

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
MYERS INDUSTRIES, INC., )  
)  
Respondent. )

PCB No. 08-14  
(Enforcement)

**RECEIVED**  
CLERK'S OFFICE  
SEP 12 2008  
STATE OF ILLINOIS  
Pollution Control Board

**NOTICE OF FILING**

To: MEYERS INDUSTRIES, INC.  
c/o Paul E. Presney  
726 South Second Street  
Springfield, IL 62704

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

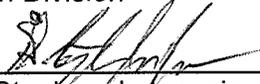
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: 

\_\_\_\_\_  
Stephen J. Janasie  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: September 10, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
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MYERS INDUSTRIES, INC., )  
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Respondent. )

PCB No. 08-16

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, MII, INC., as follows:

COUNT I  
OPEN DUMPING

1. This count is brought on behalf of the People of the State of Illinois, ex rel. Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, MYERS INDUSTRIES, INC. ("MI"), is a Delaware corporation in good standing. Attorney Paul E. Presney, 726 South Second Street, Springfield, Illinois 62704 is the company's registered agent.

4. At all times relevant to this Complaint, MI was the owner of a manufacturing facility ("facility") located at 2200 West 5<sup>th</sup> Street Road, Lincoln, Illinois 62656. MI manufactured store fixtures and shelving of particle board, wood, and laminates at the facility.

5. On September 7, 2006, Illinois EPA performed an inspection of the facility.

6. On September 7, 2006, the Illinois EPA inspector found an area of white, water-based glue in the bed of a railroad spur just outside the facility's loading dock door. The area of glue measured approximately 10 feet by 8 feet by 1 foot in size.

7. On September 7, 2006, the inspector also found an area of oil contaminated soil and gravel along the railroad spur. The area of contaminated soil measured approximately 6 feet by 4 feet by 1 foot.

8. On September 7, 2006, the inspector also found discarded pallets, cardboard, wood and other refuse in a pile on the east side of the facility grounds; the pile measured approximately 15 feet by 8 feet by 2 feet.

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

No person shall:

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

\* \* \*

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

(1) Without a permit granted by the Agency or in violation of any conditions imposed by such permit ...; or

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

\* \* \*

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

\* \* \*

(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;

\* \* \*

10. Section 3.305 of the Act, 415 ILCS 5/3.305 (2006) 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.

11. Section 3.385 of the Act, 415 ILCS 5/3.385 (2006) provides as follows:

“Refuse” means waste.

12. Section 3.445 of the Act, 415 ILCS 5/3.445 (2006) provides as follows:

“Sanitary landfill” means a facility permitted by the Agency for the disposal of waste on land ... without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day’s operation, or by such other methods and intervals as the Board may provide by regulations.

13. Section 3.535 of the Act, 415 ILCS 5/3.535 (2006) provides 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....

14. Section 812.101(a) of the Land Pollution Regulations, 35 Ill. Adm. Code

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

All persons, except those specifically exempted by Section 21(d) of the Act, shall submit to the Agency an application for a permit to develop and operate a landfill....

15. Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2006) provides in

pertinent part as follows:

"Litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris . . .oil. . .or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

16. MII caused or allowed debris and other wastes and refuse to be disposed of

and/or abandoned at the facility, and the facility is not permitted as a disposal site and does not fulfill the requirements of a sanitary landfill.

17. By causing or allowing the open dumping of refuse and waste, and by disposing or abandoning wastes at a site that does not meet the requirements of the Act and the regulations and standards thereunder, MII has violated Sections 21(a) and 21(e) of the Act, 415 ILCS 5/21(a), 21(e) (2006).

18. By conducting a waste-storage and/or waste-disposal operation without a permit, MII has violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006) and Section 812.101(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a).

19. By causing or allowing open dumping in a manner resulting in litter, MII has also violated Section 21(p) of the Act, 415 ILCS 5/21(p) (2006).

**PRAYER FOR RELIEF**

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

**COUNT II**  
**HAZARDOUS WASTE VIOLATIONS**

1. Complainant realleges and incorporates herein by reference paragraphs 1 through 5 and paragraph 13 of Count I as paragraphs 1 through 6 of this Count II.

7. MII's assembly and process operations generated between 100 kilograms and 1000 kilograms of two types of hazardous wastes in a calendar month.

8. One of these hazardous wastes is a paint related waste solvent ("waste solvent"), containing acetone and toluene and is identified with United States Environmental Protection Agency ("USEPA") hazardous waste numbers F003, F005, and D001.

9. MII generated the waste solvent in a parts washer and in the paint gun cleaning areas of the facility.

10. MII's assembly and process operations also generated paint cake sludge ("sludge"); a waste flammable solid that contains methyl ethyl ketone and xylene and is identified with USEPA hazardous waste numbers F003, F005, D001, D035, and D043.

11. On September 7, 2006, the Illinois EPA inspector observed an open drum used for satellite accumulation of the waste solvent in the facility's paint vault area. The drum was not labeled as containing hazardous waste.

12. On September 7, 2006, the inspector also observed several open plastic buckets and open cans containing sludge. None of these containers were labeled as containing hazardous waste.

13. On September 7, 2006, the inspector also observed several unlabeled drums of waste solvent in a locked, fenced-in area outside on the facility's north side. In the same area, a bag of sludge was also not labeled.

14. Section 3.220 of the Act, 415 ILCS 5/3.220 (2006), provides as follows:

"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.

15. Section 702.110 of the Board's RCRA and UIC Permit Programs Regulations, 35

Ill. Adm. Code 702.110, provides the following definitions:

"Hazardous waste management facility" or "HWM facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of "hazardous waste". A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

"HWM facility" (RCRA) means Hazardous waste management facility.

16. Section 21 of the Act, 415 ILCS 5/21 (2002), provides, in pertinent part, as

follows:

No person shall:

\* \* \*

e. Dispose, treat, store or abandon any waste . . . except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

\* \* \*

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, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

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

17. Section 703.121 of the Board's RCRA Permit Program Regulations, 35 Ill. Adm.

Code 703.121, provides in pertinent part, as follows:

- a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:
  - 1) Without a RCRA permit for the HWM (hazardous waste management) facility; or  
\* \* \*
- b) An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit.  
\* \* \*

18. Section 722.134 of the Board's Hazardous Waste Operating Regulations, 35 Ill.

Adm. Code 722.134, provides, in pertinent part, as follows:

a) Except as provided in subsection (d), (e), (f), (g), (h), or (l) of this Section, a generator is exempt from all the requirements in Subparts G and H of 35 Ill. Adm. Code 725, except for 35 Ill. Adm. Code 725.211 and 725.214, and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the following conditions are fulfilled:

\* \* \*

3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

\* \* \*

c) Accumulation near the point of generation.

1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in containers at or near any point of generation where wastes initially accumulate that is under the control of the operator of the process generating the waste without a permit or interim status and without complying with subsection (a) of this Section, provided the generator does the following:

A) The generator complies with . . .35 Ill. Adm. Code 725.273(a); and

B) The generator marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

2) A generator that accumulates either hazardous waste or acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in excess of the amounts listed in subsection (c)(1) of this Section at or near any point of generation must, with respect to that amount of excess waste, comply

within three days with subsection (a) of this Section or other applicable provisions of this Chapter. During the three day period the generator must continue to comply with subsection (c)(1) of this Section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

d) A generator that generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the following conditions are fulfilled:

\* \* \*

2) The generator complies with the requirements of Subpart I of 35 Ill. Adm. Code 725 (35 Ill. Adm. Code 725.276 and 725.278);

\* \* \*

19. Section 725.273 of the Board's Hazardous Waste Operating Regulations, 35 Ill.

Adm. Code 725.273, provides, in pertinent part, as follows:

a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

\* \* \*

20. By storing hazardous wastes without a RCRA permit, Respondent has violated Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2006), and Section(s) 703.121(a) and (b) of the Board's RCRA Permit Program Regulations, 35 Ill. Adm. Code 703.121(a) and (b).

21. By storing hazardous wastes in unlabeled containers, Respondent has violated Section(s) 21(e) and (f)(2) of the Act, 415 ILCS 5/21(e) and (f)(2) (2006), through Section(s) 722.134(a) and (c) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 722.134(a) and (c) and is not eligible for the permit exemptions provided by the same Board Regulations.

22. By storing hazardous wastes in the pain vault area in open containers, Respondent has violated Section(s) 21(e) and (f)(2) of the Act, 415 ILCS 5/21(e) and (f)(2) (2006), through Section 725.273(a) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 725.273(a), and is not eligible for the permit exemptions provide by Section(s)

722.134(c) and (d) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 722.134(c) and (d).

**PRAYER FOR RELIEF**

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

**COUNT III**  
**NOISE VIOLATIONS**

- 1. Complainant realleges and incorporates herein by reference paragraphs 1 through 4 of Count I as paragraphs 1 through 4 of this Count III.
- 5. MII's manufacturing operations create increased sound pressure levels. The increased sound pressure levels emanate from a number of sources, particularly continuous exhaust fan noise and frequent truck idling, but also backup beepers and other associated machinery and equipment.
- 6. In June 2007, in response to a citizen complaint, the Office of the Attorney General contracted with the professional services of Noise Solutions by Greg Zak, Inc. ("Noise Solutions") to conduct sound level measurements of the facility.

7. On June 14, 2007, Noise Solutions performed sound level measurements during daytime hours at the residential property nearest to the facility, with the measurement devices directed at the facility. The measurement devices used, along with their calibration and operation, were in compliance with the Board's required measurement protocol, the American National Standards Institute's requirements, and the International Electro-technical Commission's requirements.

8. At all times relevant to this Complaint, the facility operated on a 24-hour, 7 days a week basis. Thus, Noise Solutions's measurements are applicable to the Board's Noise Regulations for both daytime and nighttime hours.

9. At all times relevant to this Complaint, the facility operated on a 24-hour, 7 days a week basis. Thus, Noise Solutions was unable to obtain usable ambient sound level measurements. As a result, Noise Solutions followed the Board's Regulations for alternative measurements for ambient sound levels.

10. Section 901.101(d) of the Board's Noise Regulations, 35 Ill. Adm. Code 901.101(d) classifies the facility as Class C Land. Section 901.101(b), 35 Ill. Adm. Code, classifies the area residents' property as Class A Land.

11. Section 24 of the Act, 415 ILCS 5/24 (2006), provides as follows:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.

12. Section 900.102 of the Board's Noise Regulations, 35 Ill. Adm. Code, provides as follows:

Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental

Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

13. Noise Solutions measurements of the facility's sound pressure levels included 70 db at the 63 Hz octave band center frequency ("octave band"), 68 db at the 125 Hz octave band, 66 db at the 250 Hz octave band, 55 db at the 500 Hz octave band, 56 db at the 1 KHz octave band, 56 db at the 2 KHz octave band, 51 db at the 4 KHz octave band, and 47 db at the 8 KHz octave band.

14. Noise Solutions measurements of the facility's sound pressure levels show violations of Section 901.102(a) of the Board's Noise Regulations, 35 Ill. Adm. Code 901.102(a), for sound emitted from a Class C Land to a Class A Land during daytime hours at the 250 Hz, 1 KHz, 2 KHz, 4 KHz, and 8 KHz octave bands.

15. Noise Solutions measurements of the facility's sound pressure levels show violations of Section 901.102(b) of the Board's Noise Regulations, 35 Ill. Adm. Code 901.102(b), for sound emitted from a Class C Land to a Class A Land during nighttime hours at 63 Hz, 125 Hz, 250 Hz, 500 Hz, 1 KHz, 2 KHz, 4 KHz, and 8 KHz octave bands.

16. Noise Solutions measurements of the facility's sound pressure levels also show a prominent discrete tone at the 250 Hz octave band, in violation of Section 901.106(a) of the Board's Noise Regulations, 35 Ill. Adm. Code 901.106(a).

17. MII's violations of Section(s) 901.102(a) and (b), as well as Section 901.106(a) of the Board's Noise Regulations, represent a violation of Section 24 of the Act, 415 ILCS 5/24 (2006) and Section 900.102 of the Board's Noise Regulations, 35 Ill. Adm. Code 900.102.

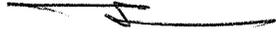
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- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN,  
Attorney General  
of the State of Illinois,  
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

Of Counsel:  
STEPHEN JANASIE  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: 9/09/08

## CERTIFICATE OF SERVICE

I hereby certify that I did on September 10, 2008, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: MEYERS INDUSTRIES, INC.  
c/o Paul E. Presney  
726 South Second Street  
Springfield, IL 62704

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

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

  
\_\_\_\_\_  
Stephen J. Jarfasie  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
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SEP 12 2008  
STATE OF ILLINOIS  
Pollution Control Board

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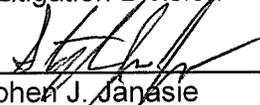
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, STEPHEN J. JANASIE, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN  
Attorney General of the  
State of Illinois

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

BY:   
Stephen J. Janasie  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: September 10, 2008