

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEB 01 2005

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
CONCRETE SPECIALTIES CO., an)
Illinois corporation,)
)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

No. 05-148
(Enforcement - Air)

NOTICE OF FILING

TO: Ms. Maria S. Pugliese
Attorney for Respondent
Baker & McKenzie
100 E. Randolph Drive
Chicago, Illinois 60601

James Nondorf
Registered Agent
Concrete Specialties Co.
1375 Gifford Road
Elgin, IL 60120

PLEASE TAKE NOTICE that we have today, February 1, 2005 filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of our Complaint, a copy of which is attached herewith and served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceedings. 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.


NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing A (20 ILCS 3515/1 et seq.) to correct the alleged pollution.

Respectfully submitted,

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

BY:


Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
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FEB 01 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
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Complainant,)
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v.)
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CONCRETE SPECIALTIES CO., an)
Illinois corporation,)
)
Respondent.)

PCB No. 05-148
(Enforcement - Air)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, CONCRETE SPECIALTIES CO., an Illinois corporation, as follows:

COUNT I

CONSTRUCTION OF EMISSION SOURCES WITHOUT A PERMIT

1. This Complaint 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 the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an administrative agency of the State of Illinois, established by Section 4 of the Act, 415 ILCS

5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act, and regulations promulgated by the Illinois Pollution Control Board ("Board").

3. At all times relevant to this complaint, Respondent CONCRETE SPECIALTIES CO., is and was an Illinois corporation duly authorized to transact business in the State of Illinois.

4. At all times relevant to this complaint, Respondent is and was the owner and operator of a concrete product manufacturing facility located at 1375 Gifford Road, Elgin, Cook County, Illinois ("Facility" or "Site"). Cook County is classified pursuant to the federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as a 'severe ozone nonattainment area'.

5. The facility uses mold release compounds that are blends of water, surfactants, and aliphatic hydrocarbons. The compounds are used to prevent adherence of concrete to parts of the mold during curing/drying. Volatile organic material (VOM) emissions result from evaporation of available hydrocarbons contained in the compounds.

6. Section 3.26 of the Act, 415 ILCS 5/3.26 (2002), provides, 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, agent, or assigns.

7. Respondent, an Illinois corporation, is a "person" as

that term is defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (2002).

8. Section 201.102 of the Board regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, as follows:

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

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

9. Respondent manufactures concrete manholes, pipe, and similar products at its facility and has done so since approximately 1997, an exact date better known to Respondent. Respondent's storage piles, storage bins, cement bins, conveyors, mixers, mold release compound, and gas steamer at the facility are "emission source[s]" and "new emission source[s]" as those terms are defined in 35 Ill. Adm. Code 201.102.

10. Section 3.02 of the Act, 415 ILCS 5/3.02 (2002), contains the following definition:

"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.

11. Section 3.06 of the Act, 415 ILCS 5/3.06 (2002), provides, as follows:

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

12. Since 1997, Respondent has had the potential to emit in excess of 25 tons of VOM per year, the threshold for major sources in the Chicago nonattainment area. VOM is a "contaminant" as that term is defined in Section 3.06 of the Act, 415 ILCS 5/3.06 (2002).

13. VOM is injurious to human health and to the atmosphere; therefore, Respondent is capable of causing or contributing to air pollution.

14. Since 1997, the exact date better known to Respondent, to the time of the filing of this Complaint, Respondent has operated its facility.

15. Section 9 of the Act, 415 ILCS 5/9 (2002), provides, in pertinent part, as follows:

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;

16. Section 201.142 of the Board regulations, 35 Ill. Adm. Code 201.142, provides, as follows:

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 Section

201.146.

17. Beginning in 1997, the exact date better known to Respondent, and continuing to a date better known to Respondent, Respondent commenced and completed construction of emissions sources at the Site without first applying for and obtaining a construction permit from the Illinois EPA. Respondent has thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.142.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, CONCRETE SPECIALTIES CO., on Count I:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;

2. Finding that the Respondent has violated Section 9(b) of the Act and 35 Ill. Adm. Code 201.142;

3. Ordering the Respondent to cease and desist from any further violation of Section 9(b) of the Act and 35 Ill. Adm. Code 201.142;

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

5. Ordering the Respondent to pay all costs, including

attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT II

OPERATION OF EMISSION SOURCES WITHOUT A PERMIT

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count II.

16. Section 201.143 of the Board regulations, 35 Ill. Adm. Code 201.143, provides, as follows:

No person shall cause or allow the operation of any new emission source or any 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 Agency, except for such testing operations as may be authorized by the construction permit.

17. Since the date of first installation in 1997, the exact date known to Respondent, Respondent has operated one or more emissions sources at the Site without first applying for and obtaining a operating permit from the Illinois EPA. The Respondent has thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.143.

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

SPECIALTIES CO., on Count II:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;

2. Finding that the Respondent has violated Section 9(b) of the Act and 35 Ill. Adm. Code 201.143;

3. Ordering the Respondent to cease and desist from any further violation of Section 9(b) of the Act and 35 Ill. Adm. Code 201.143;

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

5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT III

OPERATING A MAJOR STATIONARY SOURCE WITHOUT A CAAPP PERMIT

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

15. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2002), provides, in pertinent part, as follows:

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

"CAAPP permit" . . . means any permit issued, renewed, amended, modified, or revised pursuant to Title V of the Clean Air Act.

"CAAPP Source" means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

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

"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) belonging to a single major industrial grouping. . . .

"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

16. Section 39.5 of the Act, 415 ILCS 5/39.5 (2002), provides, in pertinent part, as follows:

6. Prohibition

* * *

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

17. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2002), provides in pertinent part, as follows:

1. 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 . . .

18. Respondent's facility, located in a severe ozone nonattainment area, has the potential to emit over 25 tons per year of VOM , and is a "major stationary source" as that term is defined in Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2002), and therefore also a "CAAPP source" as defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2002).

19. Respondent owns and operates the emission sources at the Site, and therefore is the "owner and operator" of "CAAPP source" as those terms are defined in Section 39.5(1) of the act, 415 ILCS 5/39.5(1) (2002).

20. Section 39.5(5) of the Act, 415 ILCS 5/39.5(5) (2002), provides in pertinent part, as follows:

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.

21. Respondent began operation of emissions sources at the Site in 1997, and was required to file a CAAPP permit application or an application for a Federally Enforceable State Operating Permit (FESOP) seeking an exclusion from the CAAPP permit no later than 12 months after beginning operation of the source. However, Respondent did not submit a FESOP application to Illinois EPA until December 9, 2003 and continues, as of the date of the filing of this complaint, to operate without the required permit.

22. By failing to submit its application for a CAAPP permit within 12 months after beginning operation of the source, the Respondent violated Section 39.5(6)(b) of the Act, 5/39.5(6)(b)(2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, CONCRETE SPECIALTIES CO., on Count III:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;

2. Finding that the Respondent has violated Section 39.5(6)(b) of the Act;

3. Ordering the Respondent to cease and desist from any further violation of Section 39.5(6)(b) of the Act;

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

5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT IV

VIOLATION OF NEW SOURCE REVIEW

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

15. Section 9 of the Act, 415 ILCS 5/9 (2002), provides, in pertinent part, as follows:

No person shall:

* * *

- (a) Cause or threaten to allow the discharge of any contaminant into the environment in any state so as to cause or tend to cause air pollution in Illinois, or so as to violate regulations or standards, adopted by the Board under this Act;

16. Pursuant to authority granted under the Act, the Board has promulgated standards applicable to major stationary sources of contaminants, at 35 Ill. Adm. Code, Part 203 ("Board Major Source regulations").

17. Section 203.201 of the Board Major Source regulations, 35 Ill. Adm. Code 203.201, provides, in pertinent part, as follows:

In any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with the part for that pollutant. In areas designated nonattainment for ozone, this prohibition shall apply to new major stationary sources or major modifications of sources that emit volatile organic materials or Nitrogen Oxides.

* * *

18. During the year 1997, the exact date known to Respondent, Respondent commenced construction of emission sources at the Site, a new major source in the Chicago nonattainment area, without first having applied for and obtained a construction permit from Illinois EPA. Respondent thereby

violated Section 203.201 of the Board Major Source regulations, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 203.201.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, CONCRETE SPECIALTIES, CO., on Count IV:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;

2. Finding that the Respondent has violated Section 9(a) of the Act, and 35 Ill. Adm. Code Section 203.201;

3. Ordering the Respondent to cease and desist from any further violation of Section 9(a) of the Act and 35 Ill. Adm. Code Section 203.201;

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

5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT V

FAILURE TO TIMELY SUBMIT
COMPLETE AND ACCURATE ANNUAL EMISSION REPORTS

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

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

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

17. Section 254.132(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides as follows:

- (a) Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this Subpart shall be violation of this Part and 35 Ill. Adm. Code 201.302(a).

18. Respondent failed to timely submit complete and accurate Annual Emissions Reports ("AERs") to the Illinois EPA for calendar years 1997 through 2002. Respondent did not submit AERs containing the required information until December 9, 2003.

19. By failing to timely submit complete and accurate AERs for years 1997 to 2002, Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and Sections 201.302(a) and 254.132(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a) and 254.132(a).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board find in favor of the Complainant and against Respondent, CONCRETE SPECIALTIES CO., on this Count V and enter an order:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9(a) of the Act, 35 Ill. Adm. Code 201.302(a), and 35 Ill. Adm. Code 254.132(a);

3. Ordering Respondent to cease and desist from further violations of Section 9(a) of the Act, 35 Ill. Adm. Code 201.302(a), and 35 Ill. Adm. Code 254.132(a);

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

5. Ordering the Respondent to pay all costs, including

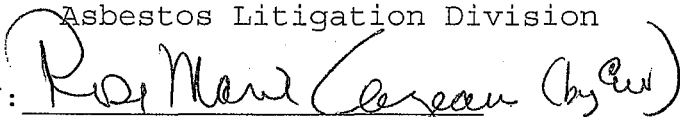
attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

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
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601
(312) 814-5282

CERTIFICATE OF SERVICE

I, MITCHELL L. COHEN, an Assistant Attorney General, do certify that I caused to be mailed this 1ST day of February, 2005, the foregoing COMPLAINT and NOTICE OF FILING upon the persons listed on said NOTICE by Certified Mail.


MITCHELL L. COHEN