

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOV 16 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)

Complainant,)

v.)

WIENMAR, INC., an Illinois)
corporation, d/b/a MARBLE WORKS,)

Respondent.)

PCB 05- 95

(Enforcement – Air)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that we have today filed with the Illinois Pollution Control Board a Complaint, a true and correct copy of which is attached 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 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.

Financing to correct the violations alleged may be available through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 *et seq.*

Respectfully submitted,

LISA MADIGAN, Attorney General
of the State of Illinois

By: 

REBECCA A. BURLINGHAM
Senior Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
(312) 814-3776

DATE: November 16, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Thomas J. Wienckowski, President
Wienmar, Inc.
225 Southwick
Schaumburg, IL 60173

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

NOV 16 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)

Complainant,)

v.)

WIENMAR, INC., an Illinois)
corporation, d/b/a MARBLE WORKS,)

Respondent.)

PCB 05- 95

(Enforcement - Air)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, WIENMAR, INC., an Illinois corporation, d/b/a MARBLE WORKS, as follows:

COUNT I

OPERATING A MAJOR STATIONARY SOURCE WITHOUT A CAAPP PERMIT

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 ("Illinois EPA") pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31 (2004)("Act").

2. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2004), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent Wienmar, Inc. ("Wienmar") was and is an Illinois corporation in good standing.

4. From approximately February 2002, or a date better known to Wienmar, through the date of filing of this Complaint, Wienmar has owned and/or operated a facility located at 1601 La Fox, South Elgin, Kane County, Illinois, where it manufactures molded resin products such as sinks, counter tops and tubs ("facility"). Wienmar operates the facility under the assumed name of Marble Works. In February 2002, Wienmar moved its operations from Sundown Road, South Elgin, to the current location at 1601 La Fox, South Elgin.

5. Operations at the facility consist of marble casting, gelcoat spray lay-up, resin storage and miscellaneous cleaning and mold preparation. Emission units at the facility include a gelcoat spray booth, the marble casting operation and resin storage tanks.

6. Volatile organic material ("VOM") is emitted from the gelcoat spray and marble casting operations. Since at least February 2002, or a date better known to Wienmar, and continuing through the date of filing of this Complaint, Wienmar has discharged or emitted VOM from the facility into the environment.

7. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), contains the following definition:

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

8. VOM is a contaminant, as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

9. Section 201.102 of the Illinois Pollution Control Board ("Board") Air Pollution

Regulations, 35 Ill. Adm. Code 201.102, contains the following definitions:

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations.

10. Wienmar's gelcoat spray and marble casting operations described herein emit, or are capable of emitting, VOM, a specified air contaminant, to the atmosphere.

11. In February 2002, or a date better known to Wienmar, Wienmar installed the gelcoat spray booth and the marble casting equipment at the facility.

12. The equipment described in paragraph 11, above, constitutes new emission sources, as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

13. Section 3.115 of the Act, 415 ILCS 5/3.115 (2004), contains the following definition:

"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.

14. Because Wienmar's gelcoat and marble casting operations emit, or are capable of emitting, VOM to the atmosphere, they are capable of causing or contributing to air pollution.

15. When Wienmar moved its operations in February 2002 from Sundown Road in

South Elgin to its current facility on La Fox in South Elgin, the facility had the potential to emit more than 25 tons per year of VOM, and emitted greater than 10 tons per year of styrene.

16. Section 112(d) of the Clean Air Act ("CAA"), 42 USC 7312(d), titled, *Emissions Standards*, provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation.

17. Pursuant to Section 112(b) of the CAA, 42 USC 7412(b), the Administrator of the USEPA listed styrene as a hazardous air pollutant ("HAP").

18. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), 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.

19. Wienmar is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

20. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2004), provides as follows:

6. Prohibition

* * *

- 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.

21. Section 39.5(1) of the Act, 415 ILCS 5/39.5 (2004)(1), 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.

“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.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant
.....

“Regulated Air Pollutant” means the following:

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

*

*

*

(5) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Clean Air Act, including Sections 112(g), (j) and (r).

22. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2)(2004), provides in pertinent part, as

follows:

a. Sources subject to this Section shall include:

1. 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:

* * * *

- i. A major source under Section 112 of the Clean Air Act, which is defined as:

- A. For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Clean Air Act . . .

* * *

- 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 volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or . . . to emit 25 tons or more per year in areas classified as severe. . .

23. The Illinois EPA Rules pertaining to the Clean Air Act Permit Program Procedures,

35 Ill. Adm. Code Part 270 *et seq.*, became effective on March 7, 1995.

24. Section 270.107 of the Illinois EPA Rules, 35 Ill. Adm. Code 270.107, provides as

follows:

This Part applies to the owner or operator of any source

required to have an operating permit pursuant to Section 39.5 of the Act.

25. Section 270.301(b) of the Illinois EPA Rules, 35 Ill. Adm. Code 270.301(b), provides as follows:

THE OWNER OR OPERATOR OF A NEW CAAPP SOURCE SHALL SUBMIT ITS COMPLETE CAAPP APPLICATION CONSISTENT WITH Section 39.5(5) of the Act.

26. Section 39.5(5)(x) of the Act, 415 ILCS 5/39.5(5)(x)(2004), provides as follows:

The owner or operator of a new CAAPP source shall submit its complete CAAPP application consistent with this subsection within 12 months after commencing operations of such source.

27. The equipment described in paragraph 5 of Count I of this Complaint emits or may emit VOM and styrene, each a "regulated air pollutant", as defined by Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2004).

28. Since February 2002, the exact date being better known to Wienmar, and continuing through the date of filing of this Complaint, the facility has emitted or may emit a regulated pollutant. Therefore, the facility is a stationary source, as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2004).

29. Wienmar 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)(2004).

30. The facility is located in a severe non-attainment area for ozone.

31. The facility is a major stationary source, as that term is defined in Section 39.5(2)(c)(i)(A) and (iii)(A) of the Act, 415 ILCS 5/39.5(2)(c)(i)(A) and (iii)(A)(2004).

Therefore, the Clean Air Act Permit Program, set forth in Section 39.5 of the Act, 415 ILCS

5/39.5 *et seq.* (2004), and 35 Ill. Adm. Code 270.107, the corresponding Part 270 Illinois EPA Rules, 35 Ill. Adm. Code 270 *et seq.*, pursuant to the Section 270.107 of the Illinois EPA Rules, 35 Ill. Adm. Code 270.107, are applicable to the facility.

32. Section 270.105 of the Illinois EPA Rules, 35 Ill. Adm. Code 270.105, contains the following definition:

“New CAAPP Source” means a CAAPP source that is not an existing CAAPP source.

33. The facility is a new CAAPP source, as that term is defined in Section 270.105 of the Illinois EPA Rules, 35 Ill. Adm. Code 270.105.

34. As a manufacturer of molded resin products, the facility’s SIC code is 3281.

Wienmar began operating its marble casting, gelcoat spray lay-up operations, resin storage tanks and cleaning operations at the facility in February 2002, the exact date better known to Wienmar. As a CAAPP source, Wienmar was required to submit a CAAPP permit application to the Illinois EPA by February 2003. Wienmar failed to submit its CAAPP permit application to the Illinois EPA by February 2003.

35. On March 3, 2003, Wienmar submitted a CAAPP permit application for air emission sources located at the facility.

36. Because this application was untimely, the facility did not receive a “shield” from the requirement to operate under a CAAPP permit during the Illinois EPA’s review of the application. Accordingly, from at least February 2003 through the date of filing of this Complaint, Wienmar has operated a CAAPP source without first timely submitting a complete CAAPP permit application and obtaining a CAAPP permit, pursuant to Section 39.5(6)(b) of the

Act, 415 ILCS 5/39.5(6)(b)(2004), and Section 270.301(b), 35 Ill. Adm. Code 270.301(b).

37. By not timely submitting a complete CAAPP permit prior to operating a facility that is regulated by the provisions of the CAAPP and by subsequently operating a facility without the requisite CAAPP permit, Wienmar violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2004), and Section 270.301(b), 35 Ill. Adm. Code 270.301(b).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WIENMAR, INC.:

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

2. Finding that Respondent has violated Section 39.5(6)(b) of the Act and 35 Ill. Adm. Code 270.301(b);

3. Ordering the Respondent to cease and desist from any further violations of Section 39.5(6)(b) of the Act and 35 Ill. Adm. Code 270.301(b);

4. Assessing a civil penalty of \$50,000.00 against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000.00 per day for each day that the violations continued;

5. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondent; and

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

COUNT II

FAILURE TO COMPLY WITH NEW SOURCE REVIEW REQUIREMENTS

1-19. Complainant realleges and incorporates by reference herein paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of this Count II.

20. 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.

21. Section 203.201 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201, provides, in pertinent part, as follows:

Prohibition

In any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this Part for that pollutant. In areas designated nonattainment for ozone, this prohibition shall apply to new major stationary sources or major modifications of sources that emit [VOM] or nitrogen oxides. Revisions to this Part which were adopted to implement the Clean Air Act Amendments of 1990 shall not apply to any new major stationary source or major modification for which a permit application was submitted . . . November 15, 1992 for nitrogen oxides and [VOM] for sources located in all ozone nonattainment areas.

22. Kane County is located in a severe nonattainment area for ozone.

23. Section 203.112 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

203.112, provides, in pertinent part, the following definition:

Building, Structure and Facility

The terms "building", "structure", and "facility" include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively) incorporated by reference in 35 Ill. Adm. Code 720.111.

24. Section 203.136 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

203.136, provides the following definition:

Stationary Source

"Stationary Source" means any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the Act or this Chapter or by USEPA under the Clean Air Act (42 U.S.C. 7401 *et seq.*).

25. The facility is a "facility" and a "stationary source", as those terms are defined in Sections 203.112 and 203.136, respectively, of the Board Air Pollution Regulations.

26. Section 203.206 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

203.206, provides the following definition:

Major Stationary Source

(a) For purposes of this Part, the term "major stationary source" shall exclusively mean "building, structure and facility," as those terms are defined in Section 203.113 of this Part.

(b) The following constitute a major stationary source:

- (1) For an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit volatile organic material in an amount equal to or greater than the following:

* * *

- (C) 25 tons per year in an area classified as severe nonattainment for ozone.

27. On March 14, 2001, the Illinois EPA issued to Marble Works, the assumed name of Wienmar, Joint Construction and Lifetime Operating Permit number 00120001 authorizing the construction and operation of a marble casting operation, gelcoat spray lay-up operation, resin storage tank, and miscellaneous cleaning and mold prep operations at the 1601 La Fox, South Elgin, facility.

28. At the time of Wienmar's February 2002 move to the La Fox facility, the facility constituted a "major stationary source" under Section 203.206 of the Board Air Pollution Regulations because it had the potential to emit 25 tons per year or more of VOM and was located in a severe nonattainment area for ozone.

29. Although Wienmar obtained a construction permit from the Illinois EPA for the equipment at the La Fox location, the permit did not address compliance with 35 Ill. Adm. Code Part 203.

30. By constructing a major stationary source in February 2003, or a date better known to Wienmar, without demonstrating compliance with 35 Ill. Adm. Code Part 203, Wienmar violated Section 203.201 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

203.201, and Section 9(a) of the Act, 415 ILCS 5/9(a)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WIENMAR, INC.:

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

2. Finding that Respondent has violated Section 9(a) of the Act and 35 Ill. Adm. Code 203.201;

3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act and 35 Ill. Adm. Code 203.201;

4. Assessing a civil penalty of \$50,000.00 against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000.00 per day for each day that the violations continued;

5. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondent; and

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

COUNT III

FAILURE TO SEEK MACT DETERMINATION

1-33. Complainant realleges and incorporates by reference herein paragraphs 1 through 33 of Count I as paragraphs 1 through 33 of this Count III.

34. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)(2004), provides as follows:

No person shall:

- (1) Violate any provisions of Sections 111, 112, 165, 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

35. Section 112(g)(2)(B) of the Clean Air Act, 42 USC 7412(g)(2)(B)(2004), provides as follows:

After the effective date of a permit program under title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

36. At the time Wienmar constructed and began operating the facility on La Fox in South Elgin in February 2002, it was a major source of HAPs. Although Wienmar obtained a construction permit for the facility, it did not seek a determination from the Illinois EPA relative to maximum achievable control technology (MACT).

37. Wienmar, by its actions and omissions as alleged herein, violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)(2004), and 42 USC 7412(g)(2)(B).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WIENMAR, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9.1(d)(1) of the Act and 42 USC 7412(g)(2)(B);
3. Ordering the Respondent to cease and desist from any further violations of

Section 9.1(d)(1) of the Act and 42 USC 7412(g)(2)(B);

4. Assessing a civil penalty of \$50,000.00 against Respondent for each violation of the Act, with an additional penalty of \$10,000.00 per day for each day that the violations continued;
5. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

FAILURE TO COMPLY WITH EMISSION REDUCTION MARKET SYSTEM REQUIREMENTS

1-42. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I and paragraph 20 and paragraphs 22 through 28 of Count II as paragraphs 1 through 42 of this Count IV.

43. Section 9.8(b) of the Act, 415 ILCS 5/9.8(b) (2004), provides as follows:

Emissions reduction market system.

* * *

- b. The Agency shall design an emissions market system that will assist the State in meeting applicable post-1996 provisions under the [Clean Air Act Amendments] of 1990, provide maximum flexibility for designated sources that reduce emissions, and that takes into account the findings of the national ozone transport assessment, existing air quality conditions, and resultant emissions levels necessary to achieve or maintain attainment.

44. Section 205.310 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

205.310, provides, in pertinent part, as follows:

ERMS Applications

- a) The owner or operator of each participating source or new participating source shall submit to the Agency an ERMS application in accordance with the following schedule:

* * *

- 3) For a new participating source or for a major modification on any source existing prior to May 1, 1999, that is subject to 35 Ill. Adm. Code 203 based on VOM emissions, at the time a construction permit application is submitted or due for the source or modification, whichever come first.

- 45. Section 205.130 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

215.130, provides, in pertinent part, the following definitions:

“New participating source” means a source not operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has or will have seasonal emissions of at least 10 tons of VOM.

“Chicago ozone nonattainment area” means the area composed of Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County.

- 46. Part 205 of 35 Ill. Adm. Code, titled “Emissions Reduction Market System”, became effective on November 27, 1997.

- 47. In addition, the facility is in a severe ozone nonattainment area and was required to obtain a CAAPP permit, as alleged in Count I, above.

- 48. Therefore, the facility was a new participating source subject to the requirements defined in Sections 205.200 and 205.310 of the Board Air Pollution Regulations.

49. As a major source, Wienmar was required to submit an Emissions Reduction Market System ("ERMS") baseline application to the Illinois EPA by December 1, 2000, the date on which Wienmar submitted its application for construction permit number 00120001, issued on March 14, 2001.

50. However, Wienmar did not submit an ERMS baseline application to the Illinois EPA until March 3, 2004, when Wienmar submitted its CAAPP permit application to the Illinois EPA.

51. Wienmar, by its actions and omissions as alleged herein, violated Section 205.310(a)(3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a)(3).

52. By violating Section 205.310(a)(3) of 35 Ill. Adm. Code, Wienmar also violated Section 9.8(b) of the Act, 415 ILCS 5/9.8(b)(2004).

53. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WIENMAR, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9.8(b) of the Act and 35 Ill. Adm. Code 205.310(a)(3);
3. Ordering the Respondent to cease and desist from any further violations of

Section 9.8(b) of the Act and 35 Ill. Adm. Code 205.310(a)(3);

4. Assessing a civil penalty of \$50,000.00 against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000.00 per day for each day that the violations continued;

5. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondent; and

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

COUNT V

VIOLATION OF CONSTRUCTION/OPERATING PERMIT CONDITIONS AND REGULATORY REQUIREMENTS

1-29. Complainant realleges and incorporates by reference herein paragraphs 1 through 28 of Count I, and paragraph 27 of Count II, as paragraphs 1 through 29 of this Count V.

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

No person shall:

*

*

*

Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

31. Condition 3 of Joint Construction and Lifetime Operating Permit number 001200011, issued to Marble Works, the assumed name of Wienmar, provides in pertinent part

as follows:

Emissions of volatile organic material (VOM) and operation of the marble casting and gelcoat operation shall not exceed the following limits:

<u>Material</u>	<u>Usage (Tons/Mo)</u>	<u>(Tons/Yr)</u>	<u>VOM/Styrene Content</u>	<u>VOM/Styrene (Tons/Mo)</u>	<u>Emissions (Tons/Yr)</u>
Gelcoat	1.85	18.5	50%	0.60	5.98
Resin	4.78	478	31.4%	<u>0.30</u>	<u>3.00</u>
Total:			0.90	8.98	

These limits define the potential emission of VOM and are based on maximum material usage, maximum VOM content, AP-42 Standard Emission Factors, and USEPA CFA emission factors. Compliance with annual limits shall be determined on a monthly basis from the sum of the data for the current month plus the preceding 11 months.

32. Wienmar violated the 1.85 tons per month gelcoat usage limit each month in 2002. The exceedances ranged from 2.51 tons in March and in November through 3.83 tons in October.

33. Wienmar violated the 4.78 tons per month resin usage limit each month in 2002. The exceedances ranged from 8.94 tons in June through 53.11 tons in November.

34. Wienmar exceeded its monthly gelcoat VOM emission limit of 0.6 tons in January, April, May, June and August through and including December 2002. The exceedances ranged from 0.65 tons in January through 0.87 tons in October.

35. Wienmar exceeded its monthly resin VOM emission limit of 0.3 tons each month in 2002, except June. The exceedances ranged from 0.37 tons in December through 0.95 tons in August.

36. Wienmar emitted 8.35 tons gelcoat VOM emissions in 2002, in excess of the 5.98 tons per year limit. Wienmar emitted 6.05 tons resin VOM emissions in 2002, in excess of the

3.00 tons per year limit.

37. From January through and including November 2003, Wienmar violated the 1.85 tons per month gelcoat usage limit. The exceedances ranged from 2.27 tons in July through 3.88 tons in June.

38. Wienmar exceeded its monthly resin usage limit of 4.78 tons each month from January through September 2003. The exceedances ranged from 30.82 tons in April through 52.52 tons in May.

39. Wienmar exceeded its monthly gelcoat VOM emission limit of 0.6 tons in January, February, March, May, June, August and September 2003. The exceedances ranged from 0.61 tons in January through 0.86 in September.

40. Wienmar exceeded its monthly resin VOM emission limit of 0.3 tons each month in 2003. The exceedances ranged from 0.42 tons in July through 0.65 tons in May.

41. Wienmar emitted 7.78 tons gelcoat VOM emissions in 2003, in excess of the 5.98 tons per year limit. Wienmar emitted 7.83 tons resin VOM emissions in 2003, in excess of the 3.00 tons per year limit.

42. In 2002 and 2003, Wienmar violated the monthly and annual usage, and monthly and annual emission limitations as set forth in its permit, as alleged in paragraphs 32 through 41, above.

43. Wienmar, by its actions as alleged herein, violated Condition 3 of Joint Construction and Lifetime Operating Permit number 001200011.

44. Condition 7 of Joint Construction and Lifetime Operating Permit number 001200011 provides as follows:

The emissions of Hazardous Air Pollutants (HAP) as listed in Section 112(b) of the Clean Air Act shall be less than 10 tons/year of any single HAP and 25 tons/year of any combination of such HAPs. As a result of this condition, this permit is issued based on the emission of all HAPs from this source not triggering the requirements to obtain a Clean Air Act Permit Program Permit (CAAPP), and Section 112(g) of the Clean Air Act.

45. In 2002, the facility's HAP emissions were 12.17 tons. The facility's styrene emissions in 2003 were 11.17 tons.

46. Wienmar, by its actions as alleged herein, violated Condition 7 of Joint Construction and Lifetime Operating Permit number 001200011.

47. Section 218.301 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.301, provides as follows:

No person shall cause or allow the discharge of more than 3.6 kg/hr (8 lbs/hr) of organic material into the atmosphere from any emission unit, except as provided in Sections 218.302, 218.303, 218.304 of this Part and the following exception: If no odor nuisance exists the limitation of this Subpart shall apply only to photochemically reactive material.

48. Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950, contains the following definition:

"Emission unit" means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

49. The gelcoat spray booth and the marble casting operation at the facility are "emission units", as that term is defined in 35 Ill. Adm. Code 211.1950.

50. Condition 10 of Joint Construction and Lifetime Operating Permit number 00120001 provides as follows:

This permit is issued based upon the volatile organic material (VOM) emissions from the above referenced emission units being subject to 35 Ill. Adm. Code 218.301. Therefore, emission of VOM from any single emission unit shall not exceed 8 lb/hr. If no odor nuisance exists this limitation shall apply only to photochemically reactive materials.

51. The facility may have emitted more than 8 pounds per hour of VOM from its operations when using an atomized gelcoat. Wienmar has failed to demonstrate to the Illinois EPA that its emissions in 2002 and 2003 did not violate the 8 pounds per hour rule.

52. Wienmar, by its actions and omissions as alleged herein, violated Condition 10 of Joint Construction and Lifetime Operating Permit number 001200011 and 35 Ill. Adm. Code 218.301.

53. Condition 20(b) of Joint Construction and Lifetime Operating Permit number 00120001 provides as follows:

The Permittee shall make the above determinations as follows:

i. Annual Usage: Compute the weight of each (i.e., raw polyester styrene resin, gelcoat, solvent, etc.) used each month by the 15th of the following month. By the 15th of each month, add the latest monthly material usage used for the month to the monthly usage for the 11 previous months (to obtain the annual usage of each material)

ii. Annual Emissions: compute the emission of each material (i.e., raw polyester styrene resin, gelcoat, solvent, etc.) used each month by the 15th of the following month. By the 15th of each month, add the latest monthly material emissions for the month to the emission of the 11 previous months (to obtain the annual emission of each material).

iii. The monthly determination of compliance, for the month of record, shall be performed by the 15th of the following month. By the 15th of each month, add the latest calculated monthly emissions and material usages for the

month of record to the calculated emissions and material usages of all the 11 previous months (to obtain the annual emissions of each material).

54. From March 2001 through January 2004, Wienmar failed to compute monthly and annual emissions and usages by the 15th of each month, as required by its permit.

55. Wienmar, by its actions and omissions as alleged herein, violated Condition 20(b) of Joint Construction and Lifetime Operating Permit number 001200011.

56. Section 218.672(a)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.672(a)(1), provides in pertinent part as follows:

Any owner or operator of a polyester resin products manufacturing process which is subject to the requirements of this Subpart shall comply with the following:

(1) By a date consistent with Section 218.106 of this Part, or upon initial start-up of a process subject to this Subpart, the owner or operator of the subject process shall certify to the Agency that the process will be in compliance with Section 218.666(a) of this Subpart on and after a date consistent with Section 218.106 of this part, or on and after the initial start-up date as demonstrated by testing in accordance with Section 218.668 of this Subpart.

57. Condition 13 of Joint Construction and Lifetime Operating Permit number 00120001 provides in pertinent part as follows:

Pursuant to 35 Ill. Adm. Code Section 218.672, the owner or operator of a polyester resin products manufacturing process shall upon initial start-up of a process subject to this Subpart certify to the Illinois EPA that the process will be in compliance with Section 218.666(a).

58. The facility's operations are subject to the requirements of 35 Ill. Adm. Code 218,

Subpart CC. Wienmar was required to certify to the Illinois EPA that the facility's operations were in compliance with Subpart CC upon start-up at the La Fox location in February 2002. Wienmar did not submit the required certification until February 18, 2004.

59. Wienmar, by its actions and omissions as alleged herein, violated Condition 13 of Joint Construction and Lifetime Operating Permit number 001200011 and 35 Ill. Adm. Code 218.672(a)(1).

60. Section 218.672(a)(4)(A) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.672(a)(4)(A), provides as follows:

On and after a date consistent with Section 218.106 of this Part, the owner or operator of a subject process shall notify the Agency:

(A) Of any violation of the operating requirements of this Subpart by sending a copy of such record to the Agency within 30 days following the occurrence of the violation; and

61. Condition 16(a) of Joint Construction and Lifetime Operating Permit number 00120001 provides as follows:

Pursuant to 35 Ill. Adm. Code Section 218.672, on and after the initial start-up date, the owner or operator of a subject process shall notify the Illinois EPA:

a. Of any violation of the operating requirements of this Subpart by sending a copy of such record to the Illinois EPA within 30 days following the occurrence of the violation; and

62. Wienmar failed to notify the Illinois EPA of Wienmar's failure to timely certify the facility's compliance status with Subpart CC.

63. Wienmar, by its actions and omissions as alleged herein, violated Condition 16(a) of Joint Construction and Lifetime Operating Permit number 001200011 and 35 Ill. Adm. Code

218.672(a)(4)(A).

64. Condition 22 of Joint Construction and Lifetime Operating Permit number 00120001 provides as follows:

If there is an exceedance of the requirements of this permit as determined by the records required by this permit, the Permittee shall submit a report to the Illinois EPA's Compliance Section in Springfield, Illinois within 30 days after the exceedance. The report shall include the emissions released in accordance with the recordkeeping requirements, a copy of the relevant records, and a description of the exceedance or violation and efforts to reduce emissions and future occurrences.

65. As alleged in paragraphs 32 through 63 of this Count V, in 2002 and 2003 Wienmar violated numerous conditions of its permit. Moreover, Wienmar failed to report its permit exceedances and violations to the Illinois EPA within 30 days after the violation.

66. Wienmar, by its actions and omissions as alleged herein, violated Condition 22 of Joint Construction and Lifetime Operating Permit number 001200011.

67. As a person who, from at least March 14, 2001 through the date of filing of this Complaint, operated a gelcoat spray and marble casting equipment at the La Fox facility, which equipment is capable of causing or contributing to air pollution, in violation of conditions imposed by the facility's construction and operating permit, Wienmar violated Section 9(b) of the Act, 415 ILCS 5/9(b)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WIENMAR, INC.:

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 Section 9(b) of the Act, Conditions 3, 7, 10, 20(b), 13, 16(a) and 22 of Joint Construction and Lifetime Operating Permit number 001200011, and 35 Ill. Adm. Code 218.301, 218.672(a)(1) and 218.672(a)(4)(A);

3. Ordering the Respondent to cease and desist from any further violations of Section 9(b) of the Act, Conditions 3, 7, 10, 20(b), 13, 16(a) and 22 of Joint Construction and Lifetime Operating Permit number 001200011, and 35 Ill. Adm. Code 218.301, 218.672(a)(1) and 218.672(a)(4)(A);

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

5. Ordering the Respondent to pay all costs, including attorney, expert witness 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 VI

FAILURE TO TIMELY SUBMIT ANNUAL EMISSIONS REPORTS

1-42. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 31 of Count I, paragraphs 20 through 28 of Count II, and paragraphs 48 and 49 of Count V as paragraphs 1 through 42 of this Count VI.

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

The owner or operator of any emission unit or air pollution

control equipment, unless specifically exempted in this Section, shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units 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 purpose of the Act and this Chapter.

44. Section 254.132 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

254.132, provides in pertinent part as follows:

Failure to File a Complete Report

- a) 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).

45. Section 254.137(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code

254.137(a), provides as follows:

Reporting Schedule

- a) All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

46. The Annual Emissions Report for calendar year 2001 for Wienmar's Sundown Road facility was due on or before May 1, 2002. Wienmar did not submit the report to the Illinois EPA until February 18, 2004.

47. The Annual Emissions Report for calendar year 2002 for Wienmar's La Fox facility was due on or before May 1, 2003. Wienmar failed to submit an Annual Emissions Report that accurately reflected its emissions in 2002 until February 18, 2004.

48. By failing to timely submit Annual Emissions Reports for both sources for the

years 2001 and 2002, Wienmar violated Sections 201.302(a), 254.132(a) and 254.137(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), 254.132(a) and 254.137(a).

49. By violating regulations or standards adopted by the Board under the Act, Wienmar also violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WIENMAR, INC.:

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 Section 9(a) of the Act and 35 Ill. Adm. Code 201.302(a), 254.132(a) and 254.137(a);
3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act and 35 Ill. Adm. Code 201.302(a), 254.132(a) and 254.137(a);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of continued violation;
5. Ordering the Respondent to pay all costs, including attorney, expert witness 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

LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

REBECCA A. BURLINGHAM
Senior Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3776

CERTIFICATE OF SERVICE

I, REBECCA A. BURLINGHAM, an Assistant Attorney General in this case, do certify that I caused to be mailed this 16th day of November, 2004, the foregoing Notice of Filing and Complaint upon the person listed on said Notice by certified mail in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.


REBECCA A. BURLINGHAM