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JUN 23 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
HERITAGE FS, INC., an Illinois)
incorporated cooperative,)
)
Respondent.)

PCB No. 04- 224
(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List.

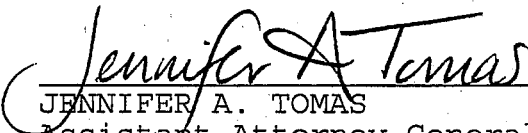
PLEASE TAKE NOTICE that on June 23, 2004, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are attached and hereby served upon you.

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

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:


JENNIFER A. TOMAS
Assistant Attorney General
Environmental Bureau
188 W. Randolph Street, Suite 2001
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 v.) PCB No. 04- 224
) (Enforcement - Water)
 HERITAGE FS, INC., an Illinois)
 incorporated cooperative,)
)
 Respondent.)

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, HERITAGE FS, INC. ("Heritage"), as follows:

COUNT I
WATER POLLUTION

1. This complaint is brought on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, 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), and is an action to restrain ongoing violations of the Act and for civil penalties.

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Heritage FS, Inc. is a farming cooperative and

an incorporated entity pursuant to the Agricultural Co-operative Act, 805 ILCS 315 (2002).

4. Heritage is a retailer of farm fertilizer and chemicals as well as petroleum and LP gas. The cooperative consists of thirteen (13) branches with approximately 1,000 members and is governed by a nine-member board.

5. On July 9, 2003, during offloading of diesel fuel from a delivery truck to a tank at Heritage's branch bulk fuel facility located at 2201 Grinnel Road, Kankakee, Kankakee County, Illinois ("Site"), a valve was placed in the wrong position causing the release of approximately 790 gallons of diesel fuel.

6. A recovery tank by the offloading area caught and retained approximately 250 gallons of the release, while the remaining amount, approximately 540 gallons, overflowed the tank and were deposited on the ground. Some of the fuel flowed, aided by subsequent heavy rains, over land approximately 400 feet to a drainage ditch which leads to Soldier Creek, a tributary of the Kankakee River, and ultimately to the Kankakee River itself, where it was carried downstream for a distance of approximately one (1) mile into the Kankakee River.

7. The fuel release caused fuel puddles on the ground and a visible oil sheen that extended from the drainage ditch into the Kankakee River.

8. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002),

provides 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 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.

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002),

provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

10. Respondent Heritage is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

11. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002),

provides the following definition:

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

12. Diesel fuel is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

13. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002),

provides 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.

14. The drainage ditch that leads to Soldier Creek, Soldier Creek and the Kankakee River are all "waters" as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

15. 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.

16. By discharging diesel fuel into a drainage ditch leading to Soldier Creek and ultimately to the Kankakee River, Heritage caused or allowed water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, HERITAGE FS, INC. for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002);

3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act;

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

5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT II
WATER POLLUTION HAZARD

1-14. Complainant realleges and incorporates by reference Paragraphs 1 through 14 of Count I as Paragraphs 1 through 14 of this Count II.

15. 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.

16. By causing or allowing contaminants to be deposited on the land in such place and manner as to create a water pollution hazard to the waters of the State, Heritage is in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, HERITAGE FS, INC. for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002);
3. Order Respondent to cease and desist from any further violations of Section 12(d) of the Act;
4. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violations occurred;
5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT III
VIOLATIONS OF NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM

1-14. Complainant realleges and incorporates by reference Paragraphs 1 through 14 of Count I as Paragraphs 1 through 14 of this Count III.

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

No person shall:

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

16. By causing or allowing the discharge of a contaminant into the waters of the State, Heritage violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002).

17. Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

- (a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

18. By discharging a contaminant into the waters of the State of Illinois, Heritage is in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, HERITAGE FS, INC. for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a);
3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act and Section 309.102(a) of the Board Water Pollution regulations;
4. Assess against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;
5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney,

expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT IV
OFFENSIVE CONDITIONS

1-15. Complainant realleges and incorporates by reference Paragraphs 1 through 15 of Count I as Paragraphs 1 through 15 of this Count IV.

16. Section 302.203 of the Illinois Pollution Control Board ("Board") Water Pollution regulations, 35 Ill. Adm. Code 302.203, provides as follows:

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...

17. Section 304.105 of the Board Water Pollution regulations, 35 Ill. Adm. Code 304.105, provides as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard...

18. On July 9, 2003, Heritage caused or allowed approximately 540 gallons of diesel fuel to flow across the ground and be discharged into waters of the State. This discharge caused the surface of the receiving waters to take on a

visible oil sheen.

19. By causing or allowing the discharge of effluent that resulted in a violation of the water quality standard found in Section 302.203, 35 Ill. Adm. Code 302.203, the Respondent violated Section 304.105, 35 Ill. Adm. Code 304.105.

20. By violating Sections 302.203 and 304.105 of the Board Water Pollution regulations, Respondent is also in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, HERITAGE FS, INC. for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), and Sections 302.203 and 304.105 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203 and 304.105;
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act and Sections 302.203 and 304.105 of the Board Water Pollution regulations;
4. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten

Thousand Dollars (\$10,000.00) for each day each violations occurred;

5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT V
OFFENSIVE DISCHARGES

1-15. Complainant realleges and incorporates by reference Paragraphs 1 through 15 of Count I as Paragraphs 1 through 15 of this Count V.

16. Section 304.106 of the Board Water Pollution regulations, 35 Ill. Adm. Code 304.106, provides as follows:

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

17. On July 9, 2003, Heritage caused or allowed approximately 540 gallons of diesel fuel to flow across the ground and be discharged into waters of the State. This discharge contained visible oil in violation of Section 304.106 of the Board Water Pollution regulations, 35 Ill. Adm. Code

304.106.

18. By violating Section 304.106 of the Board Water Pollution regulations, Respondent is also in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, HERITAGE FS, INC. for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), and Section 304.106 of the Board Water Pollution regulations, 35 Ill. Adm. Code 304.106;
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act and Section 304.106 of the Board Water Pollution regulations;
4. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violations occurred;
5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its

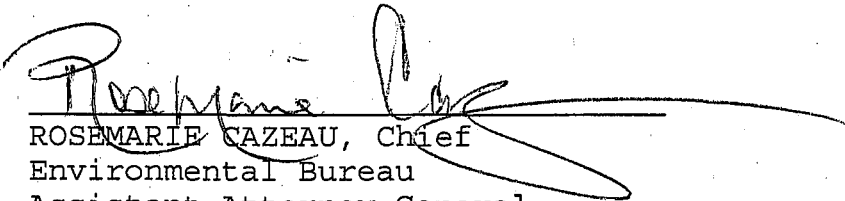
pursuit of this action; and

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

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:

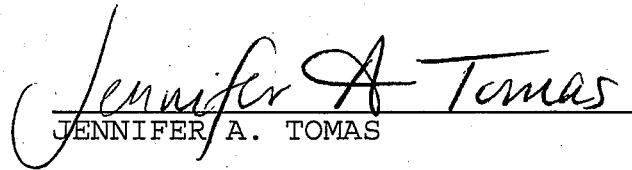

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-0609

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 23rd day of June 2004, I caused to be served by First Class Mail the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


JENNIFER A. TOMAS