ILCS 5/4 (2016), and is charged, *inter alia*, with the duty of enforcing the Act and regulations promulgated by the Illinois Pollution Control Board ("Board").

3. Respondent MARINO DEVELOPMENT LLC ("Marino"), is an Arizona limited liability company, not listed as authorized to do business in the State of Illinois by the Illinois Secretary of State. Marino's principal office is located in Chicago, Illinois.

4. Respondent A-W-BENNETT ENTERPRISES, INC. ("Bennett") is an Oregon corporation, not listed as authorized to do business in the State of Illinois by the Illinois Secretary of State.

5. At all times relevant to the Complaint, Respondent Bennett was the owner of property located at 2816 North Main Street, Rockford, Winnebago County, Illinois ("Site"). The Site consists of approximately 14 acres.

6. The Site has never been permitted by the Illinois EPA for the storage, treatment, or disposal of waste

7. Prior to Bennett's acquisition of the Site in 2014, the Site was used for industrial and heavy manufacturing purposes. From 1960 until 2003, Essex Group Inc. operated a wire coating and production operation at the Site.

8. At all times relevant to the Complaint, the Site contained several buildings, including an approximately 310,000 square foot main manufacturing building. Manholes located at various locations at the Site drain stormwater into a central subsurface collection system, which subsequently discharges to sewer lines.

9. Respondent Marino is in the business of industrial demolition, salvage, and property development. On a date better known to Respondents, Marino and Bennett arranged for the demolition of the existing industrial buildings at the Site.

10. On or about May 10, 2016, Marino commenced demolition activities at the Site. Demolition of the buildings resulted in the generation of demolition waste consisting of waste

brick, scrap metal, broken concrete, roofing material, siding and other demolition debris (“mixed demolition debris”) which was dumped on the ground at the Site.

11. In addition to the mixed demolition debris, a large number of creosote-treated wooden blocks, which had been used as flooring inside the industrial building at the Site, were dumped on the ground at the Site.

12. On a date better known to Respondents, but in May 2017, Respondent Marino stopped demolition and development activities and abandoned the Site. The Respondents did not take any action to remove the accumulated demolition debris or the creosote-stained wood flooring blocks from the Site for off-site disposal during 2017.

13. On September 7, 2017, an Illinois EPA inspector visited the Site to follow up on a complaint regarding illegal dumping.

14. On September 7, 2017, the Illinois EPA inspector observed the following:

- a. No demolition activity or waste removal activity was taking place at the Site.
- b. Most of the 14 acre Site was covered with piles of demolition debris; consisting of broken concrete with rebar, discarded bricks, discarded building siding, waste wood, and other discarded material, which had been dumped and abandoned at various locations at the Site.
- c. Several large piles of darkly stained creosote-treated wood flooring blocks had been dumped on the ground at the Site;
- d. Storm Sewers were located in proximity to the waste piles, but no barriers or other protective measures had been installed to prevent migration of creosote or other site contamination from entering manholes, the storm sewer collection system at the Site, or groundwater underlying the Site.

15. In June 2018, the City of Rockford commenced legal action against Respondent Bennett and its principal owner, Paul Bennett, to compel completion of demolition of the

building at the Site and the removal of debris from the Site. Removal of demolition debris and the creosote-stained wooden flooring blocks has continued through the date of filing this Complaint.

16. Section 21(a) of the Act, 415 ILCS 5/21(a) (2016), provides, in pertinent part, as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

\* \* \*

17. Section 3.315 of the Act, 415 ILCS 5/3.315 (2016), provides, as follows:

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

18. Respondent Marino, a limited liability company, and Respondent Bennett, a corporation, are “person[s]” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2016).

19. Section 3.535 of the Act, 415 ILCS 5/3.535 (2016), provides, in pertinent part, as follows:

“WASTE” means any garbage...or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities....

20. Sections 3.385 of the Act, 415 ILCS 5/3.385 (2016), provides, as follows:

“REFUSE” means waste.

21. The Respondents caused and allowed mixed demolition debris and creosote-stained wood blocks to be dumped and discarded at the Site. The mixed demolition debris and

creosote-treated wood flooring blocks are “waste” as that term is defined by Section 3.353 of the Act, and therefore also “refuse” as defined by Section 3.385 of the Act, 415 ILCS 5/3.353 and 5/3.385 (2016).

22. Section 3.185 of the Act, 415 ILCS 5/3.185 (2016), 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.

23. Section 3.460 of the Act, 415 ILCS 5/3.460 (2016), provides, as follows:

“Site” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

24. The Respondents caused the deposit of waste at the Site in a manner that exposed the waste to the environment and threatened discharge into waters. The Site is therefore a “disposal site” as defined and applied in the Act.

25. Section 3.305 of the Act, 415 ILCS 5/3.305 (2016), provides, as follows:

“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.

26. Section 3.445 of the Act, 415 ILCS 5/3.445 (2016), provides, in pertinent part, as follows:

“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,....

27. The Site has never been permitted by the Illinois EPA for the disposal of waste, and thus did not fulfill the requirements of a sanitary landfill, as defined in the Act.

28. By causing and allowing the dumping and discarding of mixed demolition debris and creosote-treated wood flooring blocks at the Site, the Respondents caused and allowed the open dumping of waste, and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count I:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(a) of the Act;
3. Ordering the Respondents to cease and desist from future violations of Section 21(a) of the Act;
4. Ordering the Respondents to complete removal of all waste from the Site and to provide proof to Illinois EPA that all waste has been disposed in accordance with the requirements of the Act and Board regulations;
5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000) against the Respondents, jointly and severally, for each violation of Section 21(a) of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
6. Ordering the Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as the Board deems appropriate and just.



**COUNT II**  
**CAUSING AND ALLOWING LITTER**

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

29. Section 21(p) of the Act, 415 ILCS.5/21(p) (2016), provides, in pertinent part, as follows:

No person shall:

\* \* \*

(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

\* \* \*

30. By causing and allowing the disposal of mixed demolition debris and creosote-stained wood flooring blocks, the Respondents caused or allowed the open dumping of waste at the Site, resulting in litter. The Respondents thereby violated Section 21(p)(1) of the Act, 415 ILCS 21(p)(1) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count II:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(p)(1) of the Act;

3. Ordering the Respondents to cease and desist from future violations of Section 21(p)(1) of the Act;
4. Ordering the Respondents to complete removal of all waste from the Site and to provide proof to Illinois EPA that all waste has been disposed in accordance with the requirements of the Act and Board regulations;
5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000) against the Respondents, jointly and severally, for each violation of Section 21(p)(1) of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
6. Ordering the Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as the Board deems appropriate and just.

**COUNT III**  
**OPEN DUMPING OF CONSTRUCTION OR DEMOLITION DEBRIS**

- 1-28. Complainant realleges and incorporates by reference herein, paragraphs 1 through 28 of Count I, as paragraphs 1 through 28 of this Count III.
29. Section 21(p) of the Act, 415 ILCS 5/21(p) (2016), provides, in pertinent part, as follows:

No person shall:

\* \* \*

- (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:

\* \* \*

7. Deposition of:

- (i) general construction or demolition debris as defined in Section 3.160(a) of this Act;

30. Section 3.160(a) of the Act, 415ILCS 5/3.160(a) (2016), provides, in pertinent part, as follows:

- (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....

31. The mixed demolition debris and waste creosote-treated stained wood flooring blocks which the Respondents dumped at the Site is “general construction or demolition debris” as that term is defined by Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2016).

32. The Respondents, by their actions as alleged herein, caused or allowed the open dumping of waste; resulting in the deposition of general construction and demolition debris at the Site. The Respondents thereby violated Section 21(p)(7) of the Act, 415 ILCS 21(p)(7) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count III:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(p)(7) of the Act;

3. Ordering the Respondents to cease and desist from future violations of Section 21(p)(7) of the Act;
4. Ordering the Respondents to complete removal of all waste from the Site and to provide proof to Illinois EPA that all waste has been disposed in accordance with the requirements of the Act and Board regulations;
5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000) against the Respondents, jointly and severally, for each violation of Section 21(p)(7) of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
6. Ordering the Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as the Board deems appropriate and just.

**COUNT IV**  
**CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT**

1-25. Complainant realleges and incorporates by reference herein, paragraphs 1 through 15, paragraphs 17 through 24, and paragraphs 26 through 27, of Count I, as paragraphs 1 through 25 of this Count IV.

26. From approximately May 2016 until at least March 2019, the Respondents stored and disposed of mixed demolition debris and waste creosote-treated wood flooring blocks at the Site. The Respondents caused and allowed the above-described waste to be deposited on the ground in such manner that the waste could enter the environment, be emitted into the air, or discharged into waters, including groundwater.

27. The Respondents did not apply for or obtain landfill development or operating

permits covering the Site at any time.

28. Section 21(d) of the Act, 415 ILCS 5/21(d) (2016), provides, in pertinent part, as follows:

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;

\* \* \*

29. Section 812.101 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 812.101, provides, in pertinent part, as follows:

**Section 812.101 Scope and Applicability**

- a) All persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 1/2, 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 applications must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

30. Section 810.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 810.103, provides the following definitions:

“Landfill” means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, landfills include waste piles, as defined in this Section.

“Operator” means the person responsible for the operation and maintenance of a solid waste disposal facility.

“Owner” means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. The “owner” is the “operator” if there is no other person who is operating and maintaining a solid waste disposal facility.

“Waste pile” means an area on which non-containerized masses of solid, non-flowing wastes are placed for disposal. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a waste pile is a landfill, unless the operator can demonstrate that the wastes are not accumulated over time for disposal. At a minimum, this demonstration must include photographs, records, or other observable or discernable information, maintained on a yearly basis, that show that within the preceding year the waste has been removed for utilization or disposal elsewhere.

31. Waste, in the form of mixed demolition debris and waste creosote-treated wood flooring blocks, was placed at the Site for disposal. The Site is a “waste pile” and therefore a “landfill” as those terms are defined in Section 810.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 810.103.

32. Respondent Bennett owns the Site and is an “owner” as that term is defined in Section 810.103 of the Board regulations, 35 Ill. Adm. Code 810.103.

33. At all times relevant to the Complaint, Respondent Marino was responsible for the demolition of buildings at the Site and for the handling and storage of the resulting demolition waste. Marino is an “operator” as that term is defined in Section 810.103 of the Board Regulations, 35 Ill. Adm. Code 810.103.

34. The Respondents stored and disposed of waste at the Site, and thereby conducted a waste storage and waste disposal operation.

35. By conducting waste storage and disposal operations at the Site without a permit issued by the Illinois EPA, the Respondents violated Section 21(d)(1) of the Act, 415 ILCS

5/21(d)(1) (2016).

36. The Respondents developed and operated the Site as a waste storage and disposal facility without first obtaining a development permit from the Illinois EPA.

37. By developing and operating a waste storage and waste disposal facility without a development permit, the Respondents violated Section 812.101 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 812.101, and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count IV:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Sections 21(d)(1) and 21(d)(2) of the Act, and 35 Ill. Adm. Code 812.101;
3. Ordering the Respondents to cease and desist from future violations of Section 21(d)(1) and 21(d)(2) of the Act, and 35 Ill. Adm. Code 812.101;
4. Ordering the Respondents to complete removal of all waste from the Site and to provide proof to Illinois EPA that all waste has been disposed in accordance with the requirements of the Act and Board regulations;
5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000) against the Respondents, jointly and severally, for each violation of Section 21(d)(1) and 21(d)(2) of the Act, and 35 Ill. Adm. Code 812.101, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

6. Ordering the Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

**COUNT V**  
**WASTE STORAGE AND DISPOSAL AT AN IMPROPER SITE**

1-25. Complainant realleges and incorporates by reference herein, paragraphs 1 through 15, paragraphs 17 through 24, and paragraphs 26 through 27, of Count I, as paragraphs 1 through 25 of this Count V.

26. Beginning on a date better known to the Respondents, but approximately May 10, 2016, the Respondents caused and allowed waste in the form of mixed demolition debris and creosote-treated wood flooring blocks to be dumped on the ground at the Site. The Respondents did not commence removal and disposal of the waste until late 2018, when compelled by order of the Circuit Court of Winnebago County.

27. Section 21(e) of the Act, 415 ILCS 5/21(e) (2016), provides, 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.

28. From approximately May 10, 2016 until the date of filing this Complaint, the Respondents stored, disposed and abandoned waste at the Site.

29. The Site has never been permitted for waste storage or waste disposal, and therefore does not meet the requirements of the Act.



30. By storing, disposing, and abandoning waste at the Site, a site not permitted for the storage or disposal of waste, the Respondents violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count V:

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 future violations of Section 21(e) of the Act;
4. Ordering the Respondents to complete removal of all waste from the Site and to provide proof to Illinois EPA that all waste has been disposed in accordance with the requirements of the Act and Board regulations;
5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000) against the Respondents, jointly and severally, for each violation of Section 21(e) of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
6. Ordering the Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as the Board deems appropriate and just.

**COUNT VI**  
**FAILURE TO PERFORM A SPECIAL WASTE DETERMINATION**

1-20. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 14, and paragraphs 17 through 21, of Count I, and paragraph 28 of Count IV, as paragraphs 1 through 20 of this Count VI.

21. Beginning in May 2016, the Respondents' demolition activities resulted in the generation of waste in the form of waste creosote-treated wooden flooring blocks. However, the Respondents dumped the waste on the ground at the Site without evaluating or testing this waste stream to determine whether it was a special waste or a hazardous waste.

22. Section 808.121(a) of the Board regulations, 35 Ill. Adm. Code 808.121(a), provides as follows:

**Section 808.121      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.

23. Beginning on a date better known to Respondents, but on or about May 10, 2016, the Respondents generated waste in the form of waste creosote-treated flooring blocks, but failed to test or otherwise evaluate the waste stream to determine whether it was a special waste.

24. By failing to evaluate or characterize the waste creosote-treated flooring blocks, the Respondents thereby violated Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count VI

1. Authorizing a hearing in this matter, at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 21(d)(2) of the Act and 35 Ill. Adm. Code 808.121;
3. Ordering the Respondents to cease and desist from any further violation of Section 21(d)(2) of the Act and 35 Ill. Adm. Code 808.121;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000) against the Respondents, jointly and severally, for each violation of Section 21(d)(2) of the Act, and 35 Ill. Adm. Code 808.121, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
5. Ordering the Respondents 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 VII**  
**FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION**

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 of Count VI, as paragraphs 1 through 21 of this Count VII.

22. Section 722.111 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111, provides, in pertinent part, as follows:

**Section 722.111 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:

- a) The person should first determine 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 Subpart D of 35 Ill. Adm. Code 721.

\* \* \*

- 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 through 728, 733, and 739 for possible exclusions or restrictions pertaining to the management of the specific waste.

23. Section 721.102 of the Board regulations, 35 Ill. Adm. Code 721.102, provides, in pertinent part, as follows:

**Section 721.102 Definition of Solid Waste**

- a) Solid Waste
  - 1) A solid waste is any discarded material that is not excluded pursuant to Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131 or 35 Ill. Adm. Code 720.130 and 720.134.
  - 2) Discarded Material

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

i) It is abandoned, as described in subsection (b);

\* \* \*

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

1) It is disposed of....

24. The respondents abandoned the waste creosote-treated wood flooring by disposing of the waste at the Site. The waste creosote-treated wood flooring is a "solid waste" as that term is defined in Section 721.102 of the Board regulations, 35 Ill. Adm. Code 721.102.

25. As a generator of solid waste, the Respondents were required to determine whether the waste creosote-treated flooring blocks generated at the Site qualified as hazardous waste using the procedure outlined in Section 722.111 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111.

26. By failing to test and evaluate the waste creosote-treated flooring blocks generated and dumped at the Site, the Respondents violated Section 722.111 of the Board Hazardous Waste regulations, 35 Ill. Adm. Code 722.111, and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count VII:

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

2. Finding that the Respondents have violated Section 21(d)(2) of the Act and 35 Ill. Adm. Code 722.111;

3. Ordering the Respondents to cease and desist from any further violation of Section violated Section 21(d)(2) of the Act and 35 Ill. Adm. Code 722.111;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000) against the Respondents, jointly and severally, for each violation of Section 21(d)(2) of the Act, and 35 Ill. Adm. Code 722.111, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;

5. Ordering the Respondents 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 VIII**  
**CREATING A WATER POLLUTION HAZARD**

1-16. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 14 and paragraphs 17 through 18, of Count I, as paragraphs 1 through 16 of this Count VIII.

17. As observed by the Illinois EPA inspector on September 7, 2017, the Defendants had dumped darkly stained creosote-treated wood flooring and mixed demolitions debris onto the ground in proximity to grates leading to the on-site storm sewers. No barriers had been installed to prevent migration of creosote or other contaminants contained in the mixed demolition debris.

18. Creosote is a mixture of heavy hydrocarbons, including polycyclic aromatic hydrocarbons. Creosote has been used as a pesticide and wood preservative. The United States Environmental Protection Agency has determined that creosote derived from coal tar is a "probable human carcinogen". If released to surface water, creosote can be toxic to aquatic organisms.

19. Section 12(d) of the Act, 415 ILCS 5/12(d) (2016), provides as follows:

No person shall:

\* \* \*

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2016), provides the following

definition:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

21. Section 3.555 of the Act, 415 ILCS 5/3.555 (2016), provides the following

definition:

“WATERS” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

22. Storm water contained in the on-site stormwater collection manholes and stormwater sewers is a “water” of the State of Illinois as that term is defined in Section 3.555 of the Act, 415 ILCS 5/3.555 (2016).

23. Section 3.165 of the Act, 415 ILCS 5/3.165 (2016), provides, as follows:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

24. The creosote leaching, or potentially leaching, from the creosote-treated wooden flooring blocks at the Site is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2016).

25. Creosote leaching from the creosote-treated wooden flooring blocks at the Site

into storm sewers would alter, or threaten to alter, the physical, thermal, or chemical properties of these waters, render, or threaten to render, these waters harmful or detrimental or injurious to wild animals, birds, fish and other aquatic life, and create a nuisance. Creosote contamination of the water in storm sewers at the Site would therefore constitute "water pollution" as that term is defined in Section 3.545 of the Act, 415 ILCS 3.545 (2016).

26. By dumping heavily stained creosote-treated wood flooring blocks on the ground at the Site, in proximity to storm sewers and without providing any barriers to prevent migration of creosote into the storm sewers or groundwater underlying the Site, the Respondents created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MARINO DEVELOPMENT LLC and A-W-BENNETT ENTERPRISES, INC., on Count VIII:


1. Authorizing a hearing in this matter, at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(d) of the Act;
3. Ordering the Respondents to cease and desist from any further violation of Section 12(d) of the Act;
4. Ordering the Respondents to take all measures necessary to prevent the migration of contaminants from the Site into waters of the State of Illinois;
5. Assessing against the Respondents, jointly and severally, a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violations of Section 12(d) of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day of violation;



6. Ordering the Respondents to pay all costs, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF  
ILLINOIS *by* KWAME RAOUL  
Attorney General of the  
State of Illinois,

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

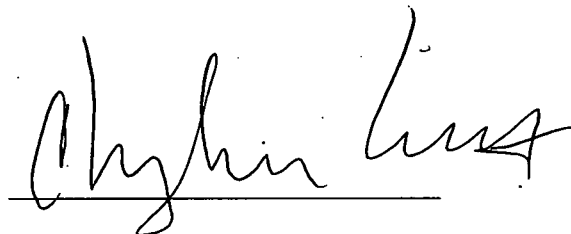
BY:   
ELIZABETH WALLACE, Chief  
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Assistant Attorney General

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 7<sup>th</sup> day of June 2019, the Complaint and Notice of Filing in this matter upon the persons listed below by certified mail.

A handwritten signature in black ink, appearing to read "Christopher Grant", written over a horizontal line.

CHRISTOPHER GRANT

**SERVICE LIST:**

Marino Development Company LLC

Mr. William Marino

Registered Agent/Statutory Agent

Marino Development Company LLC

2077 E Warner Road #110

Tempe, AZ 85284, and

Mr. William Marino

Marino Development LLC

4117 N. Lowell Avenue

Chicago IL 60641-1936

A.W. Bennett Enterprises, Inc.

Mr. Andrew Vella

Vella & Lund

401 W. State Street

Rockford IL 61101

(Service by agreement pursuant to 735 ILCS 5/2-213)