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MAY 21 2004

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

PCB04-205

May 18, 2004

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

Re: ***People v. All States Painting, Inc.***

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,

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

JB/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 21 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 ALL STATES PAINTING, INC.,)
)
 Respondent.)

PCB No. *04-205*
(Enforcement)

NOTICE OF FILING

To: Ronald DeSyllas
Registered Agent
All States Painting, Inc.
P.O. Box 110
Alexander, IL 62601

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.

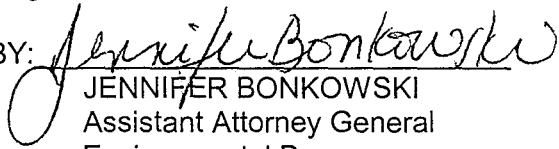
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2002), to correct the pollution alleged in the Complaint filed in this case.

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 18, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on May 18, 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:

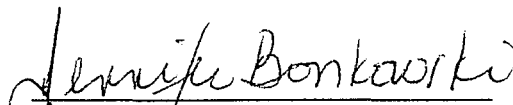
To: Ronald DeSyllas
Registered Agent
All States Painting, Inc.
P.O. Box 110
Alexander, IL 62601

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:

Jeryl Olson
Seyfarth Shaw, LLP
55 East Monroe Street
Suite 4200
Chicago, IL 60603-5803


Jennifer Bonkowski
Assistant Attorney General

This filing is submitted on recycled paper.

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MAY 21 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
ALL STATES PAINTING, INC.,)
)
Respondent.)

PCB No. 04-205
(Enforcement)

APPEARANCE

I, JENNIFER BONKOWSKI, Assistant Attorney General of the State of Illinois, hereby file my appearance 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

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

Dated: 5/18/04

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 21 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
ALL STATES PAINTING, INC.,)
)
Respondent.)

PCB No. 04-205
(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 the Respondent, ALL STATES PAINTING, INC., as follows:

COUNT I

AIR POLLUTION

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

4. Respondent, All States Painting, Inc. ("All States"), is an Illinois corporation in good standing, located in Alexander, Morgan County, Illinois. Its registered agent is Ronald Desyllas, All States Painting, Inc., P.O. Box 110, Alexander, Illinois 62601.

5. At all times relevant to this Complaint, All States has been a contractor hired by the Illinois Department of Transportation ("IDOT") for bridge painting. From the interviews of IDOT personnel and All States, the Illinois EPA learned that a bridge painting project began in the summer 2002 at the Route 104 Bridge over the Illinois River by All-States. The project began with the initial wet blasting of approximately 430,000 square feet of steel and the subsequent applications of a gray zinc-based rust proof primer, a white epoxy intermediate primer, and a blue oil-based, polyurethane finish coat. Airless spray guns and pump delivery system were used to apply the coatings.

6. On June 19, 2003, the Illinois EPA received a complaint of paint over spray from the Route 104 Bridge over the Illinois River, near Meredosia, Illinois. The complainant stated that on June 18, 2003, he observed a blue film in the water after placing his boat into the Illinois River at the Meredosia boat ramp, and that the blue paint left marks on his boat.

7. Later that day on June 19, 2003, Illinois EPA inspectors visited the site, and observed blue paint in the water and paint residue along the river bank. The inspectors observed four painters using airless spray guns to spray blue paint on the east half of the bridge. The inspectors further noted that there were no tarps near the areas being sprayed, and estimated that half of the paint being sprayed was emitted to the air rather than adhering to the surface of the bridge.

8. While on site on June 19, 2003, the Illinois EPA inspectors spoke with a representative of All States, who stated that the company had received complaints regarding the over-spray on vehicles.

9. On June 20, 2003, a representative of IDOT informed the Illinois EPA that a ruptured paint line caused the spill of blue paint into the river.

10. On June 23, 2003, the Illinois EPA received another complaint regarding over spray from the Route 104 Bridge. The complainant stated that on June 20, 2003, he observed over-spray falling into the river, and that the paint in the river left marks on his boat. The complainant also noted that All States was not using tarps to control the over spray.

11. On June 24, 2003, Illinois EPA inspectors again visited the site, observing over-spray from the bridge falling into the Illinois River. Illinois EPA inspectors noted containment with drift screening in place on the underside of the bridge decking on the eastern span, and tarp rigging on the side of the bridge adjacent to the Village of Meredosia. However, no tarping or containment was in place near the center span where the workers were painting. Over-spray was visible to the Illinois EPA inspectors. The inspectors again noted the presence of blue paint in the river and blue foam at the public boat ramp south of Route 104.

12. On June 24, 2003, a representative of All States stated that the tarps referenced in paragraph 11 were added after numerous complaints of paint damage to vehicles and nearby buildings. In addition, the All States representative admitted that a fitting on a pressurized airline broke, causing the spill of approximately one gallon of blue paint. While on site, the Illinois EPA inspector noted the contents of the paint buckets at the site. Subsequent to the site visit, the Illinois EPA inspector attained the data sheets and MSDS for the Sherwin Williams paint that was used to paint the bridge. A white epoxy was first sprayed onto the bridge, followed by a blue oil-based polyurethane finish coat. Part A of the white epoxy contained 2.09 lbs/gal of VOC, and Part B of the white epoxy contained 1.67 lbs/gal of VOC. The blue paint was composed of ACROLON 218 HS Acrylic Polyurethane Gloss, with a VOC content of 2.82 lbs/gal.

13. On June 25, 2003, the Illinois EPA inspectors met with representatives of All States and IDOT to discuss future actions to prevent the over-spray from the bridge.
14. On July 1, 2003, the Illinois EPA issued a Violation Notice ("VN") to All States.
15. All States submitted a proposed Compliance Commitment Agreement ("CCA") on July 11, 2003, stating that it had taken steps to contain the over-spray after meeting with Illinois EPA officials. The Illinois EPA rejected the proposed CCA on August 11, 2003.
16. On September 17, 2003, the Illinois EPA issued a Notice of Intent to Pursue Legal Action ("NITPLA") letter to All States.
17. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides:
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;
18. 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.
19. 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 energy, from whatever source.
20. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Admin. Code 201.141, provides:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either 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.

21. By causing, threatening or allowing the discharge or emission of any contaminant into the air of the State, All States has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Admin. Code 201.141.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, All States Painting, Inc.:

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

COUNT II

WATER POLLUTION

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 and 19 of Count I as paragraphs 1 through 17 of this Count II.

18. 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;

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), contains the following definition:

'WATER POLLUTION' is 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 water 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.

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), contains the following definition:

'WATERS' means 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.

21. The Illinois River is a “water” of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

22. The Respondent, All States, has caused, allowed, or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board’s regulations or standards through the discharge of paint to the Illinois River.

23. The discharges of contaminants from the Respondent’s bridge painting have caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

24. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board’s regulations or standards, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, All States Painting, Inc.:

- 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 to Complainant its costs and reasonable attorney fees; and

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

COUNT III

WATER POLLUTION HAZARD

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 and 19 of Count I as paragraphs 1 through 17 of this Count III.

18-20. Complainant realleges and incorporates herein by reference paragraphs 19 through 21 of Count II as paragraphs 18 through 20 of this Count III.

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

No person shall:

* * *

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

* * *

22. The Respondent, All States, has caused or allowed a blue foam or residue to remain on the river bank for a period of several days. In so doing, the Respondent caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to the Illinois River.

23. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, All States Painting, Inc.:

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

COUNT IV

OFFENSIVE CONDITIONS

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 and 19 of Count I as paragraphs 1 through 17 of this Count IV.

18-21. Complainant realleges and incorporates herein by reference paragraphs 18 through 21 of Count II as paragraphs 18 through 21 of this Count IV.

22. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Admin. Code 302.203, prohibits offensive conditions in waters of the State:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal, color or turbidity of other than natural origin . . .

23. These discharges of paint from the Respondent's bridge painting have caused offensive conditions in the Illinois River in that the waters were of a blue cast, color or turbidity of other than natural origin. The Respondent has thereby violated 35 Ill. Admin. Code 302.203 and Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully request that the Board enter an order against the Respondent, All States Painting, Inc.:

- 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 to Complainant its costs and reasonable attorney fees; and

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

Respectfully submitted,

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

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau/Springfield
500 South Second Street
Springfield, Illinois 62706
Date: 5/18/04