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JUN 9 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

| | |
|--------------------------------|---|
| PEOPLE OF THE STATE OF |) |
| ILLINOIS, |) |
| |) |
| Complainant, |) |
| |) |
| vs. |) |
| |) |
| ELYSIUM ENERGY, an Illinois |) |
| limited liability corporation, |) |
| |) |
| Respondent. |) |

PCB No. 03-223
(Enforcement)

NOTICE OF FILING

To: Charlie Northrup
Sorling, Northrup, Hanna, Cullen & Cochran, Ltd.
Attorneys for Elysium Energy
Suite 800, Illinois Building
607 East Adams
P.O. Box 5131
Springfield, IL 62705

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:



JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that I did on June 4, 2003, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Charlie Northrup
Sorling, Northrup, Hanna, Cullen & Cochran, Ltd.
Attorneys for Elysium Energy
Suite 800, Illinois Building
607 East Adams
P.O. Box 5131
Springfield, IL 62705

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 vs.)
)
 ELYSIUM ENERGY, an Illinois)
 limited liability corporation,)
)
 Respondent.)

PCB No. 03-223
(Enforcement)

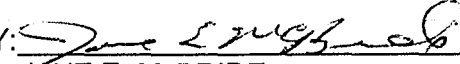
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JANE E. McBRIDE, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

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

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

BY: 
JANE E. McBRIDE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 6/4/03

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
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 Complainant,)
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 v.)
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 ELYSIUM ENERGY, an Illinois)
 limited liability corporation)
)
 Respondent.)

PCB No. 03-223
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, complains of Respondent, ELYSIUM ENERGY, an Illinois limited liability corporation, as follows:

**COUNT I
OPEN DUMPING
HAZARDOUS AND SPECIAL WASTE VIOLATIONS**

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent Elysium Energy is a limited liability corporation, registered in Illinois. The registered agent is Don Butler, C.T. Corporation, 208 South LaSalle Street, Chicago, IL 60604.

5. Respondent Elysium Energy owns and operates an operating oil field maintenance facility located on rural property near West Liberty, Jasper County, Illinois (the "facility"). The facility is located .4 miles west of the intersection of Route 130 and 25, about three-fourths mile west of West Liberty and 9.5 miles south of Newton, Illinois.

6. On August 27 and 28, 2001, the Illinois EPA conducted an inspection of the facility. At the time of the inspection, on August 27, 2001, the inspector observed an area of approximately 20 drums that had been crushed and were leaking a dark, amber-colored substance onto the ground. One of the drums had "scale remover" still legible on a label, but the rest of the drums were either unmarked or unreadable. The inspector observed that the substance leaking from the drums appeared and felt oily, and it emitted a heavy, oily, organic odor. A subsequent pH test of samples of the leaking substance did not register because of the organic nature of the spilled material.

7. At the time of the inspection on August 27, 2001, the inspector observed an area east of the drum site that consisted of a large burn pile with burned and charred wood, metal and the remains of at least two tires.

8. At the time of the inspection on August 27, 2001, a roll-off container was located outside a building on the west side of the property. The inspector observed that the container was filled with mostly old office furniture, but also contained one five-gallon bucket that was observed to be leaking an amber-colored liquid. The inspector observed that the liquid leaking from the five-gallon bucket was flowing out of the corner of the roll-off box onto the ground.

9. At the time of the inspection on August 27, 2001, the inspector observed several drums inside buildings or just outside the doors of several buildings that appeared to be in good shape and carried labels indicating the contents consisted of crankcase oil for heavy machinery.

10. On August 28, 2001, the Illinois EPA conducted another inspection of the facility. Two representatives of Respondent Elysium Energy accompanied the inspector at the time of the inspection. At the time of the inspection, the Respondent's representatives provided the inspector with copies of material safety data sheets ("MSDS") for the four types of chemicals handled at the plant. The four chemicals identified by the Respondent's representatives were scale remover, corrosion inhibitors, paraffin inhibitor and emulsion breakers. All of these chemicals contain a large percentage of petroleum naphtha, possibly making them a hazardous waste. The results of sampling indicated that the substances on the property at the spill site at the time of the inspection indicated the wastes were not regulated hazardous wastes and did not have hazardous characteristics. However, the wastes were of a nature considered special wastes.

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

'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, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Clean Water Act or source, special nuclear, or byproduct materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 9210 or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 96-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

12. Section 3.305 of the Act, 415 ILCS 5/3.305 (2002), provides, in pertinent part, as follows:

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

13. Section 21(a) of the Act, 415 ILCS 5/21(a) (2002), provides, in pertinent part, as

follows:

No person shall:

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

14. Section 21(e) of the Act, 415 ILCS 5/21(e) (2002), provides, in pertinent part, as

follows:

No person shall:

- e. 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.

15. Section 21(p) of the Act, 415 ILCS 5/21(p) (2002), provides, in pertinent part, as

follows:

- p. In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

- 1. litter;

- 3. opening burning

- 6. standing or flowing liquid discharge from the dump site;

16. Section 722.111 of the Illinois Pollution Control Board's (the "Board") Hazardous Waste Regulations, 35 Ill. Adm. Code 722.111, provide, in pertinent part:

Section 722.111 Hazardous Waste Determination

A person who generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, shall determine if that waste is a hazardous waste using the following method:

- a) The person should first determine if the waste is excluded from regulation

under 35 Ill. Adm. Code 721.104.

- b) The person should then determine if the waste is listed as a hazardous waste in 35 Ill. Adm. Code 721. Subpart D. (Board Note: Even if a waste is listed, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 and 40 CFR 260.22 (1986) to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.
- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in 35 Ill. Adm. Code 721. Subpart D, the generator shall then determine whether the waste is identified in 35 Ill. Adm. Code 721. Subpart C by either:
 - 1) Testing the waste according to the methods set forth in 35 Ill. Adm. Code 721. Subpart C, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
 - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
- d) If the generator determines that the waste is hazardous, the generator shall refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

17. Section 808.121 of the Board's Solid and Special Waste Regulations, 35 Ill.

Adm. Code 808.121, provide, in pertinent part:

Section 808.121 Generator Obligations

- a) Each person who generates waste shall determine whether the waste is a special waste. BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste.
- b) No person shall deliver special waste to a transporter unless the waste is accompanied by a manifest as specified in Section 808.122, and the transporter has a special waste hauling permit issued pursuant to 35 Ill. Adm. Code 809. The following are exceptions to this prohibition:
 - 1) The person is subject to the small quantity generator exemption of Section 808.123.
 - 2) The transporter and waste are subject to a transporter exemption under 35 Ill. Adm. Code 809.211.
 - 3) The Agency has determined pursuant to this Part that the waste is not a special waste.

- 4) The waste consists of municipal water or wastewater treatment plant sludge regulated under a sludge management plan approved by the Agency pursuant to 35 Ill. Adm. Code 309.208.
- c) No person shall cause, threaten or allow the treatment, storage or disposal of special waste in Illinois except:
 - 1) At a facility permitted or otherwise authorized to manage the special waste pursuant to 35 Ill. Adm. Code 703 or 807 (Sections 21(d) and (e) of the Act); or
 - 2) At a facility owned and operated by such person and subject to the on-site disposal exemption of Section 21(d) of the Act (Section 21(d) of the Act).
- d) No person shall deliver special waste to a transporter or a permitted facility without a supplemental wastestream permit.
- e) No person shall deliver to a transporter or permitted facility special waste with a wastestream identification number unless the waste conforms with the wastestream description in the wastestream classification determination.

18. By causing or allowing the consolidation and crushing of approximately 20 drums of special waste; the consolidation and burning of wood, metal and tires; the placement of a roll-off container containing waste and a bucket leaking a liquid substance onto the ground, and the existence and accumulation of drums containing crankcase oil at its facility, Respondent Elysium Energy has caused or allowed the open dumping of waste at its facility in a manner that has resulted in litter, opening burning and standing or flowing liquid discharge from the dump site and has thereby violated Sections 21(a), (e) and (p)(1), (3) and (6) of the Act, 415 ILCS 21(a), (e), (p)(1),(3) and (6)(2002).

19. By failing to determine if liquids contained in drums at the facility were hazardous wastes before the drums were disposed of by open dumping, Respondent Elysium Energy has violated 35 Ill. Adm. Code 722.111.

20. By failing to determine if liquids contained in drums at the facility were special wastes before the drums were disposed of by open dumping, Respondent Elysium has violated

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of the State of Illinois, respectfully request that the Board enter an order against the Respondent Elysium Energy:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2002);
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II
OPEN BURNING

- 1. Complainant realleges and incorporates herein by reference paragraphs 1 through 12 of Count I as paragraphs 1 through 12 of this Count II.
- 13. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), defines "air pollution" as follows:

'AIR POLLUTION' is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or

property.

14. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines "contaminant" as follows:

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

15. Section 3.300 of the Act, 415 ILCS 5/3.300 (2002), defines "open burning" as follows:

'OPEN BURNING' is the combustion of any matter in the open or in an open dump.

16. 35 Ill. Adm. Code 237.101 defines "open burning" as follows:

'OPEN BURNING:' the combustion of any matter in such a way that the products of the combustion are emitted to the open air without originating in or passing through equipment for which a permit could be issued under Section 9(b) of the Act (Environmental Protection Act, Ill. Rev. Stat. 1981, Ch. 111 ½, par. 1009(b)).

17. Section 9 of the Act, 415 ILCS 5/9 (2002), provides, in pertinent part, 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;

* * *

- c. Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act;

18. Section 21 of the Act, 415 ILCS 5/21 (2000), provides, in pertinent part, as follows:

No person shall:

* * *

- o. Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

* * *

- 4. open burning of refuse in violation of Section 9 of this Act;

19. By causing or allowing the combustion of wood, metal and tires in the open and in an open dump and, thereby, causing, threatening or allowing the discharge or emission of contaminants into the environment so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, and so as to violate regulations or standards adopted by the Board under this Act, Respondent Elysium Energy has violated Section 9(a) and (c) and Section 21(o)(4) of the Act, 415 ILCS 5/9(a), (c), and 21(o)(4) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of the State of Illinois, respectfully request that the Board enter an order against the Respondent Elysium Energy:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2002);
- E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT III
USED OR WASTE TIRE VIOLATIONS

1. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count II as paragraphs 1 through 16 of this Count III.

17. Section 55 of the Act, 415 ILCS 5/55 (2002), provides, in pertinent part, as follows:

a. No person shall:

1. Cause or allow the open dumping of any used or waste tire.
2. Cause or allow the open burning of any used or waste tire.

18. By causing or allowing the open dumping and open burning of used or waste tires at its facility, Respondent Elysium Energy has violated Section 55(a)(1) and (2) of the Act, 415 ILCS 5/55(a)(1),(2) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of the State of Illinois, respectfully request that the Board enter an order against the Respondent Elysium Energy:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for

each day during which each violation continued thereafter, pursuant to Section 42(a) of the Act,
415 ILCS 5/42(a)(2002);

- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

PEOPLE OF THE STATE OF ILLINOIS

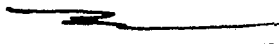
LISA MADIGAN,

Attorney General of the
State of Illinois,

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

Of Counsel

Jane E. McBride
Assistant Attorney General
500 S. Second Street
Springfield, Illinois 62706
217/782-9031

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General



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STATE OF ILLINOIS
OFFICE OF THE ATTORNEY GENERAL *Pollution Control Board*
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

03-223

June 4, 2003

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Elysium Energy***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jane E. McBride".

Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pp
Enclosures