

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 20 2004

PEOPLE OF THE STATE OF ILLINOIS)

Complainant,)

-vs-)

ALL STATES PAINTING, INC.)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-205
(Enforcement)

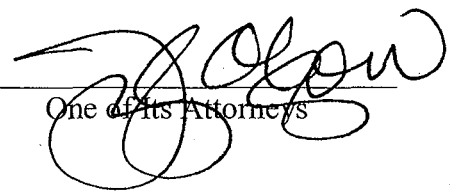
NOTICE OF FILING

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Jennifer Bonkowski
Assistant Attorney General
Environmental Bureau/Springfield
500 South Second Street
Springfield, IL 62706

PLEASE TAKE NOTICE that on July 20, 2004, Respondent, All States Painting, Inc., filed with the Clerk of the Illinois Pollution Control Board the attached Answer and Affirmative Defenses, a copy which is served upon you.

ALL STATES PAINTING, INC.

By: 
One of its Attorneys

Jeryl L. Olson
SEYFARTH SHAW LLP
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312)346-8000

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUL 20 2004

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

STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-205
(Enforcement)

RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES

Respondent, All States Painting, Inc. ("Respondent"), by and through its attorneys,
Seyfarth Shaw LLP, for its answer and affirmative defenses states as follows:

COUNT I

AIR POLLUTION

COMPLAINT ¶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).

ANSWER:

The allegations contained in Paragraph 1 of the Complaint do not require an answer, to the extent the allegations are relevant, Respondent lacks specific knowledge and demands proof thereof.

COMPLAINT ¶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").

ANSWER:

The allegations contained in Paragraph 2 of the Complaint do not require an answer, to the extent the allegations are relevant, Respondent lacks specific knowledge and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

The allegations of the Complaint speak for themselves. Respondent admits that it was provided with notice and opportunity for a meeting with the Illinois EPA, and that Complainant purports to bring the action pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002).

COMPLAINT ¶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.

ANSWER:

Respondent admits the allegations contained in Paragraph 4.

COMPLAINT ¶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.

ANSWER:

Respondent admits that it has been a contractor hired by the Illinois Department of Transportation for bridge painting. Respondent is without knowledge to form a basis to admit or

deny the remaining allegations contained in Paragraph 5, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent is without knowledge to form a basis to admit or deny the allegations contained in Paragraph 6, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent is without knowledge to form a basis to admit or deny the allegations contained in Paragraph 7, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent is without knowledge to form a basis to admit or deny the allegations contained in Paragraph 8, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent is without knowledge to form a basis to admit or deny the allegations contained in Paragraph 9, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent is without knowledge to form a basis to admit or deny the allegations contained in Paragraph 10, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent is without knowledge to form a basis to admit or deny the allegations contained in Paragraph 11, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent is without knowledge to form a basis to admit or deny the allegations contained in Paragraph 12, and therefore denies the allegations contained therein and demands proof thereof.

COMPLAINT ¶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.

ANSWER:

Respondent admits the allegations contained in Paragraph 13.

COMPLAINT ¶14:

On July 1, 2003, the Illinois EPA issued a Violation Notice ("VN") to All States.

ANSWER:

Respondent admits the allegations contained in Paragraph 14, but denies it violated the Act as alleged.

COMPLAINT ¶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.

ANSWER:

Respondent admits the allegations contained in Paragraph 15.

COMPLAINT ¶16:

On September 17, 2003, the Illinois EPA issued a Notice of Intent to Pursue Legal Action (“NITPLA”) letter to All States.

ANSWER:

Respondent admits the allegations contained in Paragraph 16.

COMPLAINT ¶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;

ANSWER:

The allegations contained in Paragraph 17 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 17 correctly quotes the referenced section of the Act as of the date noted.

COMPLAINT ¶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.

ANSWER:

The allegations contained in Paragraph 18 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 18 correctly quotes the referenced section of the Act as of the date noted.

COMPLAINT ¶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.

ANSWER:

The allegations contained in Paragraph 19 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 19 correctly quotes the referenced section of the Act as of the date noted.

COMPLAINT ¶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.

ANSWER:

The allegations contained in Paragraph 20 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 20 correctly quotes the referenced section of the Board's Air Pollution Regulations.

COMPLAINT ¶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.

ANSWER:

Respondent denies the allegations contained in Paragraph 21.

WHEREFORE, Respondent respectfully requests that the Illinois Pollution Control Board dismiss the Complaint with prejudice, award Respondent its costs and attorneys' fees, and order such further relief as appropriate and just.

COUNT II

WATER POLLUTION

COMPLAINT ¶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.

ANSWER:

Respondent restates its answers to all previous allegations set forth herein.

COMPLAINT ¶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;

ANSWER:

The allegations contained in Paragraph 18 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 18 correctly quotes the referenced section of the Act as of the date noted.

COMPLAINT ¶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.

ANSWER:

The allegations contained in Paragraph 19 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 19 correctly quotes the referenced section of the Act as of the date noted.

COMPLAINT ¶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.

ANSWER:

The allegations contained in Paragraph 20 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 20 correctly quotes the referenced section of the Act as of the date noted.

COMPLAINT ¶21:

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

ANSWER:

The statement in Paragraph 21 constitutes a legal opinion or conclusion for which no answer is necessary. If Respondent is incorrect in the foregoing and an answer is required, then said allegations are denied.

COMPLAINT ¶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.

ANSWER:

Respondent denies the allegations contained in Paragraph 22.

COMPLAINT ¶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.

ANSWER:

Respondent denies the allegations contained in Paragraph 23.

COMPLAINT ¶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).

ANSWER:

Respondent denies the allegations contained in Paragraph 24.

WHEREFORE, Respondent respectfully requests that the Illinois Pollution Control Board dismiss the Complaint with prejudice, award Respondent its costs and attorneys' fees, and order such further relief as appropriate and just.

COUNT III

WATER POLLUTION HAZARD

COMPLAINT ¶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.

ANSWER:

Respondent restates its answers to all previous allegations set forth herein.

COMPLAINT ¶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.

ANSWER:

Respondent restates its answers to all previous allegations set forth herein.

COMPLAINT ¶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;

ANSWER:

The allegations contained in Paragraph 21 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 21 correctly quotes the referenced section of the Act as of the date noted.

COMPLAINT ¶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.

ANSWER:

Respondent denies the allegations contained in Paragraph 22.

COMPLAINT ¶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).

ANSWER:

Respondent denies the allegations contained in Paragraph 23.

WHEREFORE, Respondent respectfully requests that the Illinois Pollution Control Board dismiss the Complaint with prejudice, award Respondent its costs and attorneys' fees, and order such further relief as appropriate and just.

COUNT IV

OFFENSIVE CONDITIONS

COMPLAINT ¶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.

ANSWER:

Respondent restates its answers to all previous allegations set forth herein.

COMPLAINT ¶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.

ANSWER:

Respondent restates its answers to all previous allegations set forth herein.

COMPLAINT ¶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 . . .

ANSWER:

The allegations contained in Paragraph 22 of the Complaint do not pertain to Respondent and no response is required; to the extent a response is required, Respondent admits that Paragraph 22 correctly quotes the referenced section of the Board's Water Pollution Regulations.

COMPLAINT ¶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).

ANSWER:

Respondent denies the allegations contained in Paragraph 23.

WHEREFORE, Respondent respectfully requests that the Illinois Pollution Control Board dismiss the Complaint with prejudice, award Respondent its costs and attorneys' fees, and order such further relief as appropriate and just.

AFFIRMATIVE DEFENSES

Respondent asserts the following affirmative defenses without waiving Complainant's obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law.

1. Respondent took affirmative actions to prevent over spray from contaminating water, air and land near the Illinois River.

2. Respondent performed mitigation after meeting with the Illinois EPA by discontinuing the use of spray guns and implementing the use of hand rollers to apply paint.

3. Respondent reserves its right to amend this Answer, including its affirmative and other defenses, to assert any defenses that further investigation and discovery reveal to be appropriate.

WHEREFORE, Respondent respectfully requests that the Illinois Pollution Control Board dismiss the Complaint with prejudice, award Respondent its costs and attorneys' fees, and order such further relief as appropriate and just.

DATED: July 20, 2004

Respectfully submitted,

ALL STATES PAINTING, INC.

By



One of Its Attorneys

Jeryl L. Olson
SEYFARTH SHAW LLP
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

CERTIFICATE OF SERVICE

Lindsay Wolke, an attorney, certifies that she caused a true and correct copy of the foregoing RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES to be served upon:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via courier, and

Jennifer Bonkowski, Esq.
Assistant Attorney General
Environmental Bureau/Springfield
500 South Second Street
Springfield, Illinois 62706

via U.S. Mail, having same placed in a properly addressed, postage prepaid envelope and deposited in the U.S. Mail at 55 East Monroe Street, Chicago, Illinois this 20th day of July, 2004.

Lindsay A. Wolke