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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 30 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
vs.)
)
CROMWELL-PHOENIX, INC.,)
an Illinois Corporation,)
)
Respondent.)

PCB No. 04-136
(Enforcement - Air)

NOTICE OF FILING

TO: Eric E. Boyd
Seyfarth Shaw
55 East Monroe Street, Suite 4200
Chicago, IL 60603-5803

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to advise you that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the 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.

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

BY:



MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-2069
Attorney No. 99000

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
vs.)
CROMWELL-PHOENIX, INC.,)
an Illinois Corporation,)
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COMPLAINT

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, CROMWELL-PHOENIX, INC., an Illinois corporation, as follows:

COUNT I

CAUSING, THREATENING OR ALLOWING AIR POLLUTION

1. This Count is brought on behalf of the 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 ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

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.

3. At all times relevant to the Complaint, CROMWELL-PHOENIX, INC. ("Cromwell"), was and is an Illinois corporation, authorized to do business in the State of Illinois.

4. From at least 1993 until about September 2000, Cromwell operated a facility located at 7401 South Pulaski Road, Chicago, Cook County, Illinois ("former facility").

5. At its former facility, Cromwell produced corrosion inhibiting packaging materials by using two paper coating machines to coat paper with corrosion inhibiting compounds.

6. These corrosion inhibiting compounds contained more than 0.28 kilograms per liter or 2.3 pounds per gallon volatile organic material ("VOM"), which was emitted to the environment from Cromwell's former facility.

7. On June 16, 1993, Cromwell's former facility was issued operating permit no. 88050052 by the Illinois EPA, which expired on June 16, 1994.

8. Cromwell did not renew operating permit no. 88050052.

9. In about 2000, or a date better known to Cromwell, Cromwell moved its operations to another facility located at 12701 South Ridgeway Avenue, Alsip, Cook County, Illinois ("current facility").

10. At its current facility, Cromwell constructed and commenced operation of the same type of paper coating machines as it had operated at its former facility and began to apply the same type of corrosion inhibiting compounds containing more than 0.28 kilograms per liter or 2.3 pounds per gallon VOM as it had applied

at its former facility.

11. On April 27, 2001, while attempting to inspect another business, an Illinois EPA representative discovered Cromwell's current facility. On the same date, the Illinois EPA representative proceeded to inspect Cromwell's current facility.

12. Based on the April 27, 2001 inspection, the Illinois EPA representative determined that Cromwell did not obtain construction and/or operating permits from the Illinois EPA for its current facility and that Cromwell did not otherwise demonstrate compliance with the air pollution rules and regulations at its current facility.

13. The Illinois EPA issued to Cromwell a Violation Notice and Notice of Intent to Pursue Legal Action, dated November 20, 2001, and March 19, 2002, respectively.

14. On May 29, 2003, after receiving a Violation Notice and Notice of Intent to Pursue Legal Action, Cromwell filed a Petition with the Board seeking an Adjusted Standard from the VOM paper coating requirements under 35 Ill. Adm. Code 218.204(c).

15. Cromwell's current facility continued to operate without a permit until September 18, 2003, when the Board granted its Adjusted Standard request.

16. Cromwell's former and current facilities are and were subject to the Act and the Illinois Pollution Control Board's ("Board") Air Pollution Regulations promulgated under the Act at Title 35, Subtitle B, Chapter I of the Illinois Administrative Code.

17. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides as follows:

Acts prohibited. 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 source, or so as to violate regulations or standards adopted by the Board under this Act;

18. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

Prohibition of Air Pollution.

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

19. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), defines air pollution as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

20. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines contaminant as follows:

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

21. The corrosion inhibiting compounds applied to paper at Cromwell's former and current facilities contain VOM and constitute contaminants as that term is defined in Section 3.165 of the Act.

22. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines person as follows:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited Liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

23. Cromwell, a corporation, is a "person" as that term is defined in Section 3.315 of the Act.

24. From at least 1993 until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell caused, threatened or allowed the emission of contaminants to the environment from its former and current facilities so as to cause or tend to cause air pollution in Illinois.

25. By causing or tending to cause air pollution in Illinois, Cromwell violated Section 9(a) of the Act and Section 201.141 of the Board's Air Pollution Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, CROMWELL-PHOENIX, INC., on this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;

4. Assessing against Respondent a civil penalty of Fifty Thousand dollars (\$50,000.00) for each violation of the Act and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;

5. Assessing against Respondent the Complainant's costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and

6. Granting such other relief as the Board deems appropriate.

COUNT II

CONSTRUCTING AN AIR POLLUTION SOURCE
WITHOUT A CONSTRUCTION PERMIT

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 9(b) of the Act, 415 ILCS 5/9(b) (2002), provides as follows:

Acts prohibited. No person shall:

* * *

(b) Construct, install, or operate any equipment, facility, vehicle, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by the Board regulations, without a permit granted by the [Illinois EPA], or in violation of any conditions imposed by such permit;

18-22. Complainant realleges and incorporates by reference herein paragraphs 19 through 23 of Count I as paragraphs 18 through 22 of this Count II.

23. Section 201.142 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides:

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 [Illinois EPA], except as provided in Section 201.146

24. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in relevant part, the following definitions:

"Construction": commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emissions 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 . . .

25. The VOM emitted from Cromwell's current facility is a "specified air contaminant" as that term is defined in Section 201.102 of the Board's Air Pollution Regulations.

26. The fabrication, erection or installation of two paper coating machines which emit VOM at Cromwell's current facility after April 14, 1972, constitutes "construction" of a "new emission source" as these terms are defined in Section 201.102 of the Board's Air Pollution Regulations.

27. By constructing a new emission source at its current facility after April 14, 1972, without first obtaining a construction permit from the Illinois EPA, Cromwell violated Section 9(b) of the Act and Section 201.142 of the Board's Air Pollution Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, CROMWELL-PHOENIX, INC., on this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand dollars (\$50,000.00) for each violation of the Act and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;
5. Assessing against Respondent the Complainant's costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and
6. Granting such other relief as the Board deems appropriate.

COUNT III

OPERATING AN AIR POLLUTION SOURCE
WITHOUT AN OPERATING PERMIT

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 of Count II as paragraphs 1 through 22 of this Count III.

23. Section 201.143 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides, in relevant part, as follows:

Operating Permits for New Sources.

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the [Illinois EPA], except for such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by Section 201.157) as shall be specified in the construction permit.

24-26. Complainant realleges and incorporates by reference herein paragraphs 24 through 26 of Count II as paragraphs 24 through 26 of this Count III.

27. By operating new emission sources at both its former and current facilities without an operating permit from June 16, 1994, when operating permit no. 88050052 expired, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell violated Section 9(b) of the Act and Section 201.143 of the Board's Air Pollution Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, CROMWELL-PHOENIX, INC., on this Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand dollars (\$50,000.00) for each violation of the Act and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;
5. Assessing against Respondent the Complainant's costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and
6. Granting such other relief as the Board deems appropriate.

COUNT IV

EXCEEDING THE EMISSION LIMITATION FOR A COATING LINE

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 17 and 19 through 23 of Count I as paragraphs 1 through 22 of this Count IV.

23. Section 218.103 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.103, provides, in relevant part,

as follows:

The provisions of this Part shall apply to all sources located in the Chicago area, which is 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.

24. Section 218.204(c) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.204(c), provides, in relevant part, as follows:

Emission Limitations.

Except as provided in Sections 219.205, 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 emission limitations for the specified coating. Except as provided in Section 218.204(1), compliance with the emission limitations marked with an asterisk in this Section is required on or after March 15, 1996 . . . The emission limitations are as follows:

| | | | |
|-------------------|-------------|---------------|---|
| | * | * | * |
| (c) Paper Coating | <u>kg/l</u> | <u>lb/gal</u> | |
| | 0.28* | 2.3* | |

25. Section 211.4470 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 211.4470, defines paper coating as follows:

"Paper coating" means any protective, decorative or functional coating applied on paper, plastic film, or metallic foil to make certain products, including but not limited to adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, or pressure sensitive tapes. For purposes of 35 Ill. Adm. Code 218 and 219, paper coating includes coatings applied by impregnation or saturation.

26. The coating of paper at Cromwell's former and current facilities with corrosion inhibiting compounds constitutes "paper coating" as that term is defined in Section 211.4470 of the Board's

Air Pollution Regulations.

27. The VOM content of the corrosion inhibiting compounds used on or after March 15, 1996, to coat paper at Cromwell's former and current facilities exceeds the emission limitation for paper coating of 0.28 kilograms per liter or 2.3 pounds per gallon under Section 218.204 of the Board's Air Pollution Regulations.

28. By exceeding the emission limitation for paper coating at its former and current facilities from on or after March 15, 1996, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell violated Section 9(a) of the Act and Section 218.204(c) of the Board's Air Pollution Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, CROMWELL-PHOENIX, INC., on this Count IV:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand dollars (\$50,000.00) for each violation of the Act and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;

5. Assessing against Respondent the Complainant's costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and

6. Granting such other relief as the Board deems appropriate.

COUNT V

FAILING TO DEMONSTRATE COMPLIANCE WITH THE EMISSION LIMITATION FOR A COATING LINE

1-28. Complainant realleges and incorporates herein by reference paragraphs 1 through 28 of Count IV as paragraphs 1 through 28 of this Count V.

29. Section 218.204 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.204, provides, in relevant part, as follows:

Emission Limitations.

. . . Compliance with this Subpart must be demonstrated through the applicable coating analysis methods and procedures specified in Section 218.105(a) of this Part and the recordkeeping and reporting requirements specified in Section 218.211(c) of the Subpart except where noted

30. Section 218.105(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.105(a), provides, in relevant part, as follows:

Test Methods and Procedures.

(a) Coatings, Inks and Fountain Solutions

The following test methods and procedures shall be used to determine compliance of as applied coatings, inks, and fountain solutions with the limitations set forth in this Part.

(1) Sampling: Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOM added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOM added after the sample is taken must be measured and accounted for in the calculations in subsection (a) (3) of this Section. For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(A) ASTM D3925-81 (1985) standard practice for sampling liquid paints and related pigment coating. This practice is incorporated by reference in Section 218.112 of this Part.

(B) ASTM E300-86 standard practice for sampling industrial chemicals. This practice is incorporated by reference in Section 218.112 of this Part.

31. Section 218.211(c) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.211(c), provides, in relevant part, as follows:

Recordkeeping and Reporting.

* * *

(c) Any 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 shall comply with the following:

(1) . . . upon initial start-up of a new coating line . . . the owner or operator of a subject coating line shall certify to the [Illinois EPA] that the coating line will be in compliance with section 218.204 of this Subpart on and after a date consistent with Section 218.106 of this Part, or on and after the initial start-up date. Such certification

shall include:

- (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 on each coating line;

32. From on or after March 15, 1996, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell failed to demonstrate compliance through the applicable coating analysis methods and procedures specified in Section 218.105(a) of the Board's Air Pollution Regulations and the recordkeeping and reporting requirements specified in Section 218.211(c) of the Board's Air Pollution Regulations.

33. By failing to demonstrate compliance through the applicable coating analysis methods and procedures specified in Section 218.105(a) of the Board's Air Pollution Regulations and the recordkeeping and reporting requirements specified in Section 218.211(c) of the Board's Air Pollution Regulations from on or after March 15, 1996, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell violated Section 218.204 of the Board's Air Pollution Regulations.

34. By violating Section 218.204 of the Board's Air Pollution Regulations, Cromwell violated Section 9(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent,

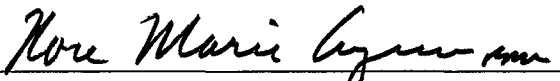
CROMWELL-PHOENIX, INC., on this Count V:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand dollars (\$50,000.00) for each violation of the Act and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;
5. Assessing against Respondent the Complainant's costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and
6. Granting such other relief as the Board deems appropriate.

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

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

BY:


ROSEMARIE CAZEAU, Chief
Assistant Attorney General
Environmental Bureau North

OF COUNSEL:

MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Attorney ID #99000
Tel: (312)814-2069

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Complaint was sent by certified mail with return receipt requested to each of the persons listed on the Notice of Filing on January 30, 2004.

BY: 
MICHAEL C. PARTEE

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on January 30, 2004:

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

BY: 
MICHAEL C. PARTEE