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Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



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DATE: December 18, 2003

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 18 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 LISA MADIGAN, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 ONYX ENVIRONMENTAL SERVICES,)
 LLC, a Delaware limited liability)
 company, and AURA II, INC., a)
 Wisconsin corporation,)
)
 Respondents.)

PCB-0498
 (Enforcement-Multimedia)

COMPLAINT

Complainant, 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, complains of Respondents, ONYX ENVIRONMENTAL SERVICES, LLC, ("Onyx") a Delaware limited liability company and AURA II, INC., ("Aura") a Wisconsin corporation, as follows:

COUNT I

AIR POLLUTION

I. VIOLATIONS BY ONYX AND AURA

1. This Complaint 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, pursuant to the terms

and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2002).

2. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, Onyx Environmental Services, LLC, ("ONYX") is a Delaware Limited Liability Company, authorized to transact business in the State of Illinois.

4. ONYX is a provider of integrated environmental management services, including the identification and separation of hazardous waste, hazardous waste packaging, removal, disposal, transportation, and recycling.

5. Respondent, Aura II, Inc. ("AURA") is a Wisconsin Corporation, not authorized to transact business in the State of Illinois. AURA owns a gold and silver reclamation business at 8035 W. Calumet Road, Milwaukee, State of Wisconsin.

6. In its silver reclamation business, AURA employs a process to remove gold and silver from plastic computer parts utilizing a mixture of hydrochloric and nitric acid solutions. AURA then adds sulfur dioxide gas to the mixture of hydrochloric acid and nitric acids, which causes the gold and silver to precipitate.

7. The resulting solution contains nitric acid, hydrochloric acid and sulfuric acid, as well as some residual

metals with RCRA hazardous waste numbers: D002, D006, D007, D008 and D011 ("AURA waste").

8. Aura owns the waste. At sometime prior to July 2, 2001, AURA, as owner of the waste, entered into a contract with ONYX for ONYX to transport AURA waste from the Wisconsin facility to an off-site waste management facility located in Ohio.

9. On July 2, 2001, at or around 7:00 a.m., AURA transferred 2000 gallons of the AURA waste to an unlined ONYX tanker for transportation through the State of Illinois to a waste management facility in Vickery, Ohio.

10. The AURA waste transferred to the ONYX tanker contained hydrochloric, sulfuric, and nitric acids. The mixture of these acids is highly corrosive.

11. On July 2, 2001, at or around 9:45 a.m., while the ONYX tanker was passing through the State of Illinois on its way to Ohio, the driver of the ONYX tanker was alerted by a passing motorist that the ONYX tanker was leaking.

12. On July 2, 2001, at around 9:49 a.m., the driver of the ONYX tanker pulled into the Lake Forest Plaza Oasis on Interstate 94, near the Village of Libertyville, in Lake County, Illinois, ("the Site").

13. At the site, the ONYX driver activated the tanker's vacuum pump in order to slow the rate of leakage from the tanker.

14. Within ten minutes of activating the vacuum system, the ONYX tanker began venting a vapor cloud out of its pressure relief valve to the atmosphere.

15. The vapor cloud was described as brown, red/orange, or rust-yellow and was reported to be about 50 feet wide by 50 feet long ("acid vapor").

16. The cloud of acid vapor persisted for up to 1 to 2 hours before it was dissipated by the Libertyville Fire Department through the use of "deluge guns" which sprayed water onto the cloud of acid vapor.

17. The nature of the acid vapor caused local emergency response officials to evacuate the 30-40 workers and customers from the Site as well as 83 residents from 48 homes within a half mile radius to the west of the tanker.

18. The nature of the acid vapor also necessitated the closure of I-94, as well as nearby St. Mary's Road, Bradley Road and Old School Road in Lake County, Illinois, for several hours.

19. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines "person" as:

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.

20. ONYX, a limited liability company, is a person as that term is defined by Section 3.315 of the Act, 415 IL 5/3.315 (2002).

21. AURA, a corporation, is a person as that term is defined by Section 3.315 of the Act, 415 ILCS 3.315 (2002).

22. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines "contaminant" as, "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source."

23. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), 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;

24. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), defines "air pollution" as:

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.

25. Section 201.141 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141, titled, Prohibition of Air Pollution, provides 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, whether 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.

26. The acid vapor, emitted into the environment in Illinois from the unlined ONYX tanker is a contaminant as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

27. Acid vapors are injurious to human health and to plant or animal life. Acute exposure to acid vapors can cause irritation to the eyes, nose, throat and skin as well as respiration problems, edema and potentially death.

28. On or about July 2, 2001, Respondents caused, threatened or allowed the discharge of acidic vapors and AURA waste, contaminants, from the unlined ONYX tanker into the environment in Illinois in sufficient quantities so as to cause or tend to cause air pollution in Illinois.

29. By causing, threatening, or allowing the release of acidic vapors and AURA waste, contaminants, into the environment in Illinois, Respondents caused or threatened or allowed air pollution in Illinois, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Code 201.141.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondents with respect to Count I:

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

2. Finding that Respondents have threatened, caused or allowed air pollution in violation of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141;

3. Ordering Respondents to cease and desist from any further violations of Section 9(a) of the Act and 35 Ill. Adm. Code 201.1451;

4. Ordering Respondents to implement procedures for the selection of tankers, the cleaning of tankers between loads, and the approval of tankers by customers seeking to ship acidic or highly corrosive or reactive wastes or materials;

5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against each Respondent for each and every violation of the Act and Board regulations and an additional Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

6. Taxing all costs in this action, including attorney, expert witnesses, emergency response, and consultant fees, against the Respondents; and

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

COUNT II

WATER POLLUTION

1-22. Complainant realleges and reincorporates by reference herein paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. On July 2, 2001, on or about 11:00 a.m., the entire contents of the AURA waste had leaked out of the ONYX tanker and been released, either to the ambient air, onto public highways, or onto the soil, asphalt and stone surfaces at and around the Site.

24. The AURA waste drained for about 1000 feet on the asphalt parking lot at the Site before reaching two sand dikes which had been installed to try to prevent the AURA waste from flowing down the Oasis access ramps.

25. Only approximately 100 to 150 gallons of AURA waste was captured by the sand dikes.

26. Up to 1850 gallons of AURA waste entered two storm sewers and a drainage way, which had water in them, one on the east and one on the west end of the Site.

27. The storm sewers lead to a drainage-way which travels along the shoulder of I-94 and ultimately the water discharges into a nearby field.

28. Section 3.345 of the Act, 415 ILCS 5/3.545 (2002), defines "water pollution" as:

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.

29. The AURA waste released from the unlined ONYX tanker entered and impacted storm sewers containing waters and a drainage way within several hundred yards of the point of release.

30. Some residual liquid acid waste remained in the drainage way until at least July 5, 2001.

31. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), defines "waters of the State" as:

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.

32. Waters in storm sewers and drainage ways are waters of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

33. AURA waste discharged from the unlined ONYX tanker into water containing storm sewers and drainage ways, waters of the State of Illinois, contained the heavy metals Cadmium (USEPA hazardous waste "HW" Number D006), Chromium (USEPA HW

Number D007), Lead (USEPA HW Number D008), and Silver (USEPA HW Number D011) ("heavy metals" collectively).

34. The AURA waste containing the heavy metals can alter the physical, thermal, chemical, biological or radioactive properties of the waters of the State in the storm sewers and drainage ways at the Site.

35. The AURA waste containing the heavy metals, discharged into the waters of the State from the unlined ONYX tanker, are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

36. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

37. By causing or allowing the AURA waste containing the heavy metals to be discharged from the unlined ONYX tanker and enter waters of the state, both through storm sewers and drainage ways, Respondents caused, threatened, or allowed water pollution in Illinois in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant, and against Respondents with respect to Count II:

1. Finding that Respondents have caused, threatened or allowed violations of Section 12(a) of the Act;
2. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act;
3. Ordering Respondents to implement procedures for the selection of tankers, the cleaning of tankers between loads, and the approval of tankers by customers seeking to ship acidic or highly corrosive or reactive wastes or materials;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against each Respondent for each and every violation of the Act and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;
5. Taxing all costs in this action, including attorney, expert witness, emergency response, and consultant fees against Respondents; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

CREATING A WATER POLLUTION HAZARD

II. VIOLATIONS BY ONYX

1-35. Complainant realleges and reincorporates by reference herein paragraphs 1 through 35 of Count II as paragraphs 1 through 35 of this Count III.

36. Section 12 (d) of the Act, 415 ILCS 5/12(d) (2002), provides as follows:

No person shall:

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

37. On July 5, 2001, three days after the release of the AURA waste, some residual acid was observed on land some 150 feet into the drainage-way at the site.

38. ONYX, by allowing AURA waste to reach the drainage-way traveling along the shoulder of I-94, deposited AURA waste in such a place and manner so as to create a water pollution hazard.

39. ONYX, by allowing AURA waste to remain in the drainage-way for three days, deposited AURA waste into the drainage-way in such a place and manner so as to create a water pollution hazard.

40. By causing or allowing the discharge of AURA waste containing heavy metals, to be deposited on land in such place and manner manner so as to create a water pollution hazard and so that future migration of the contaminants could occur, Onyx violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Onyx with respect to this Count III:

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

2. Finding that Onyx has caused or allowed a violation of Section 12(d) of the Act;

3. Ordering Onyx to cease and desist from any further violations of Section 12(d) of the Act;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Onyx for each and every violation of the Act and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;

5. Assessing all costs against Onyx, including attorney, expert witness, emergency response, and consultant fees expended by the State in its pursuit of this action; and

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

COUNT IV

CAUSING OR ALLOWING OPEN DUMPING AND ABANDONING OF WASTE

1-22. Complainant realleges and reincorporates by reference herein paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count IV.

23. The heavy metals, contained in the AURA waste which were discharged at the Site by Onyx, were present in the soils in

detectable quantities at or near the Site until about October 3, 2001.

24. Section 3.535 of the Act, 415 ILCS 5/3.535 (2002), defines "waste" as:

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, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

25. Section 3.385 of the Act, 415 ILCS 5/3.385 (2002), defines "REFUSE" as waste.

26. The AURA waste containing the heavy metals deposited at and around the Site and which remained at the Site from July 2, 2001, until about October 3, 2001, are "wastes" and "refuse" as those terms are defined in Section 3.535 and 3.385 of the Act.

27. Section 3.185 of the Act, 415 ILCS 5/3.185 (2002), defines "disposal" as:

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.

28. Section 3.460 of the Act, 415 ILCS 5/3.460 (2002), defines "site" as follows:

"SITE" means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

29. The land on which the AURA waste, containing the heavy metals, was discharged, deposited, dumped, and/or placed is a "disposal site," as that term is defined by Section 3.460 of the Act.

30. Section 3.445 of the Act, 415 ILCS 5/3.445 (2002), defines "sanitary landfill" as:

A facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

31. The Site, where the AURA waste containing the corrosive liquid waste was released, has never been permitted by the Illinois EPA for the disposal of waste and thus does not meet the

definition of a "Sanitary Landfill" as that term is defined by Section 3.445 of the Act.

32. Section 3.305 of the Act, 415 ILCS 5/3.305(2002), defines "open dumping" as:

The consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

33. The refuse was shipped by AURA and hauled by ONYX from offsite sources and consolidated at a Site which does not fulfill the requirements of a "Sanitary Landfill" as defined in Section 3.445 of the Act, 415 ILCS 5/3.445(2002).

34. By causing or allowing the wastes consisting of the corrosive liquid waste containing the heavy metals, to be consolidated, deposited, dumped and/or placed on the Site, from July 2, 2001 to October 3, 2001, Onyx engaged in open dumping, as that term is defined in Section 3.305 of the Act.

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

No person shall:

- (a) Cause or allow open dumping of any waste.
- (b) Abandon, dump, or deposit any waste upon the public highways or other public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.

36. Interstate I-94 is a public highway and does not fulfill the requirements of a "Sanitary Landfill" as that term is defined by Section 3.445 of the Act, 415 ILCS 5/3.445 (2002).

37. Onyx, by causing or allowing AURA waste to be dumped, deposited, or discharged onto I-94, dumped or deposited waste upon a public highway.

38. Onyx by its actions as alleged herein, has violated Section 21(a) and (b) of the Act, 415 ILCS 5/21(a) and(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent Onyx with respect to this Count IV:

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

2. Finding that Onyx has caused or allowed violations of Section 21(a) and (b) of the Act;

3. Ordering Onyx to cease and desist from any further violations of Section 21(a) and (b) of the Act;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Onyx for each and every violation of the Act and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violation continued;

5. Assessing all costs against Onyx, including attorney, expert witness, emergency response, and consultant fees expended by the State in its pursuit of this action; and

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

PEOPLE OF THE STATE OF ILLINOIS

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Complaint, Notice of Filing, and Certificate of Service via United States Postal certified mail upon:

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