



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 1, 2009

PCB09-105

RECEIVED
CLERK'S OFFICE

MAY 05 2009

STATE OF ILLINOIS
Pollution Control Board

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

Re: ***People v. R.A. Cullinan & Sons, Inc.***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

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

Stephen J. Janasie
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SJJ/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
R.A. CULLINAN & SONS, INC.,)
a Delaware corporation,)
)
Respondent.)

PCB No. 09-105
(Enforcement)

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STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: R.A. Cullinan & Sons, Inc.
c/o Michael Cullinan, Registered Agent
121 West Park Street
Tremont, IL 61568

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: May 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on May 1, 2009, 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: R.A. Cullinan & Sons, Inc.
c/o Michael Cullinan, Registered Agent
121 West Park Street
Tremont, IL 61568

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. Janasie
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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vs.)
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R.A. CULLINAN & SONS, INC.,)
a Delaware corporation,)
)
Respondent.)

PCB No. 09-105
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STATE OF ILLINOIS
Pollution Control Board

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: May 1, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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MAY 05 2009

COMPLAINT

STATE OF ILLINOIS
Pollution Control Board

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of Respondent, R.A. CULLINAN & SONS, INC., as follows:

COUNT I
WASTE DISPOSAL VIOLATIONS

1. This Complaint is brought by the Attorney General, 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 ("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. Respondent R.A. CULLINAN & SONS, INC., is a Delaware corporation licensed to do business in Illinois. Respondent's registered agent is Michael Cullinan.
4. Respondent operates a clean construction and demolition debris ("CCDD") fill operation at the Farmdale Pit facility ("the facility"), a former regulated excavation located at 22493 Farmdale Road in East Peoria, Tazewell County, Illinois.

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

No person shall:

* * *

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

* * *

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

* * *

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.

* * *

6. Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2006), provides as follows:

a. No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

* * *

7. Section 1100.201 of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.201, provides as follows:

Prohibitions

- a. No person shall conduct any CCDD fill operation in violation of the Act or any regulations or standards adopted by the Board.
- b. CCDD fill operations must not accept waste for use as fill.

* * *

8. Section 3.540 of the Act, 415 ILCS 5/3.540 (2006) provides as follows:

Waste disposal site.

"Waste disposal site" is a site on which solid waste is disposed.

9. Section 3.470 of the Act, 415 ILCS 5/3.540 (2006), provides as follows:

Solid waste.

"Solid waste" means waste.

10. Section 3.535 of the Act, 415 ILCS 5/3.535 (2006), provides, in pertinent part:

Waste.

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility 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

* * *

11. Section 3.160(b) of the Act, 415 ILCS 5/3.160(a) (2006), provides, in pertinent part:

(b) "Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities.

Clean construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste.

* * *

12. Section 1100.103 of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.103, provides, in pertinent part:

"CCDD" means clean construction or demolition debris.

"CCDD fill operation" means the use of CCDD as fill material in a current or former quarry, mine, or other excavation. For purposes of this Part, the term "other excavation" does not include holes, trenches, or similar earth removal created as part of normal construction, removal, or maintenance of a structure, utility, or transportation infrastructure.

* * *

13. On or about June 28, 2007, Illinois EPA inspectors conducted a quarterly CCDD inspection of Respondent's facility. At that time, waste material that did not meet the definition of CCDD was commingled throughout the facility's CCDD fill material.

14. On or about December 18, 2007, Illinois EPA inspectors conducted a quarterly CCDD inspection of Respondent's facility. At that time, waste material that did not meet the definition of CCDD was again commingled throughout the facility's CCDD fill material.

15. Respondent's site is a waste disposal site as that term is defined in Section 3.540 of the Act, 415 ILCS 5/3.540 (2006).

16. Respondent's site is also a CCDD fill operation as that term is defined in Section 1100.103 of the Board's Clean Construction of Demolition Debris Regulations, 35 Ill. Adm. Code 1100.103.

17. By allowing waste material that does not meet the definition of CCDD to commingle with the facility's CCDD fill material, Respondent has violated Section 1100.201(b) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.201(b).

18. By violating the above referenced Board regulation, Respondent has also violated Section(s) 21(d)(2), 21(e) and 22.51(a) of the Act, 415 ILCS 5/21(d)(2), 21(e), and 22.51(a) (2006), as well as Section 1100.201(a) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.201(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against R.A. CULLINAN & SONS, INC.:

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) (2006), impose upon the Respondent a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT II
CCDD INSPECTION VIOLATIONS

1 - 16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

17. Section 22.51(c)(2)(A) of the Act, 415 ILCS 5/22.51(c)(2) (A) (2006), provides as follows:

(c) In accordance with Title VII of this Act, the Board may adopt regulations to promote the purposes of this Section. The Agency shall consult with the mining and construction industries during the development of any regulations to promote the purposes of this Section.

* * *

(2) Until the Board adopts rules under subsection (c)(1) of this Section, all persons using clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation shall:

(A) Assure that only clean construction or demolition debris is being used as fill material by screening each truckload of material received using a device approved by the Agency that detects volatile organic compounds. Such devices may include, but are not limited to, photo ionization detectors. All screening devices shall be operated and maintained in accordance with manufacturer's specifications. Unacceptable fill material shall be rejected from the site;

18. Section 1100.205 of the Board's Clean Construction or Demolition Debris

Regulations, 35 Ill. Adm. Code 1100.205, provides, in pertinent part, as follows:

Load Checking

The owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of waste at the facility. At a minimum, the load checking program must consist of the following components:

a. Routine Inspections

1. An inspector designated by the facility must inspect every load before its acceptance at the facility utilizing an elevated structure, a designated ground level inspection area, or another acceptable method as specified in the Agency permit. In addition to a visual inspection, the inspector must use an instrument with a photo ionization detector utilizing a lamp of 10.6 eV or greater or an instrument with a flame ionization detector, or other monitoring devices approved by the Agency, to inspect each load. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used by the Agency during an Agency inspection must result in the rejection of the inspected load.

* * *

b. Random Inspections

1. In addition to the inspections required under subsection (a) of this Section, an inspector designated by the facility must conduct a discharge inspection of at least one randomly selected load delivered to the facility each day. The driver of the randomly selected load must be directed to discharge the load at a separate, designated location within the facility. The inspector must conduct an inspection of the discharged material that includes, but is not limited to, additional visual inspection and additional instrument testing using the instruments required under subsection (a)(1) of this Section. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used by the Agency during an Agency inspection must result in the rejection of the inspected load.

* * *

h. All field measurement activities relative to equipment and instrument operation, calibration and maintenance and data handling shall be conducted in accordance with the following:

1. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 1100.104 of this Part;
2. The equipment or instrument manufacturer's or vendor's published standard operating procedures; or
3. Other operating procedures specified in the Agency permit.

* * *

19. On or about June 28, 2007, Illinois EPA inspectors conducted a quarterly CCDD inspection of Respondent's facility. At that time, Respondent had accepted CCDD fill material without inspecting the incoming loads of material.

20. On or about December 18, 2007, Illinois EPA inspectors conducted another quarterly CCDD inspection of Respondent's facility. At that time, Respondent had failed to use a photo ionization detector ("PID") when inspecting incoming loads of CCDD fill material.

21. By failing to inspect incoming loads of CCDD fill material, Respondent has violated Section(s) 1100.205(a)(1), 1100.205(b)(1), and 1100.205(h) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.205(a)(1), 1100.205(b)(1), and 1100.205(h).

22. By failing to inspect incoming loads of clean construction and demolition debris at the site with a PID device, the Respondent has violated Section 22.51(c)(2)(A) of the Act, 415 ILCS 5/22.51(c)(2)(A) (2006), as well as Section 1100.205(a)(1) of the Board's Clean Construction or Demolition Debris Regulations. 35 Ill. Adm. Code 1100.205(a)(1).

23. By violating the above referenced Section of the Act, as well as the above

referenced Board regulations, Respondent also violated Section(s) 21(d)(2), 21(e) and 22.51(a) of the Act, 415 ILCS 5/21(d)(2), 21(e), and 22.51(a) (2006), as well as Section 1100.201(a) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.201(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief against R.A. CULLINAN & SONS, INC.:

- 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) (2006), impose upon the Respondent a monetary penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT III
CCDD RECORDKEEPING VIOLATIONS

1 - 16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 1100.205 of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.205, provides, in pertinent part, as follows:

Load Checking

The owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of waste at the facility. At a minimum, the load checking program must consist of the following components:

* * *

(c) Documentation of Inspection Results

The documentation for each inspection must include, at a minimum, the following:

- (1) The date and time of the inspection, the name of the hauling firm, the vehicle identification number or license plate number, and the source of the CCDD;

* * *

18. On or about June 28, 2007, Illinois EPA inspectors conducted a quarterly CCDD inspection of Respondent's facility. At that time, Illinois EPA learned that Respondent had no documented CCDD records for the facility.

19. On or about December 18, 2007, Illinois EPA inspectors conducted a quarterly CCDD inspection of Respondent's facility. At that time, Illinois EPA learned that Respondent had not maintained the CCDD records for the facility.

20. By failing to maintain CCDD records for the facility, Respondent violated Section 1100.205(c)(1) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.205(c)(1).

21. By violating the above referenced Board regulation, Respondent also violated Section(s) 21(d)(2), 21(e) and 22.51(a) of the Act, 415 ILCS 5/21(d)(2), 21(e), and 22.51(a) (2006), as well as Section 1100.201(a) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.201(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief against R.A. CULLINAN & SONS, INC.:

- 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) (2006), impose upon the Respondent a monetary penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT IV
CCDD PERMIT VIOLATIONS

1 - 16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count IV.

17. Section 22.51(b)(3) of the Act, 415 ILCS 5/22.51(b)(3) (2006), provides as follows:

(3) On and after July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation without a permit granted by the Agency for the clean construction or demolition debris fill operation or in violation of any conditions 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 Board regulations and standards adopted under this Act.

* * *

18. Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006), provides, in pertinent part, as follows:

No person shall:

* * *

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

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

* * *

18. On or about September 11, 2008, Illinois EPA inspectors conducted a quarterly CCDD inspection of Respondent's facility. At that time, Respondent disposed of CCDD without a permit granted by the Illinois EPA.

19. By disposing of CCDD without a permit granted by the Illinois EPA, Respondent has violated Section(s) 22.51(b)(3) and 22(d)(1) of the Act, 415 ILCS 5/22.51(b)(3) and 22(d)(1) (2006).

20. By violating the above referenced Sections of the Act, Respondent has also violated Section(s) 21(d)(2), 21(e) and 22.51(a) of the Act, 415 ILCS 5/21(d)(2), 21(e), and 22.51(a) (2006), as well as Section 1100.201(a) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.201(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief against R.A. CULLINAN & SONS, INC.:

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) (2006), impose upon the Respondent a monetary penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

F. Grant such other and further 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 J. JANASIE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 1, 2009

