

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 03 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

PHOENIX FINISHING, INC.,)

Respondent.)

PCB 05- 202
(air enforcement)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on June 3, 2005, we filed with the Illinois Pollution Control Board a Complaint, a true and correct copy of which is attached and hereby 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 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.

Financing to correct the violations alleged may be available through the Illinois Environmental Facilities Financing Act 20 ILCS 3515/1, et seq.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY 

Christopher P. Pertz
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3532

SERVICE LIST

Phoenix Finishing, Inc.
c/o Mr. Joel Aronson, Reg. Agent
1090 Industrial Drive
Bensenville, IL 60106

Mr. Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, PC
500 Skokie Boulevard, Suite 510
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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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PHOENIX FINISHING, INC., an Illinois)	PCB 05- 202
corporation,)	(air enforcement)
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN,
Attorney General of the State of Illinois, complains of Respondent,
PHOENIX FINISHING, INC., as follows:

COUNT I

FAILURE TO OBTAIN AIR POLLUTION PERMITS

1. This Complaint is brought by the Attorney General on her own motion and upon 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, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. PHOENIX FINISHING, INC. ("PFI"), is an Illinois corporation in good standing and headquartered at 1090 Industrial Drive, Bensenville, DuPage County, Illinois.

4. PFI operates an electronic parts coating and silk screening facility at its headquarters location ("facility").

5. In January 2004, the Illinois EPA received several complaints from citizens regarding damage to their autos in the form of paint spots. All of the damage occurred while the autos were parked near the PFI facility. At least one of the citizens related to the Illinois EPA that they believed PFI was the source of the paint.

6. On January 21, 2004, the Illinois EPA conducted an inspection of the PFI facility.

7. During the inspection, the Illinois EPA inspector observed that the Respondent conducted liquid and powder coating and silk screening operations at the facility.

8. The solvent based liquid coating operation was conducted in two paint booths that were vented to the outside through a duct vent and roof stack. The liquid coating operation also includes a curing oven that vents to the atmosphere.

9. The powder coating operation was conducted in a separate booth, which was also vented outside through the duct vent and roof stack. The powder coating operation also utilizes a curing oven that vents to the atmosphere.

10. The silk screening operation includes a curing oven that vents to the atmosphere.

11. Upon information and belief, the Respondent began the liquid and powder coating and silk screening operations in 1996 or 1997 and expanded the operations in 2000 and 2001.

12. In operating the liquid coating, powder coating, and silk screen operations Respondent used coating materials, including inks, dilutents and cleaning materials containing volatile organic materials ("VOM").

13. The materials the Respondent used in the liquid coating, powder coating and silk screening operations have the potential to and do emit VOM.

14. At no time relevant to this Complaint did the Respondent have a permit from the Illinois EPA for any emission source.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"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.

16. PFI is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

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

18. VOM are "contaminants" as defined in Section 3.165

of the Act, 415 ILCS 5/3.165 (2002).

19. Section 3.115 of the Act, 415 ILCS 5/3.115 (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

20. VOM are ozone precursors and contribute to the creation of ground-level ozone. The inhalation of ozone can cause negative health impacts in humans, including difficulty breathing, throat irritation, lung damage and lowered resistance to respiratory diseases.

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

No person shall 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.

22. Section 201.143 of the Board regulations, 35 Ill. Adm. Code 201.143, provides, in pertinent part, as follows:

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 Agency, except for such testing operations as may be authorized by the construction permit.

23. Section 201.102 of the Board regulations, 35 Ill. Adm. Code 201.102, provides the following pertinent definitions:

"Air Contaminant": any solid, liquid or gaseous matter, any odor or any form of energy, that is capable of being released into the atmosphere from an emission source.

"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 emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Owner or Operator": any person who owns, leases, controls or supervises an emission source or air pollution control equipment.

24. The paint booths and ovens at the facility each constituted an "emission source" and a "new emission source" as defined in 35 Ill. Adm. Code 201.102.

25. PFI was, at all times relevant to this Complaint, an "owner or operator" as defined in 35 Ill. Adm. Code 201.102.

26. From at least 2003 through at least 2004 PFI was required to have an operating permit from the Illinois EPA for the emission sources at its facility.

27. From at least 2003 through at least 2004 the Respondent owned and operated an emission source without an operating permit from the Illinois EPA in violation of 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 for Complainant and against Respondent, PFI, with respect to this Count I:

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

2. Finding that Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) and 35 Ill. Adm. Code 201.143;

3. Ordering Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) and 35 Ill. Adm. Code 201.143;

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

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in pursuit of this action pursuant to 415 ILCS 5/42(f) (2002); and

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

COUNT II

FAILURE TO COMPLY WITH EMISSION LIMITATION STANDARDS

1-24. Complainant hereby repeats and incorporates by reference paragraphs 1 through 20 and 22 through 25 of Count I as paragraphs 1 through 24 of this Count II.

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

No person shall 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.

26. Pursuant to Section 218.103, 35 Ill. Adm. Code 218.103, all sources within the Chicago area, which includes DuPage County, must comply with the requirements of Part 218 of the Board Regulations ("ORGANIC MATERIAL EMISSION STANDARDS AND LIMITATIONS FOR THE CHICAGO AREA").

27. As a source located in DuPage County, PFI was subject to the requirements of Part 218.

28. Section 211.1190 of the Board Regulations, 35 Ill. Adm. Code 211.1190, provides, in pertinent part, as follows:

b) "Coating" means, for purposes of 35 Ill. Adm. Code 218 and 219, a material applied onto or impregnated into a substrate for protective, decorative or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, adhesives, thinners, diluents and inks.

29. Section 218.201 of the Board Regulations, 35 Ill. Adm.

Code 218.201, provides, in pertinent part, as follows:

Except as provided in Sections 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 emission limitations for the specified coating.

j)	Miscellaneous Metal Parts and Products Coating	Kg/l	Lb/gal
2)	Extreme performance coating		
A)	Air dried	0.42	(3.5)
		0.42*	(3.5)*
B)	Baked	0.42	(3.5)
		0.40*	(3.3)*

30. The Respondent used inks, dilutents and other materials that constituted coatings subject to the emission limitations of Section 218.201(j) of the Board Regulations, 35 Ill. Adm. Code 218.201(j).

31. From at least 1997 through at least April 2004 Respondent used coatings that contained VOM in an amount exceeding the emissions limitations in Section 218.201(j).

32. Respondent's usage of coatings with VOM constituted a violation of Section 218.201(j) of the Board Regulations, 35 Ill. Adm. Code 218.201(j). The use of the noncompliant coatings also caused the emission of contaminants so as to violate the regulations and standards of the Board, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, PFI, with respect to this

Count II:

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

2. Finding that Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) and 35 Ill. Adm. Code 218.201(j);

3. Ordering Respondent to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) and 35 Ill. Adm. Code 218.201(j);

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

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in pursuit of this action pursuant to 415 ILCS 5/42(f)(2002); and

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

COUNT III

FAILURE TO FILE AN ANNUAL EMISSIONS REPORT

1-26. Complainant hereby repeats and incorporates by reference paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count III.

27. Section 211.1950 of the Board Regulations, 35 Ill.

Adm. Code 211.1950, provides as follows:

"Emission unit" means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

28. The ovens and spray booths at the PFI facility constituted emission units as defined in 35 Ill. Adm. Code 211.1950.

29. Section 201.302 of the Board Regulations, 35 Ill. Adm. Code 201.302, provides, in pertinent part, as follows:

- a) The owner or operator of any emission unit or air pollution control equipment, unless specifically exempted in 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 where necessary to accomplish the purposes of the Act and this Chapter.

30. Section 254.137 of the Board Regulations, 35 Ill. Adm. Code 254.137, provides, in pertinent part, 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.

31. Section 254.132 of the Board Regulations, 35 Ill. Adm. Code 254.132, provides, in pertinent part, 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 a violation of this Part and 35 Ill. Adm. Code 201.302(a).

32. PFI was required, pursuant to Section 201.302, to file annual emission reports with the Illinois EPA during each year it was required to have a permit for its emission units.

33. For at least the reporting year 2003 PFI failed to

timely file annual emission report with the Illinois EPA. The report was due on April 1, 2004.

34. The failure to timely file annual emission reports was a violation of Sections 201.302(a) and 254.132(a) of the Board Regulations, 35 Ill. Adm. Code 201.302(a) and 254.132(a) and thereby, also a violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002)..

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, PFI, with respect to this Count III:

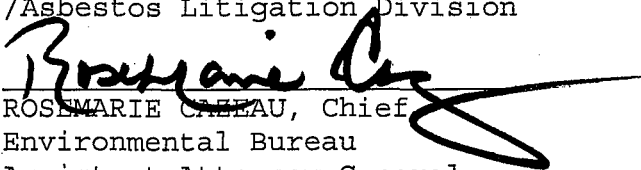
1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations alleged herein;
2. Finding that Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002) and 35 Ill. Adm. Code 201.302(a) and 254.132(a);
3. Ordering Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002) and 35 Ill. Adm. Code 201.302 and 254.132(a);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each and every day of violation;
5. Ordering Respondent to pay all costs including attorney,

expert witness and consultant fees expended by the State in
pursuit of this action pursuant to 415 ILCS 5/42(f)(2002); and
6. Granting such additional relief as the Board deems
appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. 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

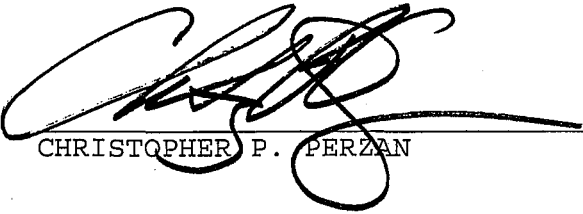
OF COUNSEL:

Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601

312-814-3532

CERTIFICATE OF SERVICE

I, CHRISTOPHER P. PERZAN, an Assistant Attorney General, certify that on the 3rd day of June, 2005, I caused to be served by Registered Certified Mail, Return Receipt Requested, the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



CHRISTOPHER P. PERZAN