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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

PLB 04-50

Lisa Madigan
ATTORNEY GENERAL

October 8, 2003

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. MacMurray College***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, APPEARANCE and COMPLAINT in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Delbert D. Haschemeyer".

Delbert D. Haschemeyer
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

DDH/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 09 2003

Respondent.

1

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

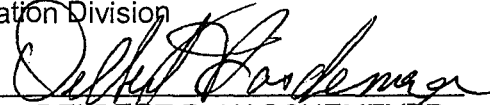
Respectfully submitted,

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:



DELBERT D. HASCHEMEYER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 8, 2003

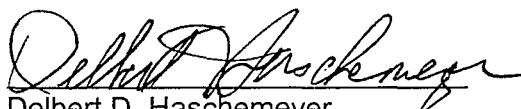
CERTIFICATE OF SERVICE

I hereby certify that I did on October 8, 2003, 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 VERIFIED COMPLAINT:

To: Daniel J. Beard
Bellatti Fay Bellatti & Beard
816 West State Street
P.O. Box 969
Jacksonville, IL 62651

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

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Delbert D. Haschemeyer
Assistant Attorney General

This filing is submitted on recycled paper.

OCT 09 2003

STATE OF ILLINOIS
Pollution Control Board

VS.

Respondent.

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, DELBERT D. HASCHEMEYER, 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:

DELBERT D. HASCHEMEYER
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 8, 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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OCT 09 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

MacMURRAY COLLEGE,
an Illinois corporation,

Respondent.

PCB NO. 04-50
(Enforcement)

VERIFIED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, MacMURRAY COLLEGE, an Illinois corporation, as follows:

COUNT I

NESHAP VIOLATIONS

1. This Complaint is brought by 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 the terms and conditions of Section 31 of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/31 (2002), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

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 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. Respondent, MacMurray College, a private college, is a not-for-pecuniary-profit corporation, in good standing, organized under the provisions of the Educational Corporations Act,

110 ILCS 30/0.01 *et seq.* (2002), located at 477 East College Avenue, Jacksonville, Morgan County, Illinois.

4. On some dates better known to the Respondent during the spring of 2001, Respondent removed insulation material containing asbestos from the interior of the west wall of an old field house (renovations activities) located on its campus at 460 Hardin Street, Jacksonville, Illinois. Following removal of the insulation material, the material was stored in open 55-gallon drums, or black plastic bags, in the field house or left swept in a pile on the floor of the field house for a period of time known to the Respondent.

5. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2000), provides:

(d) No person shall:

1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto;

* * *

6. The regulations on National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR Part 61, Subpart M *et seq.* (1993), were adopted pursuant to Section 112 of the Clean Air Act, 42 USC 7412. Asbestos is regulated as a hazardous air pollutant because it is a carcinogen.

7. 40 CFR 61.145 (1993), provides, in pertinent part:

- (a) *Applicability.* To determine which requirements of paragraphs (a), (b) and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected Facility or part of the Facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

* * *

- (b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

* * *

- (c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

* * *

- (6) For all RACM, including material that has been removed or stripped:

- (i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 61.150;
- (ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding or otherwise damaging or disturbing the material;
- (iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed or stripped more than 50 feet above ground level and was not removed as units or in sections.
- (iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

* * *

- (8) Effective one year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a Facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. . . .

8. 40 CFR 61.150(a)(1) provides:

Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of Sections 61.144, 61.145, 61.146 and 61.147 shall comply with the following provisions:

- (a) Discharge no visible emissions to the outside air during the collection, processing including incineration, packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a)(1) through (4) of this section.
 - (1) Adequately wet asbestos-containing waste material as follows:
 - (i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and
 - (ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by Section 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and
 - (iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and
 - (iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.
 - (v) For asbestos-containing waste material to be transported off the Facility site, label containers or wrapped materials with the name of the waste

generator and the location at which the waste was generated.

* * *

- (b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:
 - (1) A waste disposal site operated in accordance with the provisions of Section 61.154, or
 - (2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of Section 61.155.

9. Prior to commencing renovation activities within the field house, Respondent failed to thoroughly inspect the facility for the presence of asbestos, including Category I and Category II non-friable ACM, in violation of 40 CFR 61.145(a) (1999), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

10. Prior to renovation activities within the field house, Respondent failed to provide to the Illinois EPA a notification of demolition and renovation informing the Illinois EPA of its intent to conduct such activities, in violation of 40 CFR 61.145(b)(1) (1999) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

11. Respondent failed to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material generated by the renovation activities within the field house until collected and contained in preparation for disposal at a site permitted to accept such waste, in violation of 40 CFR 61.145(c)(2) (1999), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

12. Respondent failed to have on-site during renovation activities within the field house at least one representative trained in the provisions of the NESHAP for asbestos and compliance methods prescribed therein, in violation of 40 CFR 61.145(c)(8) (1999), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

13. Respondent failed to adequately wet, and keep wet, regulated asbestos-containing waste material, thereby causing or allowing the discharge of visible emissions to the outside air during the processing of such material, in violation of 40 CFR 61.150(a)(1) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

14. Respondent failed to transport to a waste disposal site as soon as practical all asbestos-containing waste material generated during renovation activities within the field house in violation of 40 CFR 61.150(b) and Section 9.1(d) of the Act, 415 ILCS 9.1(d) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, MacMURRAY COLLEGE:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and the 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) (2002), impose a civil penalty of up to fifty thousand dollars (\$50,000) for each violation; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT II

OPEN DUMPING VIOLATIONS

1-4. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 4 of Count I as paragraphs 1 through 4 of this Count II.

5. Section 21(a), (d)(1), (d)(2), (e), (p)(1), and (p)(7) of the Act, 415 ILCS 5/21(a), (d)(1), (d)(2), (e), (p)(1) and (p)(7) (2002), respectively, provide 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 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; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, no permit shall be required for:

- (i) any person conducting a waste-storage, waste-stored, treated, or disposed within the site where such wastes are generated, or

- (ii) a facility located in a county with a population over 700,000, operated and located in accordance with Section 22.38 of this Act, and used exclusively for the transfer, storage, or treatment of general construction or demolition debris;

- (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;

* * *

7. Disposition of:

- (i) general construction or demolition debris as defined in Section 3.78 of this Act; or
- (ii) clean construction or demolition debris as defined in Section 3.78a of this Act.

6. Section 812.101(a) of the Pollution Control Board's land regulations, 35 Ill. Adm.

Code 812.101(a), provides:

Scope and Applicability

- (a) All persons except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 -1/2, par. 1021(d)) [415 ILCS 5/21(d)] shall submit to the Agency an application for a permit to develop and operate a landfill. The applications must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

7. Section 722.111 of the Pollution Control Board's land regulations, 35 Ill. Adm. Code

722.111, provides:

Hazardous Waste Determination

A person who generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, shall determine if that waste is a hazardous waste using the following method:

- (a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- (b) The person must then determine if the waste is listed as a hazardous waste in 35 Ill. Adm. Code 721.Subpart D.

BOARD NOTE: Even if a waste is listed, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

- (c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in 35 Ill. Adm. Code 721.Subpart D, then generator shall then determine whether the waste is identified in 35 Ill. Adm. Code 721.Subpart C by either:

- (1) Testing the waste according to the methods set forth in 335 Ill. Adm. Code 721.Subpart C, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
- (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.
- (d) If the generator determines that the waste is hazardous, the generator shall refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

8. Section 739.122(c)(1) of the Pollution Control Board's land regulations, 35 Ill. Adm. Code 739.122(c)(1), provides:

Used Oil Storage

* * *

(c) Labels

- (1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

9. Section 808.121 of the Pollution Control Board's land regulations, 35 Ill. Adm. Code 808.121, provides:

Generator Obligations

- (a) Each person who generates wastes shall determine whether the waste is a special waste.

10. Commencing on some date known to the Respondent and continuing to some date known to the Respondent, Respondent caused or allowed the open dumping of waste adjacent to the field house, including cinder blocks, wood, an ice chest, and water heater, in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2002).

11. Commencing on some date known to the Respondent and continuing to some date known to the Respondent, Respondent conducted a waste-storage operation resulting from waste

mentioned above deposited adjacent to the field house without first obtaining the requisite permit issued by the Illinois EPA in violation of Section 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2002), and in violation of Board regulations.

12. Commencing on some date known to the Respondent and continuing to some date known to the Respondent, Respondent caused the storage of waste for disposal or treatment at a site not permitted to accept such waste for storage and disposal, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2002).

13. Commencing on some date known to the Respondent and continuing to some date known to the Respondent, Respondent caused or allowed the open dumping of waste adjacent to the field house, including cinder blocks, wood, an ice chest, and water heater, resulting in litter, in violation of Section 21(p)(1) of the Act, 415 ILCS 21(p)(1) (2002).

14. Commencing on some date known to the Respondent and continuing to some date known to the Respondent, Respondent caused the open dumping of general demolition debris in the form of cinder blocks and wood waste adjacent to the field house, in violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2002).

15. Commencing on some date known to the Respondent and continuing to some date known to Respondent, Respondent failed to apply for and obtain the requisite permit from the Illinois EPA prior to operation of a waste disposal site resulting from waste handling and disposal activities adjacent to the field house, in violation of Section 812.101(a) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 812.101(a).

16. Commencing on some date known to Respondent and continuing to some date known to Respondent, Respondent failed to conduct hazardous waste determinations relative to seven 20-gallon, two 55-gallon, and two 30-gallon drums stored within the field house. In addition, hazardous waste determinations were not performed on the contents of four 55-gallon drums

stored within the janitorial supplies room located within the Norris Education Building, in violation of Section 712.111 of the Illinois Pollution Control Board's land regulations, 35 Ill. Adm. Code 722.111.

17. Commencing on some date known to the Respondent and continuing to some date known to the Respondent, Respondent failed to label one 55-gallon, one 20-gallon, and two 30-gallon drums, stored within the field house, identifying the contents as "used oil," in violation of Section 739.122(c)(1) of the Pollution Control Board's waste regulations, 35 Ill. Adm. Code 739.122(c)(1).

18. Commencing on some date known to the Respondent, and continuing to some date known to the Respondent, Respondent failed to conduct special waste determinations relative to seven 20-gallon, two 55-gallon, and two 30-gallon drums stored within the field house. In addition, special waste determinations were not performed on the contents of four 55-gallon drums stored within the janitorial supplies room located within the Norris Education Building, in violation of Section 808.121(a) of the Pollution Control Board's waste regulations, 35 Ill. Adm. Code 808.121(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, MacMURRAY COLLEGE.

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and the 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) (2002), impose a civil penalty of up to fifty thousand dollars (\$50,000) for each violation; and

E. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
State of Illinois

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

BY: 

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

Of Counsel
DELBERT D. HASCHEMEYER
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 10/08/03

STATE OF ILLINOIS)
)ss
COUNTY OF SANGAMON)

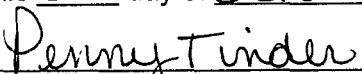
AFFIDAVIT

I, Alan Grimmett, being first duly sworn, on oath state:

1. I am a certified asbestos inspector in the State of Illinois.
2. I have been employed as an Environmental Protection Associated, Illinois Environmental Protection Agency, State of Illinois, for approximately five and one half years.
3. I have read the foregoing Verified Compliant and am aware of the contents thereof.
4. I have personal and direct knowledge of the facts alleged in the Verified Compliant.
5. The factual matters set forth therein are true and correct in substance and in fact, to the best of my knowledge and true belief.


ALAN GRIMMETT

Subscribed and Sworn to before me
this 3rd day of October, 2003.


NOTARY PUBLIC

