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AUG 05 1993
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
MONARCH ASPHALT CO.,)
an Illinois corporation,)
)
Respondent.)

No. PCB 93-145
(Enforcement)

NOTICE OF FILING

TO: Gary Griffin
Registered Agent for
Monarch Asphalt Company
175 West Jackson, Suite 2141
Chicago, Illinois 60604

PLEASE TAKE NOTICE that we have today filed with the Illinois Pollution Control Board a Complaint and Certificate of Service, on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Respectfully submitted,

ROLAND W. BURRIS
Attorney General
State of Illinois

By: *Julie Weisenberg*
Julie D. Weisenberg
Assistant Attorney General
Environmental Control Division
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3369

Date: *August 5, 1993*

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 MONARCH ASPHALT, CO.,)
 an Illinois corporation,)
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 Respondent.)

PCB 93-145
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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Roland W. Burris, Attorney General of the State of Illinois, complains of the Respondent, MONARCH ASPHALT CO., as follows:

COUNT I

CONSTRUCTION OF CRUSHER WITHOUT A PERMIT

1. This Complaint is brought by the Attorney General on his own motion and upon the request of the Illinois Environmental Protection Agency ("Agency") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1031.

2. The Agency is an administrative agency of the State of Illinois, created pursuant to the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1004, and charged, inter alia, with the duty of enforcing the Act.

3. Respondent, MONARCH ASPHALT CO., ("MONARCH"), is an Illinois corporation. At all times relevant to this complaint, MONARCH has operated an asphalt plant located at 1727 Medill Avenue, Chicago, Cook County, Illinois.

4. Within its facility, MONARCH utilizes, among other implements, at least three (3) asphalt storage tanks (the "tanks"), one (1) dryer with cyclones and baghouse (the "dryer"), one (1) asphalt storage silo (the "silo"), one vibrating screen (the "screen"), one roadway for ingress and egress from the facility (the "roadway") and one (1) portable crusher (the "crusher") (collectively referred to as the "sources"). On July 13, 1987, the IEPA issued permit No. 72100913 (in the form of a five year renewal) to MONARCH for all the sources except for the crusher. The permit was again renewed on March 31, 1992 and will expire March 31, 1997.

5. On or about August 27, 1991, the exact date best known only to MONARCH, MONARCH commenced construction of the crusher listed herein without obtaining the required Agency construction permit.

6. On May 8, 1992, the IEPA issued operating permit No. 92040020 for the crusher that expires April 21, 1997.

7. Section 201.102 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

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

"Existing Emission Source": any emission source, the construction or modification of which has commenced prior to April 14, 1972.

"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.

8. The crusher is capable of emitting particulate matter, a specified air contaminant, to the atmosphere. The crusher was constructed or modified after April 14, 1972 and is a new emission source as that term is defined by 35 Ill. Adm. Code 201.102.

9. Sections 9(a) and (b) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, pars. 1009(a) and (b), provide 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;
- 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 Agency, or in violation of any conditions imposed by such permit;

10. Section 201.142 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides as follows:

Construction Permit Required

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution

control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

11. The crusher must have an Agency construction permit because it is a new emission source and is not exempt pursuant to 35 Ill. Adm. code 201.146.

12. Respondent, by its conduct described herein, has violated sections 9(a) and (b) of the Act, Ill. Rev. Stat. 1991, ch 111-1/2, pars. 1009(a) and (b), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

WHEREFORE, the complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MONARCH ASPHALT COMPANY:

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 Sections 9(a) and (b) of the Act and 35 Ill. Adm. Code 201.142;

3. Ordering Respondent to cease and desist from any further violations of Sections 9(a) and (b) of the Act and 35 Ill. Adm. Code 201.142;

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

5. Ordering 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 II

OPERATION OF CRUSHER WITHOUT A PERMIT

1-9. Complainant realleges and incorporates herein by reference paragraphs 1 through 9 of Count I as paragraphs 1 through 9 of this Count II.

10. Section 201.143 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides as follows:

Operating Permits for New Sources

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by section 201.157) as shall be specified in the construction permit.

11. From at least August 27, 1991, the exact date best known only to Respondent, up to May 8, 1992, Respondent has caused or allowed operation of the crusher without the required Agency operating permit.

12. On May 8, 1992, the Agency issued operating permit No. 92040020 for the crusher. The permit will expire April 21, 1997.

13. Respondent, by its conduct described herein, has violated Sections 9(a) and (b) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, pars. 1009(a) and (b), and Section 201.143 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.143.

WHEREFORE, the complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MONARCH ASPHALT COMPANY:

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 Sections 9(a) and (b) of the Act and 35 Ill. Adm. Code 201.143;

3. Ordering Respondent to cease and desist from any further violations of Sections 9(a) and (b) of the Act and 35 Ill. Adm. Code 201.143;

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

5. Ordering Respondent to pay all costs, including reasonable 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 III

OPERATING DURING MALFUNCTION

1-4. Complainant realleges and incorporates herein by reference paragraphs 1 through 4 of Count I as paragraphs 1 through 4 of this Count III.

5. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

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

"Existing Emission Source": any emission source, the construction or modification of which has commenced prior to April 14, 1972.

"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.

6. The sources are capable of emitting particulate matter, a specified air contaminant, to the atmosphere. The sources, except for the crusher, were constructed or modified before April 14, 1972, and are existing emission sources as that term is defined by 35 Ill. Adm. Code 201.102.

7. From approximately September 27, 1990 to the present, on dates better known only to MONARCH, MONARCH caused, threatened or allowed the dryer to operate while the baghouses were malfunctioning.

8. By allowing the dryer to operate while the baghouses were malfunctioning, MONARCH discharged excessive contaminants into the environment. The emissions were visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.

9. Section 9(a) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1009(a), 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;

10. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

Prohibition Of Air Pollution

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.

11. Section 201.149 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.149, provides as follows:

**Operation During Malfunction,
Breakdown Or Startups**

No person shall cause or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the standards or limitations set forth in Subchapter C of this Chapter, unless the current operating permit granted by the Agency provides for operation during a malfunction or breakdown. No person shall cause or allow violation of the standards or limitations set forth in that Subchapter during startup unless the current operating permit granted by the Agency provides for violation of such standards or limitations during startup.

12. From approximately September 27, 1990 to the present, on dates better known only to MONARCH, MONARCH caused, threatened or allowed the dryer to operate while the baghouses were malfunctioning.

13. By allowing the dryer to operate while the baghouses were malfunctioning, MONARCH discharged excessive contaminants into the environment. The emissions were visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.

14. Section 212.301 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 212.301, provides as follows:

Fugitive Particulate Matter

No person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage

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

COUNT IV

EMISSION VIOLATIONS FROM SILO, SCREEN AND/OR ROADWAY

1-4. Complainant realleges and incorporates herein by reference paragraphs 1 through 4 of Count I as paragraphs 1 through 4 of this Count IV.

5-6. Complainant realleges and incorporates herein by reference paragraphs 5 through 6 of Count III as paragraphs 5 through 6 of this Count IV.

7. From approximately October 29, 1990, up to the present, on dates better known only to MONARCH, including but not limited to, October 29, 1990 and August 22, 1991, MONARCH caused, threatened or allowed the silo, screen and/or roadway to operate in such a way so as to emit fugitive particulate matter. The particulate matter emissions were visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.

8. Section 9(a) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1009(a), 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;

9. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

Prohibition Of Air Pollution

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.

10. Section 212.301 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 212.301, provides as follows:

Fugitive Particulate Matter

No person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.

11. From approximately October 29, 1990, up to the present, on dates better known only to MONARCH, including but not limited to October 29, 1990 and August 22, 1991, MONARCH failed to pave or treat with water, oils or chemical dust suppressants its normal traffic pattern access areas. In areas that should have been treated with water, oils or chemical dust suppressants, Monarch failed to apply same on a regular basis as needed.

12. Section 212.306 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 212.306, provides as follows:

Traffic Areas

All normal traffic pattern access areas surrounding storage piles specified in Section 212.304 and all normal traffic pattern roads and parking facilities which are located on mining or manufacturing property shall be paved or treated with water, oils or chemical dust suppressants. All paved areas shall be cleaned on a regular basis. All areas treated with water, oils or chemical dust suppressants shall have the treatment applied on a regular basis, as needed, in accordance with the operating program required by Sections 212.309, 212.310 and 212.312.

13. The excessive particulate emissions described above are violations of Section 9(a) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1009(a), 35 Ill. Adm. Code 201.141, 35 Ill. Adm. Code 212.301 and 35 Ill. Adm. Code 212.306.

WHEREFORE, the complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MONARCH ASPHALT COMPANY:

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 Sections 9(a) and (b) of the Act, 35 Ill. Adm. Code 201.141, 35 Ill. Adm. Code 212.301 and 35 Ill. Adm. code 212.306;
3. Ordering Respondent to cease and desist from any further violations of Sections 9(a) and (b) of the Act, 35 Ill. Adm. Code 201.141, 35 Ill. Adm. Code 212.301, 35 Ill. Adm. Code 212.306;

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

5. Ordering Respondent to pay all costs, including reasonable 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 V

OPERATING EMISSION SOURCE IN VIOLATION OF PERMIT CONDITIONS

1.-3. Complainant realleges and incorporates herein by reference paragraphs 1 through 3 of Count I as paragraphs 1 through 3 of this Count V.

4. On or about April 22, 1985, MONARCH submitted an application to the Agency for a permit to construct and operate an asphalt recycler at its Medill Avenue plant. Among the items submitted by MONARCH in support of said application was a document captioned "Dust Control Plan", a true and correct copy of which is attached hereto as Exhibit "A."

5. The "Dust Control Plan" submitted in association with MONARCH's April 22, 1985 permit application provides, in part, as follows:

Dust will be controlled by spraying a water surfacant [sic] mixture using 3 spray

bars. The location of the spray bars are detailed on the attached Flow Diagram.

The surfacant [sic] to water ratio will be 1 part surfacant [sic] to 100 parts water. The surfacant [sic] to be used will be D-Dust by DuBois Chemical Company or equivalent.

6. On or about July 1, 1985, the Agency issued MONARCH a permit to construct and operate the equipment referred to in MONARCH's April 22, 1985 permit application. A true and correct copy of that permit is attached hereto as Exhibit "B."

7. The Agency's July 1, 1985 permit provides, in part, as follows:

Permit is hereby granted to the above designated Permittee to CONSTRUCT and OPERATE emission source(s) and/or air pollution control equipment consisting of a recycled asphalt paving operation with detergent spray bar control as described in the above-referenced application. This permit is subject to standard conditions attached hereto and the following special conditions:

1. Operation of the emission source(s) included in this permit shall not begin until all associated air pollution control equipment has been constructed and is operational.

* * *

8. Standard Condition 3 of the Agency's July 1, 1985 permit provides:

3. The permittee shall not authorize, cause, direct or allow any modification, as defined in Rule 101, Chapter 2, Part 1 of the Illinois Pollution Control Board Rules and Regulations, of equipment, operations or practices which are reflected in the permit application as submitted unless a new application or request for revision of existing application is filed with the Agency at

least ninety (90) days prior to the time of said modification and unless a new permit or revision of existing permit is granted for such modification.

9. Between July 1, 1985 and October 27, 1987, and on a date or dates better known to the Respondent, MONARCH constructed an asphalt recycler at its Medill Avenue plant.

10. On October 27, 1987 and October 7, 1988, and on a date or dates better known to the Respondent, up to approximately June 27, 1990, MONARCH caused or allowed its asphalt recycler to be operated without using a water/surfactant mixture.

11. On October 27, 1987, and on a date or dates better known to the Respondent, up to approximately June 27, 1990, MONARCH caused or allowed its asphalt recycler to be operated with only two spray bars attached.

12. At some time prior to June 27, 1990, the exact date best known only to MONARCH, MONARCH ceased operating the asphalt recycler.

13. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

"Modification": any physical change in, or change in the method of operations, of an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted.

"Air Pollution Control Equipment": any equipment or facility of a type intended to

eliminate, prevent, reduce or control the emission of specified air contaminants.

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

14. Section 9(b) of the Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1009(b), 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 Agency, or in violation of any conditions imposed by such permit.

15. Particulate matter is a specified air contaminant as that term is defined in 35 Ill. Adm. Code 201.102.

16. MONARCH's spray bar system constitutes air pollution control equipment as that term is defined in 35 Ill. Adm. Code 201.102.

17. MONARCH's failure to use a water/surfactant mixture to control dust emissions from MONARCH's asphalt recycler resulted in an increase in the amount of particulate matter emitted from that equipment during operation.

18. MONARCH's failure to attach all of the spray bars specified in MONARCH's April 22, 1985 permit application resulted in an increase in the amount of particulate matter emitted from MONARCH's asphalt recycler during operation.

19. MONARCH's failure to use a water/surfactant mixture to control emissions from its asphalt recycler constitutes a modification as that term is defined in 35 Ill. Adm. Code 201.102.

20. MONARCH's failure to attach all of the spray bars specified in its April 22, 1985 permit application constitutes a modification as that term is defined in 35 Ill. Adm. Code 201.102.

21. The Agency never granted MONARCH a permit that specified that the company could operate its asphalt recycler with only two spray bars or without using the water/surfactant mixture specified in MONARCH's April 22, 1985 permit application.

22. By causing or allowing modifications to equipment, operations and practices reflected in its April 22, 1985 permit application, MONARCH violated Standard Condition 3 of the Agency's July 1, 1985 permit.

23. By causing or allowing its asphalt recycler to be operated before all associated air pollution control equipment was operational, MONARCH violated Special Condition 1 of the Agency's July 1, 1985 permit.

24. By violating conditions imposed by an Agency permit, MONARCH violated Section 9(b) of the Act.

WHEREFORE, the complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MONARCH ASPHALT COMPANY:

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(b) of the Act;

3. Ordering Respondent to cease and desist from any further violation of Section 9(b) of the Act;

4. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each violation of the Act, and an additional civil penalty of One Thousand Dollars, (\$1,000.00) for each day during which each violation shall have continued up to July 1, 1990, and an additional penalty of Ten Thousand Dollars, (\$10,000.00) for each day of violation after July 1, 1990;

5. Ordering Respondent to pay all costs, including reasonable 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,

ROLAND W. BURRIS
Attorney General
State of Illinois

BY: *Matthew J. Dunn*
MATTHEW J. DUNN, Chief
Environmental Control Division
Assistant Attorney General

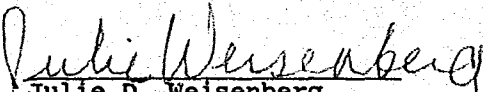
OF COUNSEL:

JOSEPH J. ANNUNZIO, Deputy Chief
WILLIAM D. SEITH, Deputy Chief
MICHAEL K. FRANKLIN
Assistant Attorneys General
Environmental Control Division
100 West Randolph, 12th floor
Chicago, IL 60601
(312) 814-3421

DATED:
jwcoln

CERTIFICATE OF SERVICE

I, Julie Weissenberg, an Assistant Attorney General in this case, do certify that I caused to be mailed, this 5th day of August, 1993, the foregoing Complaint and Notice of Filing, upon the person(s) listed on said Notice, by certified mail, postage prepaid, and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601


Julie D. Weissenberg
Assistant Attorney General

jwnofln