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DEC 20 2005
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 15, 2005

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

PCB06-104

Re: ***People v. Moore Painting Co. and Illinois-American Water Co.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

J. L. Homan
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JLH/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 20 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 MOORE PAINTING CO., an Illinois)
 corporation, and ILLINOIS-AMERICAN)
 WATER COMPANY, an Illinois)
 corporation,)
)
 Respondents.)

PCB No. *06-104*
(Enforcement)

NOTICE OF FILING

To: MOORE PAINTING CO.	ILLINOIS-AMERICAN WATER CO.
c/o H. Dennis Moore, R.A.	c/o CT Corporation System, R.A.
4522 Alton Comm Parkway	208 S. LaSalle Street, Ste. 814
Alton, IL 62002	Chicago, IL 60604

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith 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 this 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.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), 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: 

J. L. HOMAN
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on December 15, 2005, 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 COMPLAINT:

To: MOORE PAINTING CO.
c/o H. Dennis Moore, R.A.
4522 Alton Comm Parkway
Alton, IL 62002

ILLINOIS-AMERICAN WATER CO.
c/o CT Corporation System, R.A.
208 S. LaSalle Street, Ste. 814
Chicago, IL 60604

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



J. L. Homan
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
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 Complainant,)
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 MOORE PAINTING CO., an Illinois)
 corporation, and ILLINOIS-AMERICAN)
 WATER COMPANY, an Illinois)
 corporation,)
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 Respondents.)

PCB No. 06-104
(Enforcement)

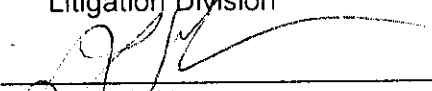
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, J. L. HOMAN, Assistant Attorney General of the State of Illinois, hereby enters her 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: 

J. L. HOMAN
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 15, 2005

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DEC 20 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
)
MOORE PAINTING CO., and ILLINOIS-)
AMERICAN WATER COMPANY,)
)
Respondents.)

PCB No. ~~06~~ 06-104
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondents, MOORE PAINTING CO., and ILLINOIS-AMERICAN WATER COMPANY, as follows:

COUNT I
AIR POLLUTION

1. This Complaint is brought by the Attorney General 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 (2004).
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 in proceedings before the Illinois Pollution Control Board ("Board").
3. The Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), after providing the Respondents with notice and opportunity for a meeting with the Illinois EPA.

4. Respondents, MOORE PAINTING CO. ("Moore"), and ILLINOIS-AMERICAN WATER COMPANY ("Illinois-American"), are each an Illinois corporation in good standing. The registered agent for Moore is H. Dennis Moore and he may be reached at 4522 Alton Comm Parkway, Alton, Illinois, 62002. The registered agent for Illinois-American is CT Corporation System, 208 S. LaSalle Street, Suite 814, Chicago, IL 60604.

5. At all times relevant to this Complaint, Illinois-American has been a public utility providing potable water and sanitary sewer services to various communities in Illinois and Moore has been a contractor hired by Illinois-American to remove paint and then repaint a vertical water storage tank located at 1013 Cardinal Street ("Cardinal St. Tank" or "site") in a residential area of the City of Alton, Madison County, Illinois.

6. The Respondents entered into a "Tank Maintenance Agreement" in March 2004 to govern all aspects of the Cardinal St. Tank project. This agreement also comprised subsequent submittals by Moore for the abatement of the lead-based paint on the Cardinal St. Tank. The agreement, *inter alia*, indicated that prior to abatement Moore must treat the lead-based paint with a specified chemical to bind the lead and mitigate leaching; that Moore must not employ open abrasive blasting or uncontained hydro blasting; that Moore must provide for total containment unless alternative methods were approved by Illinois-American; and that Moore must collect and dispose of the resulting lead-based paint wastes as hazardous waste.

7. On a date better known to the Respondents, Moore submitted to Illinois-American an amendment to the tank maintenance agreement proposing to use an "alternate robotic blast procedure" in conjunction with a "slurry blast" on areas not reached by the robotic blasting. Illinois-American either approved or failed to reject the amendment and thereby allowed Moore to proceed without the necessary total containment.

8. On June 3, 2004, Moore employed uncontained hydro blasting on the lead-based paint on the Cardinal St. Tank.

9. On June 4, 2004, there was an accumulation of the resulting lead-based paint wastes, including the blasting grit or media, on tarps on the ground along the base of the Cardinal St. Tank, on the ground of the vacant lot to the east and the backyard of the residence to the south, and in the street to the north.

10. On June 4, 2004, the Illinois EPA collected a sample of water being discharged from the site and three samples of wastes on the ground of the vacant lot to the east and the backyard of the residence to the south. Lead was subsequently determined to be present in all four samples, one of which tested to be hazardous at a level of 1,980 /milligrams per kilogram/parts per million.

11. On June 7, 2004 and June 11, 2004, the Illinois EPA conducted meetings at the site with representatives of Illinois American and Moore, to discuss the situation.

12. On June 29, 2004, the Illinois EPA conducted a follow-up inspection of the site and observed a significant amount of paint chips and grit in the vacant lot to the east of the tank, and on residences south of the tank.

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), defines "contaminant" as follows:

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

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

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;

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

16. Section 201.141 of the Board’s Air Pollution Regulations, 35 Ill. Admin. Code 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.

17. The Respondents failed to implement effective precautions during the removal of lead-based paint from the Cardinal St. Tank, and thereby caused and allowed the emissions of lead and other 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.

18. By causing, threatening or allowing the discharge or emission of any contaminant into the air of the State so as to cause or tend to cause air pollution, the Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Admin. Code 201.141.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondents, MOORE PAINTING CO., and ILLINOIS-AMERICAN WATER COMPANY:

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

- B. Finding that Respondents has violated the Act and regulations as alleged herein;
- C. Ordering Respondents 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) (2004), impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II

WATER POLLUTION

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.

14. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), provides, as follows:

No person shall:

* * *

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

* * *

15. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), contains the following definition:

'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 water 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.

16. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), contains the following definition:

'Waters' means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

17. The Respondents failed to implement effective precautions during the removal of lead-based paint from the Cardinal St. Tank, and thereby deposited lead and other contaminants upon the ground in such place and manner as to create a water pollution hazard.

18. By creating a water pollution hazard, the Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondents, MOORE PAINTING CO., and ILLINOIS-AMERICAN WATER COMPANY:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents has violated the Act and regulations as alleged herein;
- C. Ordering Respondents 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) (2004), impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III

WASTE DISPOSAL VIOLATIONS

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count III.

14. Section 21 of the Act, 415 ILCS 5/21 (2004), provides, in pertinent part, as follows:

No person shall:

a. Cause or allow the open dumping of any waste.

* * *

e. Dispose, treat, store or abandon any waste . . . except at a site which meets the requirements of this Act and of regulations and standards thereunder.

* * *

l. Conduct any process or engage in any act which produces hazardous waste in violation of any regulations or standards adopted by the Board under subsections (a) and ©) of Section 22.4 of this Act.

* * *

15. Section 3.185 of the Act, 415 ILCS 5/3.185 (2004), provides:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

16. Section 3.535 of the Act, 415 ILCS 5/3.535 (2004), provides:

“Waste” means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations. . . .

17. Section 722.111 of the Board’s Waste Disposal Regulations, 35 Ill. Adm. Code 722.111, provides: “A person who generates a solid waste . . . shall determine if that waste is a hazardous waste”

18. Section 808.121(a) of the Board’s Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), provides: “Each person who generates waste shall determine whether the waste is a special waste.”

19. As a material containing contaminants and resulting from commercial operations, the lead-based paint removed from the Cardinal St. Tank, including the blasting grit or media, is a “waste” as that term is defined at Section 3.535 of the Act, 415 ILCS 5/3.535 (2004).

20. The Cardinal St. Tank is a site or facility that does not meet the requirements of this Act and of the regulations and standards thereunder, for waste disposal, as referenced in Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

21. The Respondents failed to implement effective precautions during the removal of lead-based paint from the Cardinal St. Tank, and thereby deposited waste in such a way as to cause or allow the open dumping of wastes.

22. By depositing, dumping, or abandoning the lead-based paint wastes (including the blasting grit or media), the Respondents have caused or allowed open dumping and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

23. By depositing, dumping, or abandoning the lead-based paint wastes (including the blasting grit or media), the Respondents have disposed of waste at a site or facility that does not meet the requirements of this Act and of the regulations and standards thereunder and thereby violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondents, MOORE PAINTING CO., and ILLINOIS-AMERICAN WATER COMPANY:

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

B. Finding that Respondents has violated the Act and regulations as alleged herein;

C. Ordering Respondents 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) (2004), impose a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board may deem appropriate.

COUNT IV

OPEN DUMPING

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count IV.

14. Section 21 of the Act, 415 ILCS 5/21 (2004) provides in pertinent part as follows:

No person shall:

* * *

(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;

* * *

15. By employing uncontained hydro blasting on the lead-based paint on the Cardinal St. Tank in such a way as to cause or allow the open dumping of lead-based paint wastes (including the blasting grit or media) resulting in litter, the Respondents have violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1)(2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondents, MOORE PAINTING CO., and ILLINOIS-AMERICAN WATER COMPANY:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents has violated the Act and regulations as alleged herein;
- C. Ordering Respondents 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) (2004), impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT V

HAZARDOUS WASTE DETERMINATION VIOLATIONS

- 1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count V.
- 14. Section 722.111 of the Board's regulations, 35 Ill. Adm. Code 722.111, provides as follows:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must 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 should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.
- 15. The Respondents failed to make any hazardous waste determination on the lead-based paint wastes, including the blasting grit or media, as required by Section 722.111 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.111.

16. By failing to perform hazardous waste determinations, the Defendant has violated Section 722.111 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 722.111.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondents, MOORE PAINTING CO., and ILLINOIS-AMERICAN WATER COMPANY:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents has violated the Act and regulations as alleged herein;
- C. Ordering Respondents 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) (2004), impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT VI

SPECIAL WASTE DETERMINATION VIOLATIONS

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count V.

14. Section 808.121 of the Board's regulations, 35 Ill. Adm. Code 808.121, provides as follows:

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

BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also

determine if the waste is a hazardous waste.

* * *

15. The Respondents failed to make any special waste determination on the lead-based paint wastes, including the blasting grit or media, as required by Section 808.121(a) of the Board's regulations, 35 Ill. Adm. Code 808.121(a).

16. By failing to perform special waste determinations, the Defendant has violated Section 808.121(a) of the Board's Hazardous 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 Respondents, MOORE PAINTING CO., and ILLINOIS-AMERICAN WATER COMPANY:

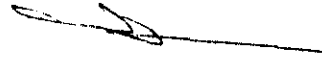
- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents has violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney General

of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
J.L. HOMAN
Assistant Attorney General
Environmental Bureau/Springfield
500 South Second Street
Springfield, Illinois 62706
Date: 12/14/05