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MAY 18 2004
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 14, 2004

PLB 04-201

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Southern Illinois Power Cooperative***

Dear Clerk Gunn:

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

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink that reads "Jennifer Bonkowski". The signature is written in a cursive style.

Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

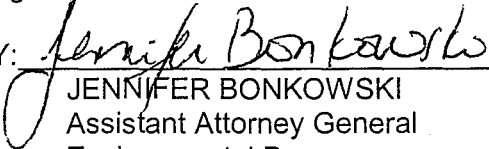
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2002), to correct the pollution alleged in the Complaint filed in this case.

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: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 14, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on May 14, 2004, 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:

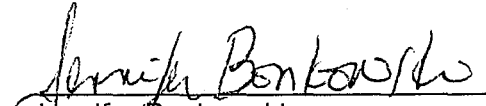
To: Tim Reeves
Registered Agent
11543 Lake of Egypt Road
Marion, IL 62959

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
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

a copy was also sent by First Class Mail with Postage thereon fully prepaid

To: Sheldon Zabel
Marilyn McFawn
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606-6473


Jennifer Bonkowski
Assistant Attorney General

This filing is submitted on recycled paper.

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CLERK'S OFFICE

MAY 18 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 SOUTHERN ILLINOIS POWER)
 COOPERATIVE, an Illinois)
 not-for-profit corporation,)
)
 Respondent.)

PCB NO. 04-201
(Enforcement)

APPEARANCE

I, JENNIFER BONKOWSKI, Assistant Attorney General of the State of Illinois, hereby file my appearance in this proceeding on behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS.

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: Jennifer Bonkowski
JENNIFER BONKOWSKI,
Assistant Attorney General

JENNIFER BONKOWSKI
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 5/14/04

MAY 18 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
)
 SOUTHERN ILLINOIS POWER)
 COOPERATIVE, an Illinois)
 not-for-profit corporation,)
)
 Respondent.)

PCB NO. 04-201
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of Respondent, SOUTHERN ILLINOIS POWER COOPERATIVE, as follows:

COUNT I

RECORD KEEPING 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. Southern Illinois Power Cooperative ("SIPC") located at 11543 Lake of Egypt Road, Marion, Williamson County, Illinois 62959, is an Illinois not-for-profit corporation and is in good standing. SIPC's registered agent is Tim Reeves, 11543 Lake of Egypt Road, Marion, Illinois 62959.

5. At all times relevant to this Complaint, SIPC operated a fossil fuel-fired power generating plant in Marion, Illinois. Emission sources at the facility include a boiler with an associated electrostatic precipitator and flue gas desulfurization system (Unit #4). Unit #4 is subject to a New Source Performance Standard (NSPS) for fossil fuel-fired steam generators.

6. Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), provides:

No person shall:

- b. 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 [Illinois Environmental Protection] Agency, or in violation of any conditions imposed by such permit;

7. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), provides:

"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 unreasonably interfere with the enjoyment of life or property.

8. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), provides:

No person shall:

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

9. 40 CFR 60.7(c)(1) provides:

- (c) Each owner or operator required to install a continuous monitoring device shall submit excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and/or summary report form (see paragraph (d) of this section) to the Administrator semiannually, except when more frequent reporting is

specifically required by an applicable subpart; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. . . . Written reports of excess emissions shall include the following information:

- (1) The magnitude of excess emissions computed in accordance with §60.13(h), any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. The process operating time during the reporting period. . . .

10. 40 CFR 60.7(d)(2), provides:

- (d) The summary report form shall contain the information and be in the format shown in figure 1 unless otherwise specified by the Administrator. One summary report form shall be submitted for each pollutant monitored at each affected facility.

- (2) If the total duration of excess emissions for the report period is 1 percent or greater of the total operating time for the reporting period or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, the summary report form and the excess emissions report described in §60.7(c) shall both be submitted.

11. On January 20, 1993, the Illinois EPA issued SIPC State operating permit number 800010054 for the operation of Unit #4.

12. Special Condition 1(a) of the operating permit 80010054, provides:

This Unit #4 boiler is subject to a New Source Performance Standard (NSPS) for Fossil Fuel Fired Steam Generators, 40 CFR 60. subparts A and D. The Illinois EPA is administering NSPS in Illinois on behalf of the United States EPA under a delegation agreement.

13. Special Condition number 4 of operating permit number 80010054, provides::

The permittee shall fulfill applicable recordkeeping requirements of the NSPS, 40 CFR 60.7.

14. On January 11, 2001, April 6, 2001 and July 3, 2001, respectively, SIPC submitted excess emission reports for the fourth quarter of calendar year 2000 and the first and

second quarters of 2001 to the Illinois EPA. The Illinois EPA reviewed the reports to determine SIPC's compliance with applicable regulations and permit conditions.

15. On August 24, 2001, the Illinois EPA issued Violation Notice (VN) A-2001-00126 to SIPC for failure to submit required summary reports to the Illinois EPA, excess opacity during the operation of Unit #4, excess SO₂ emissions from Unit #4 and failure to maintain and operate Unit #4 in a manner consistent with good air pollution control practices.

16. While SIPC submitted quarterly excess emission reports to the Illinois EPA for Unit #4, the reports for the fourth quarter of calendar year 2000 and the first and second quarters of calendar year 2001, were not in the form required by 40 CFR Part 60.

17. By failing to submit excess emissions and monitoring systems performance report with an accompanying summary report, the Respondent has violated 40 CFR 60.7(c) and (d).

18. By violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

19. By failing to fulfill the applicable recordkeeping requirements of the NSPS, 40 CFR 60.7, the Respondent has violated Special Condition number 4 of operating permit number 80010054.

20. By constructing, installing or operating any equipment, facility, vehicle, vessel, or air craft capable of causing or contributing to air pollution or designed to prevent air pollution in violation of any conditions imposed by such permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, Southern Illinois Power Cooperative:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding the Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II

OPACITY VIOLATIONS

1-12. Complainant realleges and incorporates herein by reference paragraphs 1 through 8, 11, 12, 14 and 15 of Count I as paragraphs 1 through 12 of this Count II.

13. 40 CFR 60.42(a)(2) provides:

On or after the date on which the performance test required to be conducted by §60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which:

- (2) Exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.

14. Condition 1(b) of operating permit 80010054 provides:

The particulate matter, SO₂ and opacity from the Unit #4 boiler shall not exceed 0.10 lbs/mBtu, 1.2 lbs/mmBtu and 20%, respectively, pursuant to the New Source Performance Standard.

15. The excess emissions report submitted to the Illinois EPA by SIPC for the first quarter of 2001 indicates that SIPC had six-minute opacity averages greater than 20% except for one six-minute period per hour of not more than 27% opacity on 2,115 occasions during the operation of Unit #4.

16. In its proposed Compliance Commitment Agreement, SIPC noted a number of conditions may have contributed to its opacity problems including an overfire air technology system that caused unburned carbon to remain in the gas stream, resulting in additional particulate loading to the electrostatic precipitator; a shortage of coal forcing SIPC to purchase poor quality coal that added to particulate loading; and an additional booster fan added to Unit #4 caused additional moisture in the precipitator to freeze during the winter months, shorting out equipment.

17. By having six-minute opacity averages greater than 20% except for one six-minute period per hour of not more than 27% opacity on 2,115 occasions during the operation of Unit #4 during the first quarter of 2001, the Respondent has violated 40 CFR 60.42(a)(2) and Special Condition 1(b) of Operating Permit number 80010054.

18. By violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

19. By constructing, installing or operating any equipment, facility, vehicle, vessel, or air craft capable of causing or contributing to air pollution or designed to prevent air pollution in violation of any conditions imposed by such permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, Southern Illinois Power Cooperative:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding the Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III

SULFUR DIOXIDE VIOLATIONS

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 8, 11, 12, 14 and 15 of Count I and paragraph 14 of Count II as paragraphs 1 through 13 of this Count III.

14. 40 CFR 60.43(a)(2), provides:

On and after the date on which the performance test required to be conducted by §60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:

- (2) 520 nanograms per joule heat input (1.2 lb per million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue, except as provided in paragraphs (e) of this section.

15. The Illinois EPA originally calculated that in the second quarter of 2001, SIPC had sulfur dioxide emissions in excess of 1.2-lb/mmBtu 11.6% of the total operating time for Unit #4.

16. SIPC subsequently disputed the amount of time that Unit #4 exceeded the SO₂ limitations, stating instead that SIPC had excess emissions 3.9% of the total operating time.

17. After reviewing its initial findings, the Illinois EPA agreed with SIPC that SIPC had excess SO₂ 3.9% of the total operating time for Unit #4 in the second quarter of 2001.

18. By causing to be discharged into the atmosphere from its facility excess SO₂ emissions 3.9% of the total operating time, the Respondent has violated 40 CFR 60.43(a)(2) and Special Condition 1(b) of Operating Permit number 80010054.

19. By violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

20. By constructing, installing or operating any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution in violation of any conditions imposed by a permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, Southern Illinois Power Cooperative:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding the complainant its costs and reasonable attorney's fees; and

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

COUNT IV

GOOD AIR POLLUTION CONTROL PRACTICES VIOLATIONS

1-12. Complainant realleges and incorporates herein by reference paragraphs 1 through 8, 11, 12, 14 and 15 of Count I as paragraphs 1 through 12 of this Count IV.

13. 40 CFR 60.11(d) provides, in part:

At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. . .

14. Condition 1(c) of operating permit 80010054 provides:

At all times, the permittee shall also, to the extent practicable, maintain and operate the Unit #4 boiler, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

15. SIPC has failed to maintain and operate Unit #4 in a manner consistent with good air pollution control practices. During the first quarter of calendar year 2001, operation of Unit #4 resulted in 2,115 instances of excess opacity readings. During the second quarter of 2001, operation of Unit #4 resulted in excess sulfur dioxide emissions 3.9% of the total operating time.

16. By failing to maintain and operate Unit #4 in a manner consistent with good air pollution control practices, the Respondent has violated 40 CFR 60.11(d) and Condition 1(c) of operating permit 80010054.

17. By violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

18. By constructing, installing or operating any equipment, facility, vehicle, vessel, or air craft capable of causing or contributing to air pollution or designed to prevent air pollution in violation of any conditions imposed by such permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, Southern Illinois Power Cooperative:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding the Complainant its costs and reasonable attorney's fees; and

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: _____

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

Of Counsel

JENNIFER BONKOWSKI
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 5/14/04

sipccomplaint/common