

February 5, 2020

ATTORNEY GENERAL RAOUL FILES LAWSUIT AGAINST MODERN PLATING OVER HYDROCHLORIC ACID LEAK

Raoul Also Seeks Injunction Requiring Immediate Evaluation and Cleanup

Chicago — Attorney General Kwame Raoul [filed a lawsuit](#) against Modern Plating Corp. over the release of the hazardous chemical hydrochloric acid at its plant in Freeport, Ill.

Raoul's lawsuit, filed in Stephenson County Circuit Court, includes allegations of air and water pollution, conducting a hazardous waste disposal operation without a permit, and the dumping of waste into an on-site pond. Raoul also [filed a motion for immediate and preliminary injunction](#), seeking an order requiring Modern Plating to immediately contain and clean up the pollution.

On Jan. 14, an above-ground storage tank at the Modern Plating site in Freeport ruptured, releasing about 4,800 gallons of hydrochloric acid. The acid reached a pond, which connects to a small creek that drains into the Pecatonica River. The release also created a vapor cloud which caused 20 employees to be evacuated from the site. Emergency personnel tried to evacuate nearby residents but were prevented due to the vapor cloud, and at least one person sought medical attention due to potential hydrochloric acid exposure.

"Hydrochloric acid poses significant health and environmental hazards, and I am committed to ensuring the immediate and long-term impacts of this release are addressed," Raoul said. "My office will continue working to ensure that companies are held accountable for contamination that threatens public health and our environment."

Hydrochloric acid is a hazardous chemical that can cause burns and additional burns and scarring to the nose, throat and respiratory tract when inhaled. Release of the chemical into streams, creeks and other water bodies can result in the death of fish and other aquatic life.

In addition to filing the lawsuit, the Attorney General's office filed a motion asking the court to enter an order that will require Modern Plating to take immediate action while the litigation is pending. Raoul's motion seeks to require Modern Plating to investigate the cause of the release, contain and clean up pollution, and remove and properly dispose of contaminated soil. The motion also seeks to require the company to submit a number of reports to the Illinois Environmental Protection Agency (IEPA), including a summary describing past response actions, a report detailing findings and recommendations for corrective actions or preventive measures – which should be implemented following IEPA approval – and a completion report.

Raoul's lawsuit also seeks to require Modern Plating to investigate the cause of the release, take necessary steps to prevent future chemical releases, and pay civil penalties.

Handling this case for Raoul's Environmental Enforcement Division are Assistant Attorneys General Daniel Robertson and Karen Howard.

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
STEPHENSON COUNTY, ILLINOIS
CHANCERY DIVISION**

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STEPHENSON COUNTY, IL
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Nathan Luy
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
MODERN PLATING CORPORATION,)
an Illinois corporation,)
)
Defendant.)

No. **2020CH7**

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* 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”), complains of Defendant, MODERN PLATING CORPORATION, an Illinois corporation (“Defendant”), as follows:

**COUNT I
SUBSTANTIAL DANGER TO THE ENVIRONMENT,
PUBLIC HEALTH AND WELFARE**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, the Attorney General of the State of Illinois, on his own motion and at the request of the Illinois EPA, against Defendant pursuant to the terms and provisions of Section 43(a) of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/43(a) (2018), and is an action to restrain a substantial danger to public health and welfare and to the environment.

2. The Illinois EPA is an administrative agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2018), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Defendant was and is an Illinois corporation in good standing.

4. Defendant owns and operates a metal plating and coating facility located at 701 South Hancock Avenue, Freeport, Stephenson County, Illinois (“Site”).

5. Defendant utilizes hydrochloric acid in its metal electroplating processes at the Site.

6. On January 14, 2020, an above ground storage tank at the Site that stores hydrochloric acid ruptured, releasing approximately 4,800 gallons of hydrochloric acid (“Release”).

7. Hydrochloric acid is corrosive and can cause severe damage and burns to the skin, eyes and mucous membranes upon contact. Inhalation of hydrochloric acid can lead to severe burns and scarring of the nose, throat and respiratory tract.

8. Hydrochloric acid, when released into the environment, causes an increase in acidity in soil that disables organic growth. Hydrochloric acid can increase the acidity of water, which can destabilize an aquatic ecosystem and cause death of aquatic life.

9. The hydrochloric acid from the Release travelled over and through a containment berm surrounding the above ground storage tank, in part due to prior deterioration of the berm.

10. Hydrochloric acid from the Release entered a parking lot on the north side of the Site, and traveled further north into an open area of the Site where it entered a back water pond. The pond connects to a small creek that drains into the Pecatonica River.

11. Additionally, hydrochloric acid from the Release traveled along a concrete trench and back inside an on-site building.

12. At the time of the Release, approximately 20 employees were evacuated from the Site.

13. A vapor cloud consisting of hydrochloric acid was generated as part of the Release.
14. Residential properties are located immediately to the east, south and west of the Site.
15. The residential area immediately east of the Site is populated by approximately 100 people.
16. At the time of the Release, an attempt by the Stephenson County Emergency Management Agency to evacuate residents from the residential area immediately east of the Site was cancelled because of the presence of the hydrochloric acid vapor cloud, and residents were instead ordered to shelter in place. Upon information and belief, one gentleman who was unable to secure his face mask was taken to a local hospital for evaluation as a precautionary measure.
17. The Stephenson County Jail is located less than one mile south and east of the Site.
18. At the time of the Release, school buses and transport vans were staged at the jail in case evacuation became necessary.
19. At the time of the Release, the Stephenson County Emergency Management Agency closed off an area surrounding the Site, which only emergency personnel were allowed to enter.
20. Section 43(a) of the Act, 415 ILCS 5/43(a) (2018), provides in pertinent part as follows:
 - (a) In circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, the State's Attorney or Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an ex parte order and shall schedule a hearing on the matter not later than 3 working days from the date of injunction.

21. Section 3.535 of the Act, 415 ILCS 5/3.535 (2018), provides in pertinent part as follows:

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

22. The hydrochloric acid released at the Site is discarded material and therefore “waste” as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2018).

23. Section 3.220 of the Act, 415 ILCS 5/3.220 (2018), provides the following definition:

“Hazardous waste” means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations.

24. 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 (“Board”) has promulgated regulations applicable to the disposal of solid waste, found at 35 Ill. Adm. Code, Subtitle G, Chapter I (“Board Waste Disposal regulations”).

25. Section 721.102 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code

721.102, provides in pertinent part as follows:

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;

* * *

26. Section 3.185 of the Act, 415 ILCS 5/3.185 (2018), 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.

27. The hydrochloric acid released at the Site was spilled directly on the land in such a manner so that it may enter the environment, and was therefore “disposed” as that term is defined in Section 3.185 of the Act, 415 ILCS 3.185 (2018).

28. The hydrochloric acid was disposed of by Defendant through the Release, and was therefore “discarded”. The hydrochloric acid is therefore “solid waste” pursuant to Section 721.102(a)(1) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102(a)(1).

29. Section 721.120(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code

721.120(a), provides in pertinent part as follows:

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.

30. Section 721.122 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code

721.122, provides in pertinent part as follows:

a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C (pH Electrometric Measurement) in “Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods”, USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

* * *

b) A solid waste that exhibits the characteristic of corrosivity has the USEPA hazardous waste number of D002.

31. On January 15, 2020, the hydrochloric acid disposed at the Site was initially tested by Defendant and determined to have a pH of 0-1 at approximately 70 feet from the point of the Release. As such, the hydrochloric acid is a characteristically hazardous waste as defined by 35 Ill. Adm. Code 721.122(a)(1), and is designated with the United States Environmental Protection Agency hazardous waste number of D002 pursuant to 35 Ill. Adm. Code 721.122(b). The hydrochloric acid disposed at the Site is therefore a “hazardous waste” as that term is defined by Section 3.220 of the Act, 415 ILCS 5/3.220 (2018).

32. The uncontrolled release of hydrochloric acid, a hazardous waste, at Defendant’s Site contaminated or threatened to contaminate the soil, back water pond and creek at the Site which could result in the death of aquatic life. The Release further created a substantial danger to

the health and welfare of employees and other persons at and near the Site who may have come in contact with the spilled hydrochloric acid. In addition, the release of hydrochloric acid vapors generated at the Site which migrated off-site caused a substantial danger to the safety of workers, including first responders, at the Site, as well as persons working and residing in the surrounding area, due to the detrimental effects of inhalation. As alleged in paragraph 16, above, one individual was taken to a local hospital for evaluation as a precautionary measure.

33. Defendant, by its actions or omissions as alleged herein, has created circumstances of substantial danger to the environment and the public health and welfare, by causing or allowing the uncontrolled release of hydrochloric acid, a hazardous waste, into the soil, water and air, at and around the Site.

34. The substantial danger alleged herein will continue or reoccur unless and until this Court grants equitable relief in the form of immediate, preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant an immediate and preliminary injunction in favor of Plaintiff, and against Defendant, MODERN PLATING CORPORATION:

1. Finding that Defendant created and is maintaining a substantial danger to the environment and public health and welfare;
2. Enjoining Defendant from creating any further substantial endangerment pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2018);
3. Ordering Defendant to immediately take all necessary actions to contain and prevent the discharge or release of hydrochloric acid from the Site into the air, land, surface water and/or groundwater;

4. Ordering Defendant to remove all soil impacted by hydrochloric acid as a result of the Release;
5. Ordering Defendant to submit to Plaintiff a summary report of the Release and the work performed by Defendant in response to the Release;
6. Ordering Defendant to submit to Plaintiff a report of its investigation of on- and off-site impacts that may have been caused by the Release, and a plan for the remediation of any impacts;
7. Ordering Defendant to submit to Plaintiff, for review and approval, a final report documenting the completion of all remediation activities;
8. Ordering Defendant to submit to Plaintiff, for review and approval, a report of a root cause analysis of the Release, and a work plan for the completion of any corrective actions or preventive measures identified in the approved root cause analysis report;
9. Ordering Defendant to implement any necessary corrective actions or preventive measures pursuant to an approved root cause analysis work plan, and submitting to Plaintiff, for review and approval, a corrective action completion report;
10. Assessing against Defendant, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day of violation;
11. Ordering Defendant, pursuant to 415 ILCS 5/42(f) (2018), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and
12. Granting such other relief as this Court deems appropriate and just.

COUNT II
AIR POLLUTION

1. This count is brought on behalf of the People of the State of Illinois, *ex rel.* Kwame Raoul, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois EPA, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2018).

2-30. Plaintiff realleges and incorporates herein by reference paragraphs 2 through 19 and 21 through 32 of Count I as paragraphs 2 through 30 of this Count II.

31. Section 9(a) of the Act, 415 ILCS 9(a) (2018), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

32. Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

33. Section 3.165 of the Act, 415 ILCS 5/3.615 (2018), provides the following definition:

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

34. The hydrochloric acid vapors emitted as a result of the Release at the Site are a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.615 (2018).

35. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides the following definition:

“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.

36. Defendant is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

37. Section 3.115 of the Act, 415 ILCS 5.3.115 (2018), provides the following definition:

“Air pollution” is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

38. On January 14, 2020, the uncontrolled release of hydrochloric acid at the Site caused the discharge of hydrochloric acid vapors that migrated into the air and environment and into the area surrounding the Site, including a residential area in the vicinity of the Site, where they created a risk of injury to human, plant, or animal life, to health, or unreasonable interference with the enjoyment of life or property.

39. The discharge or emission of hydrochloric acid vapors from the Site into the air and environment, which created a risk of injury to human, plant, or animal life, to health, or unreasonable interference with the enjoyment of life or property, constitutes “air pollution” as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2018).

40. By causing or allowing the release of hydrochloric acid vapors into the atmosphere, Defendant caused, threatened, or allowed the discharge or emission of contaminants into the environment so as to cause or tend to cause air pollution in Illinois, in violation of Section 9(a) of

the Act, 415 ILCS 5/9(a) (2018), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

41. Violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary and, after a trial, permanent injunction and an order in favor of Plaintiff and against Defendant, MODERN PLATING CORPORATION:

1. Finding that Defendant has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

2. Enjoining Defendant from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

3. Ordering Defendant to undertake all necessary corrective action that will result in a final and permanent abatement of the violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2018), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

4. Assessing against Defendant, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Defendant, pursuant to 415 ILCS 5/42(f) (2018), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT III
WATER POLLUTION

1-34. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 19 and 21 through 32 of Count I, and paragraphs 1, 33, 35 and 36 of Count II as paragraphs 1 through 34 of this Count III.

35. Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

36. The hydrochloric acid that leaked or spilled from the above ground storage tank at the Site is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

37. Section 3.555 of the Act, 415 ILCS 5/3.555 (2018), 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.

38. The back water pond and creek at the Site are each a “water” of the State of Illinois as that term is defined by Section 3.555 of the Act, 415 ILCS 5/3.555 (2018).

39. Section 3.545 of the Act, 415 ILCS 5/3.545 (2018), 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.

40. Defendant's discharge of hydrochloric acid, a contaminant, into the back water pond near the creek at the Site, which can increase the acidity of water, created or is likely to create a nuisance or is likely to render these waters harmful or detrimental or injurious to public health, commercial, industrial, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. Defendant's discharge of hydrochloric acid at and near the Site thereby caused or tended to cause "water pollution" as defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2018).

41. By causing or allowing the discharge of hydrochloric acid into the environment so as to cause or tend to cause water pollution, Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018).

42. Violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary and, after a trial, permanent injunction and an order in favor of Plaintiff and against Defendant, MODERN PLATING CORPORATION:

1. Finding that Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);

2. Enjoining Defendant from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);

3. Ordering Defendant to undertake all necessary corrective action that will result in a final and permanent abatement of the violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);

4. Assessing against Defendant, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Defendant, pursuant to 415 ILCS 5/42(f) (2018), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT IV
CREATING A WATER POLLUTION HAZARD

1-39. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 19 and 21 through 32 of Count I, paragraphs 1, 33, 35 and 36 of Count II, and paragraphs 36 through 40 of Count III as paragraphs 1 through 39 of this Count IV.

40. Section 12(d) of the Act, 415 ILCS 5/12(d) (2018), 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.

* * *

41. The Release caused hydrochloric acid to travel across a parking lot and open area of the Site, and enter the back water pond, which connects to the creek.

42. Defendant, by discharging hydrochloric acid (a contaminant likely to be injurious to human, plant, or animal life, to health, or to property) onto soil at the Site, that then travelled further into the back water pond, which connects to the creek, allowed the deposition of a contaminant upon the land in such a place and manner as to create a water pollution hazard.

43. By depositing hydrochloric acid onto soil at the Site as alleged herein, Defendant thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2018).

44. Violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary and, after a trial, permanent injunction and an order in favor of Plaintiff and against Defendant, MODERN PLATING CORPORATION:

1. Finding that Defendant has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);

2. Enjoining Defendant from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);

3. Ordering Defendant to undertake all necessary corrective action that will result in a final and permanent abatement of the violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);

4. Assessing against Defendant, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Defendant, pursuant to 415 ILCS 5/42(f) (2018), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT V
CONDUCTING A HAZARDOUS WASTE DISPOSAL OPERATION
WITHOUT A PERMIT

1-35. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 19 and 21 through 31 of Count I, paragraphs 1 and 33 through 36 of Count II, and paragraph 36 of Count III as paragraphs 1 through 35 of this Count V.

36. Section 21(f) of the Act, 415 ILCS 5/21(f) (2018), provides in pertinent part as follows:

No person shall:

* * *

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

(1) Without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, . . . as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

* * *

37. Defendant, by disposing of the hydrochloric acid at the Site, conducted a hazardous waste disposal operation.

38. At all times relevant to this Complaint, Defendant did not have a RCRA permit issued by the Illinois EPA under subsection (d) of Section 39 of the Act, 415 ILCS 5/39(d) (2018), for the Site.

39. Defendant, by conducting a hazardous waste disposal operation without a RCRA permit for the Site issued by the Illinois EPA under subsection (d) of Section 39 of the Act, 415 ILCS 5/39(d) (2018), has violated Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2018).

40. Violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary and, after a trial, permanent injunction and an order in favor of Plaintiff and against Defendant, MODERN PLATING CORPORATION:

1. Finding that Defendant has violated Sections 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2018);

2. Enjoining Defendant from any further violations of Sections 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2018);

3. Ordering Defendant to undertake all necessary corrective action that will result in a final and permanent abatement of the violations of Sections 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2018);

4. Assessing against Defendant, pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3) (2018), a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each day of violation of the Act;

5. Ordering Defendant, pursuant to 415 ILCS 5/42(f) (2018), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT VI
OPEN DUMPING RESULTING IN DEPOSITION OF WASTE IN
STANDING OR FLOWING WATERS

1-27. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 19, 21, 22, 26 and 27 of Count I, paragraphs 1, 35 and 36 of Count II, and paragraphs 37 and 38 of Count III as paragraphs 1 through 27 of this Count VI.

28. Section 21(a) of the Act, 415 ILCS 5/21(a) (2018), provides as follows:

No person shall:

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

29. Section 3.460 of the Act, 415 ILCS 5/3.460 (2018), 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.

30. The Site is a “disposal site” as those terms are defined in Sections 3.185 and 3.460 of the Act, 415 ILCS 5/3.185 and 3.460 (2018), respectively.

31. Section 3.305 of the Act, 415 ILCS 5/3.305 (2018), 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.

32. Section 3.385 of the Act, 415 ILCS 5/3.385 (2018), provides as follows:

“Refuse” means waste.

33. Section 3.445 of the Act, 415 ILCS 5/3.445 (2018), 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

34. At all times relevant to this Complaint, the Site was not permitted by the Illinois EPA for the disposal of waste on land, and therefore did not fulfill the requirements of a sanitary landfill as defined in Section 3.445 of the Act, 415 ILCS 5/3.445 (2018).

35. By causing or allowing the depositing of waste from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill, Defendant caused or allowed “open dumping” as that term is defined in Section 3.305 of the Act, 415 ILCS 5/3.305 (2018).

36. By causing or allowing the open dumping of waste, Defendant violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2018).

37. Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2018), provides 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:

* * *

4. deposition of waste in standing or flowing waters

38. Defendant, by causing or allowing the depositing of hydrochloric acid into the back water pond at the Site, caused or allowed the open dumping of waste resulting in deposition of waste in standing or flowing waters, in violation of Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2018).

39. Violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary and, after a trial, permanent injunction and an order in favor of Plaintiff and against Defendant, MODERN PLATING CORPORATION:

1. Finding that Defendant has violated Sections 21(a) and 21(p)(4) of the Act, 415 ILCS 5/21(a) and 21(p)(4) (2018);

2. Enjoining Defendant from any further violations of Sections 21(a) and 21(p)(4) of the Act, 415 ILCS 5/21(a) and 21(p)(4) (2018);

3. Ordering Defendant to undertake all necessary corrective action that will result in a final and permanent abatement of the violations of Sections 21(a) and 21(p)(4) of the Act, 415 ILCS 5/21(a) and 21(p)(4) (2018);

4. Assessing against Defendant, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Defendant, pursuant to 415 ILCS 5/42(f) (2018), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney
General of the State of Illinois,

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

By: /s/ Elizabeth Wallace
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Daniel Robertson (ARDC No. 6296438)

Karen Howard

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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
STEPHENSON COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> KWAME RAOUL, Attorney)	
General of the State Illinois,)	
)	
Plaintiff,)	
)	
v.)	No.
)	
MODERN PLATING CORPORATION,)	
an Illinois corporation,)	
)	
Defendant.)	

VERIFICATION

I, Shaun Newell, do state as follows:

1. I am currently employed by the Illinois Environmental Protection Agency (“Illinois EPA”) in Rockford, Illinois as an Environmental Protection Specialist III.
2. I have been employed by the Illinois EPA for the past 27 years with the last 23 years in my current position.
3. The duties and responsibilities of my current position include: inspecting and investigating solid waste and hazardous waste facilities and conducting complaint investigations.
4. I have read the foregoing Verified Complaint for Injunction and Civil Penalties (the “Complaint”), and am aware of the contents thereof.

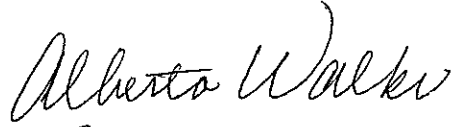
5. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the Complaint in Counts I through VI are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



EFS TEL
Illinois Environmental Protection Agency

Dated: Jan 28, 2020




January 28, 2020

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
STEPHENSON COUNTY, ILLINOIS
CHANCERY DIVISION**

EFILED
STEPHENSON COUNTY, IL
2/4/2020 2:53 PM
Nathan Luy
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
MODERN PLATING CORPORATION,)
an Illinois corporation,)
)
Defendant.)

No. **2020CH7**

MOTION FOR IMMEDIATE AND PRELIMINARY INJUNCTION

NOW COMES Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Section 43(a) of the Illinois Environmental Protection Act, 415 ILCS 5/43(a) (2018), and hereby moves this Court to enter an order for immediate and preliminary injunctive relief against Defendant, MODERN PLATING CORPORATION, an Illinois corporation.

1. This is a motion for an immediate and preliminary injunction to address violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2018) (the “Act”), and corresponding Illinois Pollution Control Board (“Board”) regulations.
2. Plaintiff incorporates by reference herein the allegations contained in its Verified Complaint for Injunctive Relief and Civil Penalties (“Verified Complaint”) filed on February 4, 2020 against the Defendant.
3. This Motion seeks an immediate and preliminary injunction order: (a) finding that

Defendant has created a substantial danger to the environment, public health and welfare; and (b) requiring the relief set forth below.

**PLAINTIFF HAS A CLEARLY ASCERTAINABLE
RIGHT WHICH NEEDS PROTECTION**

4. The first element which Plaintiff must show to obtain a preliminary injunction is that it has a clearly ascertainable right that needs protection. Article XI, Section 1, of the Illinois Constitution, IL. CONST. ART. XI, Sec. 1, provides as follows:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

5. Plaintiff has a clearly ascertainable right which needs protection. Plaintiff brings this Motion pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2018). This Section of the Act provides, in pertinent part, as follows:

In circumstances of substantial danger to the environment or to the public health of persons . . . the State’s Attorney or Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an ex parte order and shall schedule a hearing on the matter not later than 3 working days from the date of injunction.

**PLAINTIFF HAS ESTABLISHED A SUBSTANTIAL DANGER TO HUMAN HEALTH
AND THE ENVIRONMENT AND IS ENTITLED
TO AN IMMEDIATE INJUNCTION**

6. As further alleged in the Verified Complaint, the Defendant has created circumstances of substantial danger to the environment and the public health and welfare by causing or allowing the release of hydrochloric acid on January 14, 2020 (“Release”) from a

ruptured above ground storage tank into the air, soil, and a back water pond at the Defendant's metal plating and coating facility located at 701 South Hancock Avenue, Freeport, Stephenson County, Illinois ("Site").

7. Because the cause of the Release from the above ground storage tank, and the nature and the extent of contamination resulting from the Release, remain unknown, any operation or activity at the Site constitutes a substantial danger to human health and the environment. To abate this threat, the Defendant must be compelled to prevent further migration of hydrochloric acid to the air, surface water, soil and/or to groundwater; determine the extent of, and remediate, any and all contamination caused by the Release; investigate the cause of the Release; and implement any necessary corrective actions or measures to prevent a recurrence of the Release.

8. The Attorney General has brought this Motion under Section 43(a) of the Act, 415 ILCS 5/43(a) (2018). *People v. Keeven*, 68 Ill. App. 3d 91, 385 N.E.2d 804 (5th Dist. 1979) and *E.P.A. v. Fitz-Marr, Inc.*, 178 Ill. App. 3d 555, 533 N.E.2d 524 (1st Dist. 1988), hold that, upon a showing of substantial danger, the Attorney General is authorized to obtain injunctive relief.

9. When an injunction is sought pursuant to a statute, such as the Act, the traditional requirements for issuance of an injunction are obviated, and the requirements of the statute become controlling. Traditional equitable requirements are superseded by the statute because the legislature has determined that in its passage of the applicable statute, a violation of the statute itself causes irreparable injury for which no remedy exists. *Keeven*, 68 Ill. App. 3d at 97; *People v. Van Tran Electric Corp.*, 152 Ill. App. 3d 175 (5th Dist. 1987); *People ex rel. Edgar v. Miller*, 110 Ill. App. 3d 264, 269 (4th Dist. 1982).

10. In order to obtain an injunction, the State or governmental agency need only allege

and show that (a) the statute relied upon specifically allows for injunctive relief, and (b) the statute was violated. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 277 (2003). When it is established that a statute has been violated, no discretion is vested in the Circuit Court to deny the authorized injunctive relief. *Id.*; see also *People v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 625 (4th Dist. 2006). The basis of this principle of law is that public harm occurs when a statute is violated. *Id.* Once the State has sufficiently established statutory violations by a defendant, the State is “entitled to a preliminary injunction enjoining [the defendant] from further violations of the Act.” *People v. Mika Timber Co., Inc.*, 221 Ill. App. 3d 192 (5th Dist. 1991).

11. As the Illinois Supreme Court has recognized,

The Illinois Constitution of 1970 provides that every citizen has a right to a healthful environment. (Ill. Const. 1970, art. XI, § 2.) Section 1 of article XI, in fact, declares it to be the public policy of the State to provide and maintain a healthful environment for the benefit of future generations. (Ill. Const. 1970, art. XI, § 1.) Prior to enactment of the Constitution of 1970, however, common law remedies were available to abate and enjoin public nuisances which caused pollution. . . . At the same time, in 1970, the Illinois General Assembly enacted the Illinois Environmental Protection Act (Ill.Rev.Stat.1989, ch. 111 1/2, par. 1001 *et seq.*). Repealing several statutes, including the sanitary water board act (Ill.Rev.Stat.1969, ch. 19, § 145.1 *et seq.*) and the Illinois Air Pollution Control Act (Ill.Rev.Stat.1969, ch. 111 1/2, § 240.1 *et seq.*), the Act established a unified statewide program to restore, protect and enhance the quality of the environment in the State.

People of the State of Illinois v. NL Industries, 152 Ill.2d 82, 90-91 (1992).

12. There is a strong public interest in protecting the public health and the environment. *People v. Conrail, Corp.*, 251 Ill. App. 3d 550, 560 (4th Dist. 1993). Accordingly, statutes which were enacted for the protection and the preservation of public health are to be given extremely liberal construction for the accomplishment and maximization of their beneficial objectives. *Id.*

13. The violations of the Act and Board regulations and the substantial endangerment to human health and welfare and to the environment shall continue until such time as the relief requested herein is implemented.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief:

1. Entering an immediate and preliminary injunction order finding that the Defendant created and is maintaining a substantial danger to the environment and public health and welfare;
2. Enjoining the Defendant from creating any further substantial endangerment to the environment and public health and welfare pursuant to 43(a) of the Act, 415 ILCS 5/43(a) (2018);
3. Entering an immediate injunction order that requires the Defendant to:
 - a. Take all necessary actions to contain and prevent the discharge or release of hydrochloric acid from the Site into the air, land, surface water and/or groundwater;
 - b. Remove all soil impacted by hydrochloric acid as a result of the Release;
4. Entering a preliminary injunction order that requires the Defendant to:
 - a. Submit to Plaintiff a summary report of the Release and the work performed by Defendant in response to the Release;
 - b. Submit to Plaintiff a report of its investigation of on- and off-site impacts that may have been caused by the Release, and a plan for the remediation of any impacts;
 - c. Submit to Plaintiff, for review and approval, a final report documenting the completion of all remediation activities;
 - d. Submit to Plaintiff, for review and approval, a report of a root cause analysis of the Release, and a work plan for the completion of any corrective actions or preventive

measures identified in the approved root cause analysis report;

e. Implement any necessary corrective actions or preventive measures pursuant to an approved root cause analysis work plan, and submitting to Plaintiff, for review and approval, a corrective action completion report; and

5. Granting such other relief as this Court deems appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

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

ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

/s/ Daniel Robertson

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