

JUN 01 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

THE VILLAGE OF LOMBARD,)
ILLINOIS, an Illinois)
municipality corporation,)
)
Complainant,)
)
v.)
)
BILL'S AUTO CENTER,)
BILL'S STANDARD SERVICE)
and WILLIAM KOVAR,)
)
Respondents.)

PCB No. 04-213
(LUSTS - Cost Recovery)

COMPLAINT FOR COST RECOVERY

The Complainant, VILLAGE OF LOMBARD (the "Village"), by and through its attorneys, Klein, Thorpe and Jenkins, Ltd., complains against the Respondents, BILL'S AUTO CENTER, BILL'S STANDARD SERVICE and WILLIAM KOVAR (collectively referred to hereinafter as the "Respondents"), as follows:

Summary of the Complaint

The Village seeks to recover from the Respondents costs incurred in connection with the response, removal and remedial action taken as the result of contamination from underground storage tanks at a facility in Lombard, Illinois. During excavation of a water line trench in the Village owned Willow Street right-of-way on August 11, 2000, a gasoline odor was noted in the trench soils by the excavation contractor and supervising engineer for the Village. Installation of the new water main line was part of the project that also included installation of a new sanitary sewer line and lift station and reconstruction of Willow Street west of Main Street. The odor was encountered when the trench, which was

being excavated from west to east, reached an area south of the southwest corner of a former gas station, Bill's Auto Center, located at 330 S. Main Street. An investigation found that one or more of the underground storage tanks or fuel lines that were owned and operated by the Respondents had leaked and had caused the contamination to the Village's property adjacent to that 330 S. Main Street site. The impacted soil encountered in the water line trench and on the Village's property is a result of the release originating at the Bill's Auto Center facility. Due to the Respondents' acts and omissions, causing contamination and allowing contamination to remain in place, the Village incurred significant costs by conducting a response, removal and remedial action to address the contamination.

Common Allegations

1. The Village is an Illinois municipal corporation and a "person" within the meaning of Section 3.315 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/3.315.

2. Bill's Auto Center is a corporation or other business entity and a "person" within the meaning of Section 3.315 of the Act, 415 ILCS 5/3.315, and the owner and operator of six (6) underground storage tanks that were located on the real property commonly known as 330 S. Main Street, Lombard, Illinois (the "Facility").

3. Bill's Standard Service is a corporation or other business entity and a "person" within the meaning of Section 3.315 of the Act, 415 ILCS 5/3.315, and is or was the owner of the Facility where the underground storage tanks were located.

4. William Kovar is an individual and is the owner of and oversees and manages Bill's Auto Center and Bill's Standard Service.

5. Jurisdiction of the Illinois Pollution Control Board (the "Board") is proper pursuant to Section 31 of the Act, 415 ILCS 5/31.

6. The Facility formerly contained six (6) underground storage tanks used for the storage of gasoline and waste oil. At least five (5) of these tanks were removed on March 31, 1999.

7. During removal of the underground storage tanks from the Facility, there was evidence of a release through staining and odors within the soils and water surrounding the underground storage tanks. On March 31, 1999, a representative of the Office of the Illinois State Fire Marshal confirmed that a petroleum release had occurred at the Facility and an Illinois Emergency Management Agency ("IEMA") Incident Number was assigned to the leaking underground storage tanks. On information and belief, in early 1996, during the installation of the Phase II vapor recovery upgrades on the underground storage tank systems by the Respondents, impacted soils were encountered and the Respondents called IEMA and obtained an incident number. Based upon the historical use of the Facility as a service center and observations made during the underground storage tank removal, two (2) incident numbers issued to the site are related to the same release. Incident Nos. 990776 and 960012 were assigned to the Facility.

8. The Respondents exposed the underground storage tanks and pumped oily waste water and sludge from the tanks for disposal at an approved disposal facility. The underground storage tanks were cleaned and removed from the Facility.

9. During removal of the underground storage tanks, the Respondents discovered that fill under and around the tanks and native soil was contaminated by petroleum constituents that had leaked from the underground storage tanks.

10. On information and belief, beginning at the end of the period of active operation of the underground storage tanks and continuing to at least March 31, 1999, the Respondents permitted the continued release of petroleum constituents into soils at the Facility from the underground storage tanks.

11. The Illinois Environmental Protection Agency ("IEPA") received a 45 Day Report dated June 7, 2002 regarding the incident. The IEPA directed Respondents to perform corrective action in accordance with the Illinois Environmental Protection Act (the "Act") and the Illinois Administrative Code. Pursuant to the Act, the IEPA required the Respondents to file a Site Classification Work Plan and Corrective Action Plan and to otherwise comply with the law. On information and belief, the Respondents have failed to take any steps necessary to do a site investigation or to submit a Site Investigation Completion Report and Work Plan or to remediate the contamination caused by the leaking underground storage tanks.

12. The Village owns and controls property immediately adjacent to the Facility on the north side of Willow Street (the "Village Property").

13. On August 11, 2000, while installing a watermain on the Village Property, an excavation contractor and supervising engineer for the Village noted a gasoline odor in and on the Village Property.

14. Upon a subsequent investigation it was determined that petroleum contamination from the underground storage tanks at the Facility caused contamination to the Village Property.

15. The Village incurred response, removal and remedial costs and expenses in excess of \$98,000.00 in connection with the contamination from the underground storage tanks at the Facility.

16. Despite repeated demands by the Village, the Respondents have not reimbursed the Village for the response, removal and remedial costs incurred because of the leaking underground storage tanks at the Facility.

COUNT I
Violation of Section 21(a) of the Act

17. The Village realleges and incorporates by reference as if set forth fully herein Paragraphs 1 through 16 of the Complaint.

18. Section 21(a) of the Act prohibits any person from causing or allowing the open dumping of any waste. 415 ILCS 5/21(a).

19. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility and off site onto the Village Property constitute "waste" under the Act. 415 ILCS 5/3.535.

20. The Respondents caused or allowed petroleum constituents to be released from the underground storage tanks at the Facility in violation of Section 21(a) of the Act.

WHEREFORE, the Village requests the Board enter an order as follows:

- (a) Require the Respondents to reimburse the Village for the costs incurred in investigating and cleaning up petroleum contaminated soils and taking other response, removal and remedial actions at the Village Property; and

- (b) Order any other relief that the Board and equity deem appropriate.

COUNT II
Violation of Section 21(d)(2) of the Act

21. The Village realleges and incorporates by reference as if set forth fully herein Paragraphs 1 through 16 of the Complaint.

22. Section 21 (d)(1) prohibits a person from conducting a waste-storage operation or waste-disposal operation without a permit granted by the Illinois Environmental Protection Agency. 415 ILCS 5/21(d)(1).

23. Section 21(d)(2) prohibits a person from conducting a waste-storage operation or waste-disposal in violation of any regulations or standards adopted by the Board pursuant to the Act. 415 ILCS 5/21(d)(2).

24. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility and onto the Village Property constitute "waste" under the Act. 415 ILCS 5/3.535.

25. The presence of petroleum constituents in underground storage tanks at the Facility constitutes "storage" under the Act. 415 ILCS 5/3.480.

26. The leaking of petroleum constituents from underground storage tanks at the Facility constitutes "disposal" under the Act. 415 ILCS 5/3.185.

27. The Respondents conducted a waste-storage operation and a waste-disposal operation without a permit in violation of Section 21(d)(1) of the Act. 415 ILCS 5/21(d)(1).

28. The Respondents conducted a waste-storage operation and a waste-disposal operation in violation of regulations or standards adopted by the Board pursuant to the Act. 415 ILCS 5/21(d)(2).

WHEREFORE, the Village requests the Board enter an order as follows:

- (a) Require the Respondents to reimburse the Village for the costs incurred in investigating and cleaning up petroleum contaminated soils and taking other response, removal, and remedial actions at the Village Property; and
- (b) Order any other relief that the Board and equity deem appropriate.

COUNT III
Violation of Section 21(e) of the Act

29. The Village realleges and incorporates by reference as if set forth fully herein Paragraphs 1 through 16 of the Complaint.

30. Section 21(e) of the Act prohibits disposal, storage or abandonment of any waste, "except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder." 415 ILCS 5/21(e).

31. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility and onto the Village Property constitute "waste" under the Act. 415 ILCS 5/3.535.

32. The presence of petroleum constituents in underground storage tanks at the Facility constitutes "storage" under the Act. 415 ILCS 5/3.480.

33. The leaking of petroleum constituents from underground storage tanks at the Facility constitutes "disposal" under the Act. 415 ILCS 5/3.185.

34. The presence of petroleum constituents in underground storage tanks at the Facility for years after the cessation of active use by the Respondents constitutes "abandonment" under Section 21(e) of the Act. 415 ILCS 5/21(e).

35. The Respondents disposed, stored and abandoned waste at a facility that did not meet the requirements of the Act, and the regulations and standards thereunder, in violation of Section 21(e) of the Act. 415 ILCS 5/21(e).

WHEREFORE, the Village requests that the Board enter an order as follows:

- (a) Require the Respondents to reimburse the Village for the costs it incurred in investigating and cleaning up petroleum contaminated soils and taking other response, removal and remedial action at the Village Property; and
- (b) Order any other relief that the Board and equity deem appropriate.

COUNT IV
Violation of Section 12(a) of the Act

17. The Village realleges and incorporates by reference as if set forth herein Paragraphs 1 through 16 of the Complaint.

18. Section 12(a) of the Act prohibits a person from causing or allowing the discharge of any contaminants into the environment so as to cause or tend to cause water pollution in Illinois. 415 ILCS 5/12(a).

19. On information and belief, the leaking of the petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into the soils and groundwater and onto Village Property, caused water pollution in violation of regulations or standards adopted by the Board

pursuant to the Act. 415 ILCS 5/12(a).

20. On information and belief, Respondents caused, threatened or allowed water pollution by allowing contaminants in the form of gasoline, waste oil and other petroleum substances into the environment, which leaked into and remained in the soil and groundwater at the Facility in violation of Section 12(a) of the Act.

WHEREFORE, the Village requests that the Board enter an order as follows:

- (a) Require the Respondents to reimburse the Village for the costs it incurred in investigating and cleaning up petroleum contaminated soils and taking other response, removal and remedial action at the Village Property; and
- (b) Order any other relief that the Board and equity deem appropriate.

COUNT V
Violation of Section 12(d) of the Act

17. The Village realleges and incorporates by reference as if set forth herein Paragraphs 1 through 16 of the Complaint.

18. Section 12(d) of the Act prohibits a person from depositing any contaminants upon the land in such place and manner so as to create a water pollution hazard. 415 ILCS 5/12(d).

19. On information and belief, the petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into the soils and groundwater at the Facility and onto Village Property constitutes a "deposit of contaminants upon the land" "so as to create a water pollution hazard" under Section 12(d) of the Act. 415 ILCS 5/12(d).

20. On information and belief, the Respondents created a water pollution hazard by allowing the release of contaminants, including gasoline, waste oil, and other petroleum

substances to leak into and remain in the soils and groundwater at the Facility in violation of Section 12(d) of the Act. 415 ILCS 5/12(d).

WHEREFORE, the Village requests that the Board enter an order as follows:

- (a) Require the Respondents to reimburse the Village for the costs it incurred in investigating and cleaning up petroleum contaminated soils and taking other response, removal and remedial action at the Village Property; and
- (b) Order any other relief that the Board and equity deem appropriate.

Respectfully submitted,

VILLAGE OF LOMBARD

By:  _____
One of Its Attorneys

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Dated: June 1, 2004

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE VILLAGE OF LOMBARD,)
 ILLINOIS, an Illinois)
 municipality corporation,)
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 Complainant,)
 v.)
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 BILL'S AUTO CENTER,)
 BILL'S STANDARD SERVICE)
 and WILLIAM KOVAR,)
)
 Respondents.)

PCB No. 04- 213
(LUSTS - Cost Recovery)

NOTICE TO RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

PLEASE TAKE NOTICE that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 et seq.) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules and does not constitute legal advice or substitute for provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicitous" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicitous" or "duplicative" means that an identical or substantially similar case is already pending before the Board or in court. See 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicitous or frivolous, you may file a

motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicitous or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicitous or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicitous or frivolous will stay the 60-day period for filing an answer to the complaint. See 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicitous or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicitous or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the 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.

35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless

wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

The Clerk's Office will provide you, upon request, with a list of pro bono attorneys. These individuals or organizations may, in certain circumstances, represent citizens before the Board without charge. The Board does not review the qualifications of these attorneys and makes no representations about their credentials, abilities, or willingness to act as your attorney. No attorney on the list is required to accept any particular case. If you wish to contact any of these attorneys, you must do so on your own.
Costs.

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on June __, 2004, I served the attached formal complaint and notice on the respondents by:

certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the addresses below:

RESPONDENTS' ADDRESSES (Service List):

Bill's Auto Center
330 South Main Street
Lombard, Illinois 60148

Bill's Standard Service
c/o William Kovar
330 South Main Street
Lombard, Illinois 60148


William Kovar
330 South Main Street
Lombard, Illinois 60148



One of Complainant's Attorneys

Dennis G. Walsh
Jacob Karaca
KLEIN, THORPE AND JENKINS, LTD.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
(312) 984-6400
Atty. No. 90446

Subscribed to and sworn before me
this 1st day of June, 2004.



Notary Public



My commission expires:

9/16/06