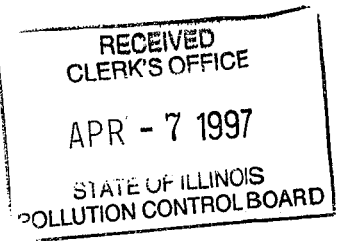


BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL



PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

MIDWEST GRAIN PRODUCTS OF
ILLINOIS, INC., an Illinois corporation,

Respondent.

PCB No. 91-179
(Enforcement)

NOTICE OF FILING

To: Charles Merrill, Esq.
Husch & Eppenberger
100 N. Broadway, Suite 1300
St. Louis, MO 63102-2789

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois a copy of the following instrument entitled COMPLAINT.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the complaint filed in this cause.

Respectfully submitted,

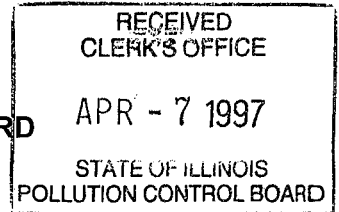
PEOPLE OF THE STATE OF ILLINOIS,
JAMES E. RYAN, Attorney General
of the State of Illinois

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

BY: Jane E. MCBRIDE
JANE E. MCBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 4/3/97

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
TAZEWELL COUNTY, ILLINOIS



PEOPLE OF THE STATE OF ILLINOIS,
Complainant,
v.
MIDWEST GRAIN PRODUCTS OF
ILLINOIS, INC., an Illinois corporation,
Respondent.

PCB NO.

97-179

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, complains of the Respondent, MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC., an Illinois corporation, as follows:

COUNT I

PREVENTION OF SIGNIFICANT DETERIORATION VIOLATION

1. This Complaint is brought by the Attorney General on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (1996).

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4 (1996), and which is charged, inter alia, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (1996), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent, Midwest Grain Products of Illinois, Inc., is an Illinois corporation in good standing. Its registered agent is Frank G. Reeder, 222 North LaSalle Street, Suite 2600, Chicago, Illinois 60601.

5. At all times relevant to this Complaint, Respondent has operated a facility that produces ethyl alcohol for beverages and industrial purposes, anhydrous fuel alcohol, wheat gluten and distiller's feed located at South Front Street and Distillery in Pekin, Tazewell County, Illinois ("facility").

6. In 1993, Respondent applied to the Illinois EPA for a construction permit in order to replace two existing feed dryers with two new feed dryers each controlled by cyclones in series with two new scrubbers in series.

7. The Illinois EPA issued Construction Permit #93020061 (originally issued May 11, 1993 and revised on May 3, 1995) and Construction Permit #93080045 (issued December 30, 1993 and revised December 6, 1995) for the two new feed dryers to the Respondent.

8. Permit Condition #1b(i) of Construction Permit #93020061 limits particulate matter emissions from dryer #651 to 1.1 pounds per hour. Permit Condition #2a Table 1A of Construction Permit #93080045 limits particulate matter emissions from dryer #651 and dryer #661 combined to 3.2 pounds per hour.

9. Both Construction Permits #93080045 and #93020061 require secondary scrubbers after both feed dryers.

10. Respondent commenced construction of each new feed dryer, after obtaining Construction Permit #9302006 and #93080045, on a date or dates better known to Respondent.

11. In May 1995, Respondent conducted a stack test of one of its grain dryers (dryer #661) that indicated actual particulate matter emissions of 17.1 pounds per hour.

12. Stack testing conducted May 1995 on dryer #661 served as representative of both dryers, and indicated actual emissions of 17.1 pounds per hour per dryer.

13. On September 21, 1995, Illinois EPA inspected Respondent's facility.

14. At this inspection, the Illinois EPA inspector determined Respondent operated equipment covered by Construction Permits #93020061 and #93080045 unpermitted; operated the dryers in excess of allowable particulate matter emission limitations specified within the permits; operated the dryers absent the secondary scrubbers; and constructed a major modification without first applying for and obtaining a Prevention of Significant Deterioration (PSD) construction permit setting forth the best available control technology ("BACT") emission limitation and installing the BACT system, as required by the federal Prevention of Significant Deterioration regulations.

15. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1996), provides:

d. No person shall:

1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or
2. Construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter

amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act.

16. Section 165 of the Clean Air Act, 42 U.S.C. 7475(a) (1983 and Supp. 1992), states in pertinent part:

- (a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless:

- 1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

* * *

- 4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

* * *

17. Section 52.21(j) of Title 40 of the Code of Federal Regulation, 40 C.F.R. Section 52.21(j) (1991), provides in pertinent part:

* * *

- (j) Control technology review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 C.F.R. parts 60 and 61.

* * *

- (3) A major modification shall apply best available control technology for each pollutant subject to regulation under the Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

* * *

Section 52.21(j) of Title 40 of the Code of Federal Regulations, 40 C.F.R. Section 52.21(j) (1991), was promulgated pursuant to Section 111 of the Clean Air Act, 42 U.S.C. Section 7411 (1983 and Supp. 1992).

18. Sections 52.21(b)(1)(i)(b) and (b)(23)(i) of Title 40 of the Code of Federal Regulations, 40 C.F.R. Section 52.21(b)(1)(i)(b) and (b)(23) (1991), provide the following definitions:

* * *

- (1)(i) Major Stationary source means:
 - (b) Notwithstanding the stationary source size specified in paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air

pollutant subject to regulation under
the Act; or

* * *

- (23)(i) Significant means, in reference to net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emission Rate

Particulate Matter: 25 tons per year of particulate matter emissions.

19. Particulate matter emissions of 17.1 pounds per hour revealed during the May 1995 stack test of dryer #661 indicate annual particulate matter emissions discharged by Respondent exceed allowed dryer emissions.

20. Particulate matter emissions discharged by Respondent exceed the statutory emission rate of 25 tons per year, thus resulting in a major modification at a major stationary source.

21. Emission limitations in Construction Permits #93080045 and #93020061 limit particulate matter emissions to less than the threshold level which triggers applicability of the PSD program. Respondent constructed two dryers which discharged into the environment particulate matter emissions in excess of the 3.2 pounds per hour permit limit for both dryers triggering applicability of the PSD program.

22. Respondent's dryers are exceeding the statutory emission rate for particulate matter of 25 tons per year, and are considered a "major modification", as that term is defined in the PSD regulations, subject to PSD regulations.

23. Further, Respondent's facility has the potential to emit 250 tons per year of air pollutants subject to regulation under the Clean Air Act, and thus is a major stationary source subject to PSD regulations.

24. Respondent's facility was considered a major source for particulate matter at the time it constructed a fluidized bed boiler in 1982, and has been considered a major source for particulate matter ever since.

25. As a result of being subject to PSD regulations, Respondent must apply best available control technology (BACT) to dryers #651 and #661. In order to determine BACT, Respondent must conduct a BACT analysis as required by federal regulations.

26. Under PSD federal regulations, Respondent was required to conduct the requisite BACT analysis consisting of a control technology review to arrive at an emission limitation which is determined to be BACT and obtain a PSD construction permit setting forth the BACT emission limitation prior to initiating construction of the major modification to a major stationary source. Respondent was also required to install the BACT system. Respondent violated 40 CFR 52.21(j) when it began construction of each dryer after receiving construction permits in May 1993 and December 1993. The exact dates Respondent began construction of the dryers are better known by Respondent.

27. By exceeding the statutory emission rates that trigger application of the PSD regulations, and by not completing a BACT analysis, obtaining a PSD construction permit, and installing the BACT system, Respondent has thereby violated 40 CFR 52.21(j) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1996).

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, Midwest Grain Products of Illinois, Inc.:

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

- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II

AIR POLLUTION

1-14. Complainant realleges and incorporates by reference paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count II.

15. Section 9(a) of the Act, 415 ILCS 5/9(a) (1996), provides that:

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.

* * *

16. Section 201.141 of the Illinois Pollution Control Board ("the Board") regulations, 35 Ill. Adm. Code 201.141 (1994), provides that:

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.

* * *

17. Respondent discharged into the environment particulate matter in excess of permitted emission limitations contained within Construction Permit #93020061 and #93080045, 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) (1996), and 35 Ill. Adm. Code 201.141 of the Board regulations.

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, Midwest Grain Products of Illinois, Inc.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III

PERMIT VIOLATIONS

1-14. Complainant realleges and incorporates by reference paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count III.

15. Section 9(b) of the Act, 415 ILCS 5/9(b) (1996), provides that:

No person shall construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, or any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

16. The May 1995 stack test on dryer #661, as representative of both dryers, indicated Respondent discharged actual particulate matter emission of 17.1 pounds per hour per dryer into the environment, in violation of Construction Permit Condition #1b(i) and Section 9(b) of the Act.

17. On September 21, 1995, and other dates better known only to Respondent, Respondent failed to operate the secondary scrubbers required for each dryer by Construction Permits #93080045 and #93020061.

18. Standard Permit Condition 3, contained in Construction Permits #93020061 and #93080045, specifies that a permittee shall not deviate from the approved plans and specifications unless the permittee requests a modification in writing and the Illinois EPA issues a supplemental permit.

19. Respondent failed to operate the secondary scrubbers and failed to modify the construction permit, in violation of Standard Construction Permit Condition 3 and, thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (1996).

20. By continuing to operate its new feed dryers in excess of construction permit emission limitations, and by continuing to operate the same dryers without secondary

scrubbers, Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (1996), and Permit Condition 1b(i) of Construction Permit #93020061 and Standard Condition 3 of both Construction Permit #93020061 and Construction Permit #93080045.

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, Midwest Grain Products of Illinois, Inc.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
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- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT IV

OPERATING WITHOUT OPERATING PERMIT

1-14. Complainant realleges and incorporates by reference paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count IV.

15. Section 9(b) of the Act, 415 ILCS 5/9(b) (1996), provides:

No person shall construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, or any type designated by Board regulations, without a permit

granted by the Agency, or in violation of any conditions imposed by such permit.

16. Section 201.143 of the Board regulations, 35 Ill. Adm. Code 201.143 (1994), provides:

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the agency, except for such testing operations as may be authorized by the construction permit.

17. On March 7, 1996, Respondent submitted to the Illinois EPA a Clean Air Act Permit Program (CAAPP) application for the facility as it exists with the new dryers. Respondent has not revised its State operating permits so that the facility is in compliance during the two-year CAAPP review period.

18. Special Condition 3a of Construction Permit #93020061 allowed operation of dryer #651 until June 30, 1995.

19. Upon information and belief, Respondent operated dryer #651 as part of its daily production process and has, therefore, been in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (1996), and 35 Ill. Adm. Code 201.143 from July 1, 1995, until the present date.

20. Special Condition #6a of Construction Permit #93080045 allows operation of the new or modified equipment addressed by the permit for 180 days following start-up.

21. Upon information and belief, start-up of dryer #661 was December 24, 1994 and it has continued to operate as part of Respondent's daily production processes. Therefore, Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (1996), and 35 Ill. Adm. Code 201.143 (1994) from June 1995 until the present date.

22. By operating dryer #651 and dryer #661 without first obtaining an operating permit, Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (1994), and 35 Ill. Adm. Code 201.143 (1994).

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, Midwest Grain Products of Illinois, Inc.:

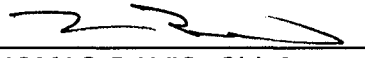
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- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
JAMES E. RYAN,
Attorney General
of the State of Illinois,

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
JANE E. MC BRIDE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 4/02/97
midwest/bd

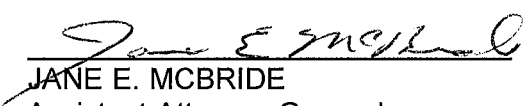
CERTIFICATE OF SERVICE

I hereby certify that I did on the 3rd day of April, 1997, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and COMPLAINT

To: Charles Merrill, Esq.
Husch & Eppenberger
100 N. Broadway, Suite 1300
St. Louis, MO 63102-2789

and the original and ten true and correct copies of the same foregoing instruments on the same date by First Class Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph
Chicago, IL 60601


JANE E. MCBRIDE
Assistant Attorney General
Environmental Bureau/Springfield