

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 SURFACE MAINTENANCE SERVICES,)
 INC., an Illinois corporation,)
)
 Respondent.)

PCB No. _____
 (Enforcement – Land)

NOTICE OF FILING

To: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that on the 29th day of September 2020, I filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached hereto and are hereby served upon you. You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.

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.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

PEOPLE OF THE STATE OF ILLINOIS
 KWAME RAOUL
 Attorney General of the State of Illinois

By: /s/ Kevin J. Garstka
 KEVIN J. GARSTKA
 Assistant Attorney General
 Environmental Bureau North
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SERVICE LIST

For the Respondent

Charles D. Schlueter, Registered Agent
4023 Charles Street
Rockford, IL 61108

CERTIFICATE OF SERVICE

I, KEVIN J. GARSTKA, an Assistant Attorney General, certify that on the 29th day of September 2020, I caused to be served by Certified Mail Return Receipt Requested the foregoing Notice of Filing and Complaint to the person listed on the attached Service List by depositing the same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

/s/ Kevin J. Garstka

KEVIN J. GARSTKA

Assistant Attorney General

Environmental Bureau

Illinois Attorney General's Office

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Chicago, IL 60602

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois (“Complainant”), complains of the Respondent, SURFACE MAINTENANCE SERVICES, INC., an Illinois corporation (“Respondent”), as follows:

COUNT I
CONDUCTING A HAZARDOUS WASTE STORAGE OPERATION WITHOUT A RESOURCE CONSERVATION AND RECOVERY ACT (“RCRA”) PERMIT

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), against Respondent, pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2018).

2. Illinois EPA is an administrative agency of the State of Illinois, established by Section 4 of the Act, 415 ILCS 5/4 (2018), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Surface Maintenance Services, Inc. (“SMS”) was and is an Illinois corporation authorized to do business in the State of Illinois.

4. At all times relevant to this Complaint, SMS has owned and operated a cleaning and painting facility located at 420 Buckbee Street in Rockford, Winnebago County, Illinois ("Facility").

5. On April 19, 2018, Illinois EPA inspected the Facility. At that time, there were 20 containers of various sizes that did not have labels identifying the contents or the accumulation dates, which are the dates on which materials were first placed in the containers. An SMS representative informed the Illinois EPA inspector that the containers were filled with unusable paint from painting jobs and included both latex-based paint and oil-based paint, although he was not sure what type of unusable paint was in any of the unlabeled containers. The SMS representative also stated that the company generates approximately 10 to 15 gallons of unusable paint per month and that the most recent manifest documenting the shipment of hazardous waste from the Facility was dated 2008.

6. On July 27, 2018, SMS submitted to Illinois EPA two waste manifests and two invoices from Safety-Kleen. The documents show that on May 25, 2018, Safety-Kleen removed 9 drums containing 495 gallons of unusable oil-based paint that SMS had stored at the Facility with the hazardous waste codes D001, D005, D006, D007, F003, and F005.

7. Subpart C of Part 721 of the Illinois Pollution Control Board ("Board") Waste Disposal Regulations, 35 Ill. Adm. Code Subpart C, provides methods for determining hazardous waste by characteristics, including ignitability, corrosivity, reactivity, and toxicity ("D-listed hazardous waste").

8. Section 721.131 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.131, provides a list of hazardous wastes from non-specific sources ("F-listed hazardous waste").

9. The mass of the 495 gallons of D-listed and F-listed hazardous waste that had been present at the Facility exceeds 1,000 kilograms.

10. Section 21(f) of the Act, 415 ILCS 5/21(f) (2018), provides, in pertinent part, as follows:

No person shall:

* * *

(f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

(1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder;

(2) in violation of any regulations or standards adopted by the Board under this Act; or

11. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), 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.

12. SMS, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

13. Section 721.102 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102, provides, in pertinent part as follows:

a) Solid Waste

1) A solid waste is any discarded material that is not excluded pursuant to Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131 or 35 Ill. Adm. Code 720.130 and

720.134.

2) Discarded Material

A) A discarded material is any material that is described as follows:

i) It is abandoned, as described in subsection (b);

* * *

b) A material is a solid waste if it is abandoned in one of the following ways:

1) It is disposed of;

2) It is burned or incinerated;

3) It is accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

4) Sham recycled, as explained in subsection (g).

* * *

14. The containerized unusable oil-based paint that SMS had stored at the Facility meets the definition of "discarded material" set forth in Section 721.102(a)(2) and (b)(3) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102(a)(2) and (b)(3), because it was accumulated and stored at the Facility in lieu of being abandoned by being disposed of, burned, or incinerated.

15. As discarded material, the containerized unusable oil-based paint that SMS had stored at the Facility is "solid waste", as that term is defined in Section 721.102(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102(a), as it is not excluded pursuant to Section 721.104(a), 35 Ill. Adm. Code 721.104(a), or Sections 721.130 and 721.131, 35 Ill. Adm. Code 721.130 and 721.131.

16. Section 3.535 of the Act, 415 ILCS 5/3.535 (2018), provides the following definition:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . .

17. As discarded material, the containerized unusable oil-based paint that SMS had stored at the Facility is “waste,” as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2018).

18. Section 3.220 of the Act, 415 ILCS 5/3.220 (2018), provides the following definition:

“Hazardous waste” means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. . . .

19. Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. 721.103, provides, in pertinent part, as follows:

- a) A solid waste, as defined in Section 721.102, is a hazardous waste if the following is true of the waste:
 - 1) It is not excluded from regulation as a hazardous waste pursuant to Section 721.104(b); and
 - 2) It meets any of the following criteria:
 - A) It exhibits any of the characteristics of hazardous waste identified in Subpart C. . . .
 - B) It is listed in Subpart D and has not been excluded from the lists in Subpart D pursuant to 35 Ill. Adm. Code 720.120 and 720.122.

* * *

- D) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this subsection (a)(2) pursuant to 35 Ill. Adm. Code 720.120 and 720.122 or subsection (g) or (h);

20. The containerized unusable oil-based paint that SMS had stored at the Facility and that Safety-Kleen determined to be a D-listed waste is characteristically hazardous pursuant to Section 721.121 in Subpart C of Part 721 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.121. As such, this containerized waste is a “hazardous waste” as that term is defined in Section 3.220 of the Act, 415 ILCS 5/3.220 (2018), and in Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. 721.103.

21. The containerized unusable oil-based paint that SMS stored at the Facility and that Safety-Kleen determined to be an F-listed waste is hazardous waste pursuant to Section 721.131 in Subpart D of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.131. As such, this containerized waste is a “hazardous waste” as that term is defined in Section 3.220 of the Act, 415 ILCS 5/3.220 (2018), and in Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. 721.103.

22. Section 3.480 of the Act, 415 ILCS 5/3.480 (2018), provides the following definition:

“Storage” means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.

23. SMS’s accumulation of containerized unusable oil-based paint waste at the Facility constitutes “storage” as that term is defined in Section 3.480 of the Act, 415 ILCS 5/3.480 (2018).

24. Section 703.121(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b), provides, in pertinent part, as follows:

No person may conduct any hazardous waste storage, hazardous waste

treatment, or hazardous waste disposal operation as follows:

- a. Without a RCRA permit for the HWM (hazardous waste management) facility;

* * *

- b. An owner or operator of a HWM unit must have permits during the active life (including the closure period) of the unit. . . .

25. Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm.

Code 720.110, provides, in pertinent part, the following definitions:

“Generator” (RCRA) means any person, by site location, whose act or process produces hazardous waste.

“Hazardous waste” (RCRA and UIC) means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.

“Hazardous waste management facility” or “HWM facility” (RCRA) means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

“HWM facility” (RCRA) means hazardous waste management facility.

“Owner or operator” means the owner or operator of any facility or activity subject to regulation under the RCRA or UIC program.

“Permit” means an authorization, license, or equivalent control document issued to implement this Part and 35 Ill. Adm. Code 703, 704, and 705. “Permit” includes RCRA permit by rule (35 Ill. Adm. Code 703.141), RCRA standardized permit (35 Ill. Adm. Code 703.238), UIC area permit (35 Ill. Adm. Code 704.162), and RCRA or UIC “Emergency Permit” (35 Ill. Adm. Code 703.221 and 704.163). “Permit” does not include RCRA interim status (35 Ill. Adm. Code 703.153 through 703.157), UIC authorization by rule (Subpart C of 35 Ill. Adm. Code 704), or any permit that has not yet been the subject of final Agency action, such as a draft permit or a proposed permit.

“Person” means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

“RCRA permit” (RCRA) means a permit required pursuant to Section 21(f) of the

Act.

“Storage” (RCRA) means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

26. As a result of SMS’s operations at the Facility, whereby it accumulated unusable oil-based paint, SMS was a “generator” of “hazardous waste”, as those terms are defined in Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 702.110.

27. As a result of SMS’s operations at the Facility, SMS was a “person” conducting a “hazardous waste storage” operation without a “RCRA permit” at a “hazardous waste management facility,” as those terms are defined in Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 702.110.

28. On and before April 19, 2018, from a date better known to SMS, and continuing through May 25, 2018, SMS was the “owner or operator” of a “HWM” unit at the Facility, as those terms are defined in Section 702.110 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 702.110.

29. On and before April 19, 2018, from a date better known to SMS, and continuing through May 25, 2018, SMS could not store hazardous waste at the Facility without having a RCRA permit unless SMS complied fully with an exemption provided in Section 722.114(a)(4) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.114(a)(4).

30. Section 722.114(a)(4)(A) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.114(a)(4), provides as follows:

- a) Provided that a VSQG meets all the conditions for exemption listed in this Section, hazardous waste generated by the VSQG is not subject to the requirements of 35 Ill. Adm. Code 702, 703, 705, and 722 through 728 and the notification requirements of section 3010 of RCRA (42 USC 6930), and the VSQG may accumulate hazardous waste on site without complying with these requirements, except that the VSQG must comply with this Section and Sections 722.110 through 722.113. The conditions for exemption are as follows:

* * *

4) If the VSQG accumulates at any time 1,000 kg (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

A) The waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided in subsection (a)(1);

B) The quantity of waste accumulated on site never exceeds 6,000 kg (13,200 lbs); and

C) The VSQG fulfills the conditions for exemption in Section 722.116(b)(2) through (f).

31. On and before April 19, 2018, from a date better known to SMS, and continuing through May 25, 2018, SMS accumulated hazardous waste on-site at the Facility for more than 180 days.

32. By accumulating hazardous waste on-site at the Facility for more than 180 days, SMS failed to fulfill the conditions of Section 722.114(a)(4)(A) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.114(a)(4)(A).

33. Section 722.116(b)(6) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.116(b)(6), provides as follows:

b) Accumulation. The generator must accumulate hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption allowing longer accumulation in subsections (d) and (e). The following accumulation conditions also apply:

* * *

6) Labeling and Marking of Containers and Tanks

A) Containers. An SQG must mark or label its containers with the following:

i) The words "Hazardous Waste";

ii) An indication of the hazards of the contents. Examples include, but are not limited to, the applicable hazardous waste characteristics (i.e., ignitable, corrosive, reactive, or toxic); hazard communication consistent with subpart E (Labeling) and subpart F (Placarding) of 49 CFR 172, incorporated by reference in 35 Ill. Adm. Code 720.111; a hazard statement or pictogram consistent with 29 CFR 1910.1200 (Hazard Communication), incorporated by reference in 35 Ill. Adm. Code 720.111; or a chemical hazard label consistent with NFPA 704, incorporated by reference in 35 Ill. Adm. Code 720.111; and

iii) The date upon which each period of accumulation begins clearly visible for inspection on each container.

34. On and before April 19, 2018, from a date better known to SMS, and continuing through May 25, 2018, SMS failed to mark or label containers at the Facility with i) the words "Hazardous Waste", ii) any indication of the hazards of their contents; and iii) the date upon which each period of accumulation of hazardous waste began in such containers.

35. By failing to mark or label containers at the Facility with i) the words "Hazardous Waste", ii) any indication of the hazards of their contents; and iii) the date upon which each period of accumulation of hazardous waste began in such containers, SMS failed to fulfill the conditions of Section 722.116(b)(6)(A) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.116(b)(6)(A), and thereby also failed to fulfill the conditions of Section 722.114(a)(4)(C) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.114(a)(4)(C).

36. Because SMS failed to fulfill the conditions of Section 722.114(a)(4)(A) and (C) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.114(a)(4) (A) and (C), SMS, as of April 19, 2018, from an earlier date better known to SMS, was unable to rely on the exemptions from the requirement to obtain a RCRA permit provided in 35 Ill. Adm. Code 722.114. SMS therefore was required by Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1)

(2018), and Sections 703.121(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b), to obtain a RCRA permit to conduct a hazardous waste storage operation at the Facility.

37. As of April 19, 2018, from a date better known to SMS, and continuing through May 25, 2018, SMS failed to obtain a RCRA permit for the Facility, in violation of Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2018), and Sections 703.121(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b).

38. By violating Section 703.121(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b), SMS thereby also violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against Respondent, SURFACE MAINTENANCE SERVICES, INC., with respect to Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 21(f)(1) and (2) of the Act, 415 ILCS 5/21(f)(1) and (2) (2018), and Section 703.121(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b);
3. Ordering the Respondent to cease and desist from any future violations of Section 21(f)(1) and (2) of the Act, 415 ILCS 5/21(f)(1) and (2) (2018), and Section 703.121(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b);
4. Assessing against the Respondent a civil penalty not to exceed Twenty-Five Thousand Dollars (\$25,000) per day of violation for each violation of Section 21(f)(1) and (2)

of the Act, 415 ILCS 5/21(f)(1) and (2) (2018), and Section 703.121(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a) and (b), pursuant to Section 42(b)(3) of the Act, 415 ILCS 5/42(b)(3) (2018);

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees against Respondent; and

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

COUNT II

STORING HAZARDOUS WASTE AT A FACILITY THAT DOES NOT MEET THE REQUIREMENTS OF THE ENVIRONMENTAL PROTECTION ACT

1-38. Complainant realleges and incorporates herein paragraphs 1 through 38 of Count I as paragraphs 1 through 38 of this Count II.

39. Section 21(e) of the Act, 415 ILCS 5/21(e) (2018), provides as follows:

No person shall:

* * *

Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage, or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

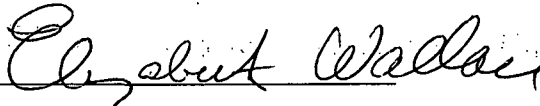
40. By storing hazardous waste at the Facility without a RCRA permit for the Facility, SMS stored waste at a facility that does not meet the requirements of the Act and of regulations and standards thereunder, and thereby violated Section 21(e) of the Act, 415 ILCS 5/21(e).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against Respondent, SURFACE MAINTENANCE SERVICES, INC., with respect to Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that the Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2018);
3. Ordering the Respondent to cease and desist from any future violations of Section 21(e) of the Act, 415 ILCS 5/21(e) (2018);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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By: 

ELIZABETH WALLACE, Chief
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