

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
Complainant,)
)
v.) PCB 09-108
) (Enforcement – Air)
)
APOLLO PLASTICS)
CORPORATION, an Indiana)
corporation, Respondent.)
)

NOTICE OF FILING THE RESPONDENT'S ANSWER TO COMPLAINT

TO: See attached service list.

PLEASE TAKE NOTICE that on November 19, 2010, I filed with the Illinois Pollution Control Board via E-Filing the Respondent's ANSWER TO COMPLAINT FOR CIVIL PENALTIES in the above-referenced matter on behalf of Apollo Plastics Corporation, a copy of which is hereby served upon you.

DATED: November 19, 2010

Respectfully submitted,

APOLLO PLASTICS CORPORATION

By: /s/ Harvey M. Sheldon
One of Its Attorneys

Harvey M. Sheldon, Esq.
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601
(312) 704-3504
E-mail: hsheldon@hinshawlaw.com

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ANSWER: Admitted, except as to any dates prior to Apollo's commencing business in 2001.

4. At all times relevant to this Complaint, Apollo has operated a facility located at 5333 North Elston Ave, Chicago, Cook County, Illinois 60630 ("Facility").

ANSWER: Admitted since January 1, 2001, and otherwise DENIED.

5. Apollo is a manufacturer of automobile dashboard components.

ANSWER: Admitted that the alleged components are the principal products manufactured by Apollo.

6. Current emission units at the Facility include two manual paint booths, three coating lines, one of which is controlled by a regenerative thermal oxidizer (RTO), twelve pad printers, twenty-six injection molding machines, and one parts washer.

ANSWER: Admitted that the emission units at Apollo include those alleged, except that there is a single manual paint booth. Denied that only one coating line is controlled by the RTO.

7. The coatings utilized by Apollo in its manufacturing have volatile organic materials content greater than 3.2 lbs/gal for the color coating and 3.5 lbs/gal for the primer.

ANSWER: Admitted that generally this is true, but any implication that this is inappropriate or unlawful is denied.

8. Apollo's operation of the Facility is subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board ("Board") and the Illinois EPA. The Board's regulations for air pollution are found in Title 35, Subtitle B, Chapter I of the Illinois Administrative Code ("Board Air Pollution Regulations"), and the Illinois EPA rules and regulations for air pollution are found in Title 35, Subtitle B, Chapter II of the Illinois Administrative Code ("Illinois EPA Air Pollution Regulations").

ANSWER: Neither admitted nor denied. The law and regulations speak for themselves.

9. Section 3.315 of the Act, 415 ILCS 5/3.315, provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint

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stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

ANSWER: Neither admitted nor denied. The statute speaks for itself.

10. As a registered business in Illinois, APOLLO PLASTICS CORP is a “person” under Section 3.315 of the Act, 415 ILCS 5/3.315.

ANSWER: Admitted.

11. Section 211.7150 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.7150, provides the following definition:

“VOLATILE ORGANIC MATERIAL (VOM)” or volatile organic compound means any compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photo-chemical reactions.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

12. Section 3.06 of the Act, 415 ILCS 5/3.06, contains the following definition:

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

ANSWER: Denied that God, wind, rain or sunlight are contaminants, and otherwise neither admitted nor denied, as the regulations speak for themselves.

13. Section 201.102 of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 201.102, contains the following definitions:

“EMISSION SOURCE”: any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

“EXISTING EMISSION SOURCE”: any emission source, the construction or modification of which has commenced prior to April 14, 1972.

“NEW EMISSION SOURCE”: any emission source, the construction or modification of which is commenced on or after April 14, 1972.

“SPECIFIED AIR CONTAMINANT”: any air contaminant as to which this Subtitle contains emission standards or other specific limitations.

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ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

14. VOM is a “specified air contaminant” as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

ANSWER: Neither admitted nor denied, as regulations speak for themselves.

15. Because the Facility’s emission units emit, or are capable of emitting VOM, a specified air contaminant, they are emission sources as that term is defined in Section 201.102 of the Board Air Pollution Regulations 35 Ill. Adm. Code 201.102.

ANSWER: Admitted that the emission units of Apollo would be capable of emitting VOM to the atmosphere.

16. Section 9(b) of the Act, 415 ILCS 5/9(b):

No person shall:

(b) 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, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

ANSWER: This paragraph fails to state a complaint and is inherently unanswerable; To the extent it is attempting to quote public law or regulations, it is neither admitted nor denied, as the law and regulations speak for themselves

17. 35 Ill. Adm. Code 201.142 provides as follows:

Construction Permit Required

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Sections 201.146 or Section 201.170(b) of this Part.

ANSWER: This paragraph fails to state a complaint and is inherently unanswerable; To the extent it is attempting to quote public law or regulations, it is neither admitted nor denied, as the law and regulations speak for themselves.

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18. Beginning in 2002, on dates best known to Apollo, Apollo constructed two pad printers and two injection molding machines at its facility. In 2004, on dates best known to Apollo, Apollo installed new spray guns at the Facility.

ANSWER: Denied, except that Apollo admits that it installed Pad Printing Units PP-3 in August 2004 and PP-4 in December 2005. Apollo will demand strict proof that the units required a construction permit, as their emissions are internal to the building where Apollo does business and otherwise classified by Illinois rules as “de minimis”. Installation of injection molding machines is admitted, but it is denied that the installation thereof required a construction permit, per exemption under 35 IAC 201.146(ii). Apollo admits replacing an older model spray gun with a new improved spray gun that reduced emissions; such replacement does not require a construction permit.

19. Apollo did not apply for or receive a construction permit from the Illinois EPA for its spray gun.

ANSWER: This allegation is admitted as a physical fact; Apollo denies any permits were required for the spray gun.

20. Apollo did not apply for or receive any construction permits from the Illinois EPA for its pad printers or its injection molding machines.

ANSWER: Denied. Pad Printers are de minimis units that should be considered covered under the Lifetime Operating Permit and later by the FESOP obtained by Apollo that is now in full force and effect. Molding machines were exempt from permitting.

21. Apollo, by its conduct as alleged herein, violated Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142 and thereby Section 9(b) of the Act, 415 ILCS 5/9(b).

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count I, because the People’s authorized agents told Apollo no permits were required for its operations on making an official

inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

COUNT II
FAILURE TO OBTAIN REQUISITE PERMITS BEFORE CONSTRUCTION OF
EMISSION UNIT

1-18. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count II.

ANSWER: The Respondent here incorporates by reference its answers to paragraphs 1 through 18 of Count 1.

19. 35 Ill. Adm. Code 201.143 provides as follows:

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of any 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.

ANSWER: Neither admitted nor denied; the regulations speak for themselves.

20. Apollo did not apply for or receive an operating permit from the Illinois EPA for its spray guns.

ANSWER: Denied.

21. Apollo did not apply for or receive any operation permits from the Illinois EPA for its pad printers or its injection molding machines.

ANSWER: Denied.

22. Apollo, by its conduct as alleged herein, violated Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143 and, thereby, Section 9(b) of the Act, 415 ILCS 5/9(b).

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count II, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

COUNT III

FAILURE TO OBTAIN A CLEAN AIR ACT PERMIT PROGRAM PERMIT

1-12. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 of Count I as paragraphs 1 through 12 of this Count III.

ANSWER: The Respondent here incorporates by reference its answers to paragraphs 1 through 12 of Count I.

13. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b), provides as follows:

Prohibition After the applicable CAAPP permit or renewal application submittal date, as specified in Subsection 5 of this Section, no person shall operate a CAAPP source without a

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CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency.

ANSWER: Neither admitted nor denied; statutes speak for themselves.

14. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1), provides the following definitions:

“CAAPP” means the Clean Air Act Permit Program developed pursuant to Title V of the Clean Air Act.

“CAAPP permit” or “permit” (unless the context suggests otherwise) means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act.

“Source” means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant... .

“Regulated Air Pollutant” means the following:

(1) Nitrogen oxides (NO_x) or any volatile organic compound. . . .

ANSWER: Neither admitted nor denied, as the Act speaks for itself.

15. Apollo’s two manual paint booths, three coating lines, twelve pad printers, twenty-six injection molding machines, and one parts washer herein emit, or may emit VOM.

ANSWER: Admitted, except there is only one manual paint booth at the facility

16. Apollo’s Facility is a “stationary source” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1).

ANSWER: Admitted.

17. Apollo operates a stationary source and is an “owner or operator” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1).

ANSWER: Admitted.

18. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2), provides in pertinent part, as follows:

2. Applicability
 - a. Sources subject to this Section shall include:
 1. Any major source as defined in paragraph (c) of this subsection.
 - c. For purposes of this Section the term “major source” means any source that is:
 - iii. A major stationary source as defined in part D of Title I of the Clean Air Act including:
 - A. For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or . . . to emit 25 tons or more per year in areas classified as “severe” . . .

ANSWER: Neither admitted nor denied, as the Act speaks for itself.

19. Section 270.107 of the Illinois EPA’s Air Pollution Regulations, 35 Ill. Adm. Code 270.107(2008), provides as follows:

Applicability

This Part applies to the owner or operator of any source required to have an operating permit pursuant to Section 39.5 of the Act.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

20. In 2001, when Apollo purchased the Facility, Apollo’s Facility was located in a non-attainment area for ozone classified as severe.

ANSWER: Admitted.

21. Apollo’s Facility is a “major stationary source” as that term is defined in Section 39.5(2)(c)(iii)(A) of the Act, 415 ILCS 5/39.5(2)(c)(iii)(A). Therefore, Apollo is subject to the provisions of Section 39.5 of the Act, 415 ILCS 5/39.5, and applicable regulations.

ANSWER: Denied for times relevant to this Count.

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22. Section 270.103 of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 270.103, provides in pertinent part as follows:

Existing CAAPP Source

"Existing CAAPP source" means a CAAPP source that commenced operation prior to the effective date of the CAAPP.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

23. Section 39.5(5)(x) of the Act, 415 ILCS 5/39.5(5)(x), provides as follows:

Applications and Completeness

x. The owner or operator of a new CAAPP source shall submit its complete CAAPP application consistent with this subsection within 12 months after commencing operation of such source. The owner or operator of an existing source that has been excluded from the provisions of this Section under subsection 1.1 or subsection 3(c) of this Section and that becomes subject to the CAAPP solely due to a change in operation at the source shall submit its complete CAAPP application consistent with this subsection at least 180 days before commencing operation in accordance with the change in operation.

ANSWER: Neither admitted nor denied as the Act speaks for itself.

24. From at least some time in January 2001, when Apollo purchased the Facility, the exact date which is better known to Apollo, until September 29, 2006, Apollo operated the Facility without having submitted the requisite CAAPP Permit Application to the Illinois EPA.

ANSWER: Neither admitted nor denied as the allegation is so vague and the use of terminology so misleading and the time so imprecise that it is impossible to formulate a straight answer. Apollo demands strict proof that as a holder of a lifetime operating permit, inspected and found in compliance by Illinois EPA, it was considered a major source that was required to have a CAAPP permit under the Clean Air Act.

25. From at least January 2001, when Apollo purchased the Facility, the exact date best known to Apollo, and continuing to the present, the Apollo has and continues to operate a CAAPP source without the requisite permit.

ANSWER: Denied.

26. Apollo, by its conduct as alleged herein, violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b).

Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count III, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions.

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and

installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

COUNT IV
FAILURE TO COMPLY WITH THE ILLINOIS POLLUTION CONTROL BOARD'S
REGULATION FOR PLASTIC PARTS COATING

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

ANSWER: The Respondent here incorporates by reference its answers to paragraphs 1 through 14 of Count I.

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

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.

ANSWER: Neither admitted nor denied; the law speaks for itself.

16. Section 218.204(n)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.204(n)(1), provides as follows:

Except as provided in section 218.205, 218.207, 218.208, 218.212, 218.215, and 218.216 of this subpart, no owner or operator of a coating line shall apply at any time any coating in which the VOM content exceeds the following emissions limitations for the specified coating...

(n) Plastic Parts Coating: Automotive/Transportation

(1) Interiors

(B) Air Dried

Kg/l lb/gal

(i)	Color Coat	0.38	3.2
(ii)	Primer	0.42	3.5

ANSWER: Neither admitted nor denied, as the law speaks for itself.

17. Beginning in at least January 2001, and continuing until December 2007, Apollo utilized coatings with a VOM content greater than 3.2 lbs/gal for color coat and 3.5 lbs/gal for primer.

ANSWER: Admitted for most times of operation.,

18. By utilizing coatings with a VOM content greater than 3.2 lbs/gal for color coat and 3.5 lbs/gal for primer, Apollo violated Section 9(a) of the Act, 415 ILCS 5/9(a), and Section 218.204(n)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.204(n)(1).

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count IV, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions.

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an

arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

FIFTH AFFIRMATIVE DEFENSE

Apollo has settled this allegation by paying a penalty and obtaining ERMs credits.

COUNT V
FAILURE TO MAINTAIN REQUIRED RECORDS

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I and paragraph 15 of Count IV as paragraphs 1 through 15 of this Count V.

ANSWER: The Respondent here incorporates by reference its answers to paragraphs 1 through 15 of Count I.

16. From at least some time January 2001 and continuing to a date best known to Apollo, Apollo failed to keep records of the name and identification number of each coating as applied on each coating line and the weight of VOM per volume of each coating as applied each day on each coating line.

ANSWER: Admitted.

17. Section 218.211(c) of the Board of Air Pollution Regulations, 35 Ill. Adm. Code 218.211(c), provides the following in pertinent part:

An owner or operator of a coating line subject to the limitations of Section 218.204 of this subpart other than Section 218.204(a)(2) or

(a)(3) of this Subpart and complying by means of Section 218.204 of this Subpart shall comply with the following:

(2) On and after a date consistent with Section 218.106 of this Part or on and after the initial start-up date, the owner or operator of a subject coating line shall collect and record all of the following information each day for each coating line and maintain the information at the source for a period of three years:

(A) The name and identification number of each coating as applied on each coating line;

(B) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line;

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

18. Apollo's failure to maintain the required records is a violation of 35 Ill. Adm. Code 218.211(c).

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count V, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions.

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

COUNT VI
FAILURE TO TIMELY SUBMIT AN EMISSION REDUCTION MARKET SYSTEM
("ERMS") BASELINE APPLICATION

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

ANSWER: The Respondent here incorporates by reference its answers to paragraphs 1 through 14 of Count I.

15. Section 9.8(b) of the Act, 415 ILCS 5/9.8(b), provides as follows:

The Agency shall design an emissions market system that will assist the State in meeting applicable post-1996 provisions under the CAA of 1990, provide maximum flexibility for designated sources that reduce emissions, and that take into account the findings of the national ozone transport assessment, existing air quality conditions, and resultant emissions levels necessary to achieve or maintain attainment.

ANSWER: Neither admitted nor denied, as the Act speaks for itself.

16. Section 205.310 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310, provides in pertinent part as follows:

ERMS Applications

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The owner or operator of each participating source or new participating source shall submit to the Agency an ERMS application in accordance with the following schedule:

(2) For any source that first becomes a participating source because its VOM emissions increase to 10 tons or greater during any seasonal allotment period beginning with 1999, on or before December 1 of the year of the first seasonal allotment period in which its VOM emissions are at least 10 tons, provided that this emission increase is not a major modification pursuant to 35 Ill. Adm. Code 203;

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

17. Section 205.130 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.210, provides as follows:

“Participating source” means a source operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has or will have seasonal emissions of at least 10 tons of VOM.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

18. Apollo is a participating source, as that term is defined by 35 Ill. Adm. Code 205.130.

ANSWER: Denied. Apollo did not exist on or before May 1, 1999.

19. Beginning during the 2004 seasonal allotment period, Apollo’s seasonal VOM emissions were greater than 10 tons.

ANSWER: Admitted.

20. Apollo was required to submit its ERMS baseline application to the Illinois EPA no later than December 1, 2004. However, Apollo did not submit their ERMS baseline application until July 27, 2006.

ANSWER: Denied. To be accurate, Apollo submitted the ERMS baseline application on July 27, 2007, not July 27, 2006.

21. Respondent, by its conduct as alleged herein, violated Section 9.8(b) of the Act, 415 ILCS 5/9.8(b), and Section 205.310 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310.

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count VI, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions.

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

FIFTH AFFIRMATIVE DEFENSE

The allegations of this Count have already been resolved by the payment of ERMs penalties.

COUNT VII
FAILURE TO SUBMIT ANNUAL EMISSION REPORTS

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I and paragraph 15 of Count IV as paragraphs 1 through 15 of this Count VII.

ANSWER: The Respondent here incorporates by reference its answers to paragraphs 1 through 15 of Count I.

16. Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), provides as follows:

Reports

(a) The owner or operator of any emission source or air pollution control equipment shall submit to the Agency as a minimum, annual reports detailing the nature, specific source and total annual quantities of all specified air contaminant emissions, provided, however, that the Agency may require more frequent reports where necessary to accomplish the purposes of the Act and this Chapter.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

17. Section 254.137(a) of the Illinois EPA's of Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a), provides as follows:

(a) All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

18. Section 254.132(a) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides as follows:

Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this

Subpart shall be a violation of this Part and 35 Ill. Adm. Code
201.302(a)

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

19. As an owner or operator of emission units and air pollution control equipment, Apollo is required to submit an Annual Emissions Report to the Illinois EPA by May 1 of the year following the calendar year in which the emissions took place.

ANSWER: Admitted.

20. Apollo submitted the Annual Emission Reports for calendar years 2001 through 2006 on July 27, 2007.

ANSWER: Admitted.

21. Apollo failed to timely submit its annual emissions reports for the calendar years 2001 through 2006.

ANSWER: Denied for the period Apollo complied with the 5,000 gallon limitation..

22. By its actions as alleged herein, Apollo has violated Sections 201.302(a), 254.137(a) and 254.132(a) of 35 Ill. Adm. Code, and thereby, violated Section 9(a) of the Act, 415 ILCS 5/9(a).

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count VII, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions.

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

COUNT VIII
FAILURE TO SUBMIT SEASONAL EMISSION REPORTS ("SERS")

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I and paragraph 15 of Count VI as paragraphs 1 through 15 of this Count VIII.

ANSWER: The Respondent here incorporates by reference its answers to paragraphs 1 through 15 of Count I.

16. Section 205.300(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.300(a), provides as follows:

For each year in which the source is operational, the owner or operator of each participating source and new participating source shall submit, as a component of its Annual Emissions Report, seasonal emission information to the Agency for each seasonal allotment period after the effective date of this Part in accordance with the following schedule:

* * *

(2) For each participating source or new participating source that generates VOM emissions from 10 or more emission units, by November 30 of each year.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

17. Section 254.137(b) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.137(b), provides as follows:

b) Seasonal Emissions Reports must be submitted for the preceding seasonal allotment period in accordance with the following schedule:

* * *

2) For each participating source or new participating source that generates VOM emissions from 10 or more emission units, by November 30 of each year.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

18. Section 254.132(b) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(b), provides as follows:

Failure to file a complete Seasonal Emissions Report by the applicable deadlines prescribed in Section 254.137(b) of this Subpart shall be a violation of this Part and 35 Ill. Adm. Code 205.300.

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

19. For calendar years 2004 through 2007, Apollo failed to timely submit their Seasonal Emissions Report to the Illinois EPA. Apollo submitted Seasonal Emissions Reports for calendar years 2004-2006 on July 27, 2007, and for calendar year 2007 on January 29, 2008.

ANSWER: Admitted.

20. Apollo, by failing to timely submit Seasonal Emission Reports as alleged herein, violated Section 205.300(b)(2) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.300(b)(1) and Section 254.132(b) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.132(b), and, thereby, Section 9.8(b) of the Act, 415 ILCS 5/9.8(b).

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count VIII, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions.

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

COUNT IX
FAILURE TO HOLD ALLOTMENT TRADING UNITS

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I and paragraph 15 of Count VI as paragraphs 1 through 15 of this Count IX.

ANSWER: Respondent restates and incorporates herein its Answers to Paragraphs 1-14 of Count I and paragraph 15 of Count VI for its Answers to Paragraphs 1-15 of this Count.

16. Section 205.130 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 205.130, provides the following definitions:

Definitions Unless otherwise specified within this Part, the definitions for the terms used in this Part shall be the same as those found in Section 39.5 of the Act [415 ILCS 5/39.5] and in 35 Ill. Adm. Code 211.

* * *

“Allotment Trading Unit (ATU)” means a tradable unit that represents 200 lbs of VOM emissions and is a limited authorization to emit 200 lbs of VOM emissions during the seasonal allotment period.

* * *

“Chicago Ozone Nonattainment Area” means the area composed of Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County.

* * *

“Participating source” means a source operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has baseline emissions of at least 10 tons, as specified in Section 205.320(a) of this Part, or seasonal emissions of at least 10 tons in any seasonal allotment period beginning in 1999.

* * *

“Transaction Account” means an account authorized by the Agency or its designee that allows an account officer to buy or sell ATUs.

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ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

17. Section 205.150(c)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 205.150(c)(1), provides as follows:

At the end of each reconciliation period, on and after the dates specified Section 205.200 of this Part, each participating source shall:

(1) Hold ATU's in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Section 205.220, 205.225, 205.315, 205.320(e)(3) or (f) and 205.750 of this Part;

* * *

ANSWER: Neither admitted nor denied, as the regulations speak for themselves.

18. Apollo's Facility in Chicago, Illinois is located within Cook County, Illinois, and is located within the "Chicago Ozone Nonattainment Area" as that term is defined in Section 205.130 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 205.130.

ANSWER: Admitted.

19. Apollo is a "participating source" as this term is defined in Section 205.130 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 205.130.

ANSWER: Denied.

20. Because Apollo is a participating source, it is required to hold ATU's in its Transaction Account based on emissions reported in its Seasonal Emission Reports ("SERs").

ANSWER: Denied.

21. From the year 2005 through 2007, Apollo did not hold ATU's in its Transaction Account for an amount not less than the level of VOMs emitted.

ANSWER: Admitted.

22. On July 10, 2008, the Illinois EPA issued a notice to Apollo requiring an ATU Purchase from ACMA for Excursion Compensation.

ANSWER: Admitted.

23. For the years 2005 through 2007, by failing to hold ATU's in its Transaction Account in an amount not less than its actual emissions, Apollo violated Section 9.8(b) of the Act, 415 ILCS 5/9.8(b), and Section 205.150(c)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.150(c)(1).

ANSWER: Denied.

FIRST AFFIRMATIVE DEFENSE

The People are estopped from asserting the allegations of Count IX, because the People's authorized agents told Apollo no permits were required for its operations on making an official inspection of Apollo's facility. Apollo was shown written confirmation of this advice in connection with its acquisition of the equipment, and the Illinois EPA repeated this to Apollo in writing in 2002.

SECOND AFFIRMATIVE DEFENSE

Apollo asserts for its affirmative defense to this Complaint that at times relevant to this Complaint it had obtained and was and is operating under all permits required for air emissions

THIRD AFFIRMATIVE DEFENSE

The Illinois EPA, an agency of the Complainant, was contributorily negligent and primarily responsible for the failure of Apollo to possess required permits on a timely basis.

FOURTH AFFIRMATIVE DEFENSE

Under all the facts and circumstances of this case, to the extent Apollo may be shown to have been in temporary violation of one or another regulation, Apollo would be subjected to an arbitrary and unreasonable hardship were it to be required to pay a penalty for the violation shown. This is true for good reasons to be shown, including without limitation Apollo's size and economic condition and that Apollo at all relevant times was either of the good faith belief, reliant on advice of the Illinois EPA, that it was in compliance, or on learning of its non-compliance was pro-actively taking steps to be compliant by engaging engineers, contracting and installing emission controls at great expense and of greater effectiveness than necessary to attain compliance.

FIFTH AFFIRMATIVE DEFENSE

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The allegations of this Count have already been resolved by the payment of ERM's penalties.

WHEREFORE, Apollo submits that after a fair hearing, this Board should conclude Apollo is not operating in violation of Board regulation nor deserving of a civil penalty, inasmuch as its voluntary application for a CAAPP and FESOP, its great expenditures on pollution control equipment and other prior actions, together with its affirmative defenses, would make any further penalty unreasonable.

Dated: November 19, 2010

Respectfully submitted,

APOLLO PLASTICS CORPORATION

/s/ Harvey M. Sheldon

Harvey M. Sheldon

One of its Attorneys

Harvey M. Sheldon
Hinshaw & Culbertson LLP
222 N. LaSalle, Suite 300
Chicago, IL 60601
312-704-3504

CERTIFICATE OF SERVICE

I, Harvey M. Sheldon, attorney of record, hereby certify that I caused copies of the attached NOTICE OF FILING RESPONDENT'S ANSWER TO COMPLAINT FOR CIVIL PENALTIES, and this Certificate of Service in case No. 09-108 to be served on:

SERVICE LIST

Clerk of the Board
Attn: Mr. John Therriault
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

George D. Theophilos, Esq.
Assistant Attorney General
Environmental Enforcement Bureau
Illinois Attorney General's Office
69 West Washington Street, 18th Fl
Chicago, IL 60602

Hon. Bradley Halloran
Hearing Officer, Illinois PCB
Suite 11-500, Thompson Center
100 West Randolph Street
Chicago, IL 60601

By E-filing and e-mail, from the offices of Hinshaw & Culbertson LLP at 222 N. LaSalle Street, Chicago, Illinois 60601, before 4:00 P.M. on November 19, 2010.

/s/ Harvey M. Sheldon
Harvey M. Sheldon
Attorney for Respondent