

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. Lisa Madigan, Attorney General)
of the State of Illinois,)
))
Complainant,)
))
v.)
))
LASALLE STREET CAPITAL, INC.,)
an affiliate of Bank of America,)
National Association,,)
))
Respondent.)

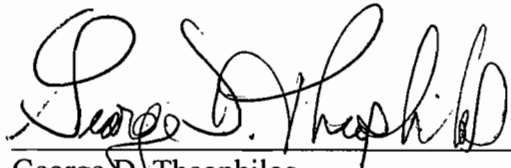
**PCB
(Enforcement Air)**

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 1st day of May, 2012, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a COMPLAINT, true and correct copies of which are attached hereto and is hereby served upon you.

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

By: 
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DATE: May 1, 2012

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* 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, LaSalle Street Capital, Inc., an affiliate of Bank of America, National Association, as follows:

COUNT I

OPERATING WITHOUT A CAAPP PERMIT

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* 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”).
2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/4 (2010).
3. This complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), and is an action to restrain ongoing violations of the Act and for civil penalties.
4. Since at least July 21, 2008 through the date of filing this Complaint, Respondent, LaSalle Street Capital, Inc., an affiliate of Bank of America, National Association, has operated a

facility at 540 West Madison Street, Chicago, Cook County, Illinois that includes the following emission units: seven stand-by diesel electric generators, two 220-volt fuel heaters, and four fuel storage tanks ("Source"). The Source has a potential to emit ("PTE") for NO_x greater than 100 tons per year.

5. The Respondent acquired the Source on or about July 21, 2008.

6. Respondent did not submit a Clean Air Act Permit Program ("CAAPP") permit or Federally Enforceable State Operating Permit ("FESOP") application to the Illinois EPA until August 24, 2009.

7. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2010), provides the following definitions:

"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.

* * *

"Regulated Air Pollutant" means the following:

(1) Nitrogen oxides (NO_x) or any volatile organic compound.

* * *

"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 of the same person (or persons 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

8. Respondent’s facility is a “stationary source” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1).

9. Respondent operates a stationary source and is an “owner or operator” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1).

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

2. Applicability

a. Sources subject to this Section shall include:

i. 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 ... oxides of nitrogen in areas classified as “marginal” or . . . to emit 25 tons or more per year in areas classified as “severe”

11. Since the Source has a PTE for NO_x greater than 100 tons per year, the Source is subject to the CAAPP permit requirements set forth in Section 39.5 of the Act, 415 ILCS 5/39.5 (2010).

12. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

13. Respondent is a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

14. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010), provides as follows:

Prohibitions

* * *

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.

15. Although the Respondent acquired the Source in July 21, 2008, Respondent did not submit a CAAPP or FESOP application to the Illinois EPA until August 24, 2009.

16. By operating a CAAPP source for approximately 13 months before applying for a CAAPP permit, Respondent operated, and continues to operate, a CAAPP source without a CAAPP permit in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board (“Board”) enter an order in favor of Complainant and against Respondent with respect to 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 Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010);

3. Ordering Respondent to cease and desist from any further violations of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010);
4. Ordering Respondent to obtain a permit from the Illinois EPA and to comply with the permit's terms and conditions;
5. Assessing against Respondent a civil penalty of ten thousand dollars (\$10,000.00) for each and every day of violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010);
6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such relief as the Board deems equitable and just.

COUNT II
FAILURE TO SUBMIT ANNUAL EMISSION REPORTS

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

14. Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), 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.

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

Reports

(a) The owner or operator of any emission source or air pollution control equipment shall submit to the Agency as a minimum, annual reports detailing the nature, specific source 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.

16. Section 254.137(a) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm.

Code 254.137(a), provides 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.

17. Section 254.132(a) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm.

Code 254.132(a), provides as follows:

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).

18. As an owner or operator of emission units and air pollution control equipment, Respondent is required to submit an Annual Emissions Report ("AER") to the Illinois EPA by May 1 of the year following the calendar year in which the emissions took place.

19. On August 30, 2011, Respondent submitted the AER for calendar year 2008 to the Illinois EPA.

20. Respondent failed to timely submit its AER for the calendar year 2008.


21. By its actions as alleged herein, Respondent has violated Sections 201.302(a), 254.137(a) and 254.132(a) of 35 Ill. Adm. Code, and thereby, violated Section 9(a) of the Act, 415 ILCS 5/9(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, 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 Sections 201.302(a), 254.137(a) and 254.132(a) of 35 Ill. Adm. Code, and thereby, violated Section 9(a) of the Act, 415 ILCS 5/9(a);
3. Ordering Respondent to cease and desist from any further violations of Sections 201.302(a), 254.137(a) and 254.132(a) of 35 Ill. Adm. Code, and Section 9(a) of the Act, 415 ILCS 5/9(a);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) including attorney, expert witness and consultant fees, against the Respondent; and
6. Granting such other 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


BY: 
ELIZABETH WALLACE, Supervising Attorney
Environmental Enforcement Asbestos
Litigation Division

Of Counsel:

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CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused the foregoing COMPLAINT to be electronically mailed to the persons listed on the attached Service List on this the 1st day of May, 2012


George D. Theophilos