

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD DEC 12 2005

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
NORTH AMERICAN LIGHTING, INC., a)
Michigan corporation,)
)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 06-78
(Enforcement – Air, water)

ANSWER TO COMPLAINT

NOW COMES NORTH AMERICAN LIGHTING, INC., by and through its attorneys,
Seyfarth Shaw LLP, and for its Answer to Complaint, states as follows:

COUNT I

AIR POLLUTION

COMPLAINT 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 (“the Act”), 415 ILCS 5/31 (2004).

ANSWER: Respondent admits the allegations contained in Complaint 1.

COMPLAINT 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 (2004), and charged *inter alia*, with the duty of enforcing the Act.

ANSWER: Respondent admits the allegations contained in Complaint 2.

COMPLAINT 3.

North American Lighting, Incorporated, is and was at all times relevant to this Complaint, a Michigan corporation in good standing. The registered agent for the Respondent is CT Corporation System, 208 South LaSalle Street, Chicago, Illinois 60604-1135.

ANSWER: Respondent admits the allegations in Complaint 3.

COMPLAINT 5.

Respondent is and was at all times relevant to this Complaint the owner and operator of a facility located at 20 Industrial Park, Flora, Clay County, Illinois. The facility is located on the East side of Flora near the municipal airport and within a quarter mile of tributaries to Elm Creek.

ANSWER: Respondent admits the allegations contained in the first sentence of Complaint 5 and that it is located on the East side of Flora. Respondent denies the remaining allegations contained in the second sentence of Complaint 5.

COMPLAINT 6.

Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides as follows:

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

ANSWER: Respondent admits the allegations contained in Complaint 6 but denies that it violated the Act.

COMPLAINT 7.

Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), provides as follows:

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: Respondent admits to the allegations contained in Complaint 7 but denies that it violated the Act.

COMPLAINT 8.

Section 3.115 of the Act, 415 ILCS 5/3.115 (2004), provides 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.

ANSWER: Respondent admits the allegations contained in Complaint 8 but denies that it violated the Act.

COMPLAINT 9.

Section 201.141 of the Board's Air Pollution regulations, 35 Ill. Adm. Code Section 201.141, provides:

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.

ANSWER: Respondent admits the allegations contained in Complaint 9 but denies that it violated the regulations.

COMPLAINT 10.

The Respondent is a manufacturer of automotive headlamps, fog lamps, and auxiliary systems. In the course of its manufacturing, the Respondent uses many hazardous chemicals, including but not limited to hydrochloric acid, sodium hydroxide, methyl isobutyl ketone, n-butyl alcohol, xylene, styrene, and toluene.

ANSWER: Respondent denies that it uses many hazardous chemicals. Respondent admits the remaining allegations contained in Complaint 10.

COMPLAINT 11.

At some point prior to December 2001, the Respondent arranged for the installation of two approximately 5,000 gallon capacity single-walled fiberglass tanks for the bulk storage of hydrochloric acid and sodium hydroxide. Respondent provided the design and specifications for the tanks and secondary containment systems to the contractors who built the tanks and constructed the secondary containment systems.

ANSWER: Respondent denies that it provided the design and specifications for the storage tanks. To the contrary, the design and specifications were provided by the manufacturer of the tanks, Fiber Winders, Inc. Respondent admits the remaining allegations in Complaint 11.

COMPLAINT 12.

On December 16, 2001, at about 3:30 p.m., the tank used to store hydrochloric acid ("HCl") failed at the bottom, releasing HCl into the secondary containment structure; the tank had been filled on December 11, 2001. The HCl escaped the secondary containment system as well and a large quantity migrated through the building to an exterior driveway with a lesser amount being deposited within a storm water drainage ditch upon adjacent property.

ANSWER: Respondent admits the allegations in the first sentence of Complaint 12 but denies the allegations contained in the second sentence of Complaint 12.

COMPLAINT 13.

Atmospheric conditions on December 16, 2001, were such that the HCl also generated a thick cloud of HCl mist almost immediately upon release. Some of the mist also was emitted from the site.

ANSWER: Respondent denies the allegations contained in Complaint 13.

COMPLAINT 14.

At 4:09 p.m., an employee of the Respondent notified the Illinois Emergency Management Agency ("IEMA") of the release. At about 7:50 p.m., an employee of the Respondent reported to IEMA that almost 4,000 gallons of HCl had been released. At some point before this 7:50 p.m. call, local police, fire department and first responders arrived on site and observed the cloud of mist coming across a field. First responders also reported the odor of chemicals in the air and burning sensations in their eyes and nostrils.

ANSWER: Respondent admits that it notified IEMA of the release and that emergency response personnel had been summoned. Respondent denies the remaining allegations contained in Complaint 14.

COMPLAINT 15.

Twenty residents living within three-quarters of a mile of the site were promptly evacuated and several streets and subdivisions were closed.

ANSWER: Respondent denies the allegations contained in Complaint 15.

COMPLAINT 16.

A contractor, M & I Acid, was called to the site to begin recovery of the liquid acid. Ultimately M & I was able to recover approximately 700 gallons of HCL.

ANSWER: Respondent denies the allegations contained in Complaint 16.

COMPLAINT 17.

From December 17, 2001, through December 18, 2001, approximately 63 tons of lime and 6.4 tons of soda ash were used to neutralize pooled acid and affected soil.

ANSWER: Respondent denies the allegations contained in Complaint 17.

COMPLAINT 18.

An inspection by the Illinois EPA on December 18, 2001, confirmed the spill of approximately 4,000 gallons of HCl and documented that there were few, if any, neutralization materials present on site, no collection or containment pumps or tanks, and no air monitoring equipment at the facility.

ANSWER: Respondent is unaware of IEPA's findings and therefore denies the allegations contained in Complaint 18.

COMPLAINT 19.

Approximately 89 tons of neutralized lime-acid mixture and contaminated soil were ultimately removed from the site and transported to a landfill.

ANSWER: Respondent denies the allegations contained in Complaint 19.

COMPLAINT 20.

The Occupational Health and Safety Administration ("OSHA") also sent staff for an on-site inspection on December 18, 2001. The OSHA inspector determined that significant and knowing violations had occurred, and a fine was assessed against NAL.

ANSWER: Respondent denies the allegations contained in Complaint 20.

COMPLAINT 21.

On April 25, 2002, the Illinois EPA was provided with the results of analytical sampling of soils which showed that all sample results tested blow the Tiered Approach to Corrective Action Objectives remediation objectives.

ANSWER: Respondent admits the allegations contained in Complaint 21.

COMPLAINT 22.

By causing or allowing the release of the HCl vapor plume to the ambient air in sufficient quantities as to be injurious to human health, such that citizens had to be evacuated to ensure their continued safety, the Respondent has caused air pollution and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code Section 201.141.

ANSWER: Respondent denies the allegations contained in Complaint 22.

PRAYER FOR RELIEF

Wherefore, the Complainant, People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Find that the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004) and 35 Ill. Adm. Code Section 201.141;
- B. Order the Respondent to cease and desist from further violations of the Act and its regulations;
- C. Assess against the Respondent a monetary penalty in accordance with the statutes; and
- D. Grant such other relief as this Board deems appropriate.

ANSWER: Respondent denies that Complainant is entitled to the requested relief.

COUNT II

WATER POLLUTION HAZARD

COMPLAINT 1.

The Complainant realleges and incorporates by reference paragraphs 1 through 19 of Count I as if fully set forth herein as paragraphs 1 through 19 of this Count II.

ANSWER: Respondent sets forth and incorporates its answers to paragraphs 1 through 19 as though set forth fully herein.

COMPLAINT 20.

Section 12 of the Act, 415 ILCS 5/12 (2004), provides, in pertinent part, as follows:

No person shall:

* * *

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

* * *

ANSWER: Respondent admits the allegations contained in Complaint 20 but denies that it violated the Act.

COMPLAINT 21.

Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides as follows:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life.

ANSWER: Respondent admits the allegations contained in Complaint 21 but denies that it violated the Act.

COMPLAINT 22.

The HCI which had escaped the secondary containment system was deposited upon the land within a storm water drainage ditch upon adjacent property within a quarter mile of tributaries to Elm Creek.

ANSWER: Respondent denies the allegations contained in Complaint 22.

COMPLAINT 23.

By causing or allowing the HCI to be deposited in such place and manner so as to create a water pollution hazard, the Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

ANSWER: Respondent denies the allegations contained in Complaint 23.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Find that the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);
- B. Order the Respondent to cease and desist from further violations of the Act and its regulations;
- C. Assess against the Respondent a monetary penalty in accordance with the statutes; and
- D. Grant such other and further relief as this Board deems appropriate.

ANSWER: Respondent denies that Complainant is entitled to the relief requested.

AFFIRMATIVE DEFENSES

Subject to and without waiving any of the foregoing denials, North American Lighting hereby states as follows as its affirmative defenses. By asserting its affirmative defenses, North American Lighting does not waive Plaintiff's obligation to meet its burden of proof and does not assume any burden of proof not otherwise imposed by law.

First Affirmative Defense

The allegations in the Plaintiff's Complaint fail to state a claim upon which relief can be granted.

Second Affirmative Defense

To the extent that Plaintiff has failed to bring this action within the applicable statute of limitations for such actions, Plaintiff's Complaint should be dismissed.

Third Affirmative Defense

Complainant's claims are barred because Respondent's due process rights to a just and timely prosecution of Complainant's claims have been violated.

Fourth Affirmative Defense

Complainant's claims are barred by the doctrine of laches, waiver, or estoppel because Complainant's failure to timely prosecute this matter has substantially prejudiced Respondent's ability to defend itself.

Fifth Affirmative Defense

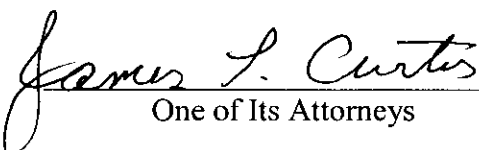
Plaintiff's claims are barred, in whole or in part, because the release was the result of independent, intervening and/or superseding events, factors, occurrences or conditions and/or the result of the negligence of other parties over whom North American Lighting had no control and for whose actions North American Lighting is not liable.

Sixth Affirmative Defense

The alleged violations are due to unavoidable circumstances and causes beyond the control or fault of North American lighting.

DATED: December 12, 2005

Respectfully submitted,
SEYFARTH SHAW LLP

By  _____
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that she caused a copy of the foregoing Answer to Complaint to be served by hand delivery on this 12th day of December, 2005 on the following:

Original and nine (9) copies:
Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601

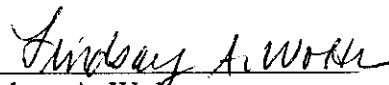
And by United States mail on the following:

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794

And by facsimile and United States mail on the following:

Copy:
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Lindsay A. Wolter