

**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**

**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 (4<sup>th</sup> 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,  
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