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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

November 6, 2008

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

PLB09-31

Re: ***People v. James Buysee***

Dear Clerk:

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 originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Andrew J. Nicholas
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

AJN/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
JAMES BUYSEE,)
d/b/a J & B Landscaping,)
)
Respondent.)

PCB No. 09.31
(Enforcement - Water)

NOTICE OF FILING

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STATE OF ILLINOIS
Pollution Control Board

To: James D. Buysee
J & B Landscaping
31 Shaffer Drive
P.O. Box 398
Coal Valley, IL 61240

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 (2006), 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: _____


Andrew J. Nicholas
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 6, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on November 6, 2008, 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: James D. Buysee
J & B Landscaping
31 Shaffer Drive
P.O. Box 398
Coal Valley, IL 61240

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

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Andrew J. Nicholas
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 12 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
JAMES BUYSEE,)
d/b/a J & B Landscaping,)
)
Respondent.)

PCB No. 69-31
(Enforcement - Water)

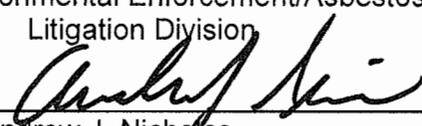
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, ANDREW J. NICHOLAS, Assistant Attorney General of the State of Illinois, hereby enters his 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: 
Andrew J. Nicholas
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 6, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
JAMES BUYSEE,)
d/b/a J & B LANDSCAPING,)
)
Respondent.)

PCB No. 09.31
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STATE OF ILLINOIS
Pollution Control Board

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, JAMES BUYSEE, d/b/a J & B LANDSCAPING, as follows:

COUNT I

WATER 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 (2006).
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 (2006), and charged, *inter alia*, with the duty of enforcing the Act.
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. James Buysee (“Respondent”) is a landscape contractor doing business as J & B Landscaping (“J & B”). J & B is located at Route 6 and Niabi Road approximately two miles north of Coal Valley, Rock Island County, Illinois (“site”).

5. On October 5, 2006, the Illinois EPA conducted an inspection of the site.

6. On October 5, 2006, the Illinois EPA observed what appeared to be a green, dried hydroseed mixture that had been dumped on the bank of Shaffer Creek, a tributary to the Rock River. A trail of the green mixture flowing to the creek was noted.

7. The Respondent uses a 200 gallon tank to apply the hydroseed mixture during landscaping operations. At the end of each operation, approximately 20 gallons of the mixture are leftover in the tank. The leftover mixture is dumped onto the bank and into Shaffer Creek.

8. On information and belief, the Respondent has been dumping leftover hydroseed at his site since approximately 1990.

9. A sample of the green dried material was collected and analysis showed the presence of the pesticide dichloro-diphenyl-trichloroethane (“DDT”) at 17 parts per billion (“ppb”) or micrograms/kilogram (“ug/Kg”), the DDT derivative; dichloro-diphenyl-dichloroethylene (“DDE”) at 16 ppb, and aroclor-1248 at 320 ppb.

10. DDT use was banned in the United States on December 31, 1972 by the United States Environmental Protection Agency (“U.S. EPA”).

11. DDE is a derivative of DDT and is also banned for use in the United States.

12. Aroclor is a polychlorinated biphenyl (“PCB”). It is listed as a hazardous substance under the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”).

13. Section 12 of the Act, 415 ILCS 5/12 (2006), provides in pertinent part that:

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;

* * *

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

* * *

14. The hydroseed mixture is a "contaminant" as that term is defined by the Act.

Section 3.165 of the Act, 415 ILCS 5/3.165 (2006) provides:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

15. The Defendant "released" the hydroseed mixture into the environment as that term is defined by the Act. Section 3.395 of the Act, 415 ILCS 5/3.395 (2006) provides in pertinent part:

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

* * *

16. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006) provides:

"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 waters

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.

17. Section 3.550 of the Act, 415 ILCS 3.550 (2006) provides:

"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.

18. By causing or allowing the discharge of the hydroseed mixture into Shaffer Creek, which is "waters" of the State, the Respondent has caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

19. By dumping the hydroseed mixture on the bank of Shaffer Creek, the Respondent has deposited "contaminants" in such place and manner so as to create a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, JAMES BUYSEE:

- 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. 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 has continued thereafter; and

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

COUNT II

OPEN DUMPING VIOLATIONS

1-12. 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 21 of the Act, 415 ILCS 5/21 (2006), provides in pertinent part that:

No person shall:

(a) Cause or allow the open dumping of any waste.

* * *

(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.

* * *

(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:

* * *

(4) deposition of waste in standing or flowing waters;

* * *

14. Section 3.185 of the Act, 415 ILCS 5/3.185 (2006), defines “disposal” as follows:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any

well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

15. Section 3.305 of the Act, 415 ILCS 5/3.305 (2006), defines “open dumping” 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.

16. Section 3.385 of the Act, 415 ILCS 5/3.385 (2006), defines “refuse” as follows:

“Refuse” means waste.

17. Section 3.535 of the Act, 415 ILCS 5/3.535 (2006), defines “waste” in pertinent part as follows:

“Waste” means any garbage...or other discarded material, including solid, liquid, semi-solid...

18. By causing or allowing open dumping of leftover hydroseed mixture at its site, the Respondent has caused or allowed the open dumping of waste, and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2006).

19. By disposing leftover hydroseed mixture at its site, the Respondent disposed of waste at a site or facility which does not meet the requirements of the Act, and thereby violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).

20. By spilling hydroseed mixture onto the bank and into Shaffer Creek, the Respondent caused or allowed the open dumping of waste in a manner which results in the deposition of waste in standing or flowing waters, and thereby violated Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, JAMES BUYSEE:

- 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. 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 has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III

WATER QUALITY VIOLATIONS

1-12. Complainant realleges and incorporates herein by reference paragraphs 1 through 12 of Count I as paragraphs 1 through 12 of this Count III.

13. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 (2005), provides in pertinent part:

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

14. The Respondent's hydroseed mixture contains floating debris and color of other than natural origin.

15. By discharging bright green colored hydroseed onto the land and into waters of the State, the Respondent has discharged floating debris, and thereby violated Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 (2005).

PRAYER FOR RELIEF

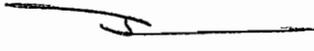
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- E. Granting such other relief as the Board may deem appropriate.

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: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

Of Counsel

Andrew J. Nicholas

Assistant Attorney General

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: 10/31/08