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MAY 09 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

VERNON and ELAINE ZOHFELD,)
)
 Complainants,)
)
 v.)
)
 BOB DRAKE, WABASH VALLEY SERVICE)
 COMPANY, MICHAEL J. PFISTER,)
 NOAH D. HORTON, and STEVE KINDER,)
)
 Respondents.)

PCB 05-193
(Citizen's Enforcement, Air)

COMPLAINT

NOW COME Complainants, VERNON and ELAINE ZOHFELD (hereinafter collectively "Zohfelds"), through their undersigned attorney, and for their Complaint against Respondents BOB DRAKE (hereinafter "Drake"), WABASH VALLEY SERVICE COMPANY (hereinafter "Wabash Valley"), MICHAEL J. PFISTER (hereinafter "Pfister"), NOAH D. HORTON (hereinafter "Horton"), and STEVE KINDER (hereinafter "Kinder"), state as follows:

1. This Complaint is brought by the Zohfelds pursuant to Section 31 of the Illinois Environmental Protection Act (hereinafter "Act"), 415 ILCS 5/31.
2. The Zohfelds are and have been residents of the County of Hamilton, State of Illinois, at all times relevant to this Complaint.
3. Until 2000, the Zohfelds owned and ran an equine breeding business located in Hamilton County which is adjacent to property owned by Drake. They bred and raised thoroughbred horses until they were about two years old, initially trained them at a racetrack to race, and then sold them at auction to trainers and others as racehorses.

4. Respondent Drake is and has been a resident of the County of Hamilton, State of Illinois, at all times relevant to this Complaint.

5. Drake owns a forty-four acre tract of land (hereinafter referred to as "field") adjacent to the property of the Zohfelds, located in Hamilton County, Illinois.

6. Wabash Valley is an agricultural cooperative with at least one office located in Hamilton County.

7. Wabash Valley transacts business by engaging in the selling and application of agrichemicals including, but not limited to, chemical pesticides and/or herbicides (hereinafter collectively referred to as "agrichemicals") to fields in various counties of Illinois, including Hamilton County.

8. The movement of agrichemical spray particles and vapors off targeted fields by air is referred to as "spray drift" or "drift" or "over drift".

9. Pfister is a resident of the County of Hamilton, State of Illinois.

10. Horton is a resident of the County of Saline, State of Illinois.

11. Kinder is a resident of the County of Hamilton, State of Illinois.

12. Pfister and Horton were and/or are agents of or are employed by Wabash Valley to drive spray equipment used to apply agrichemicals to Drake's field. Kinder is and was the supervisor of Pfister and Horton, and is and was responsible for directing their work, including with respect to when and how to apply the agrichemicals to Drake's field.

13. On or about May 8, 2000, and at other times known better to Respondents, at Drake's express request and with his knowledge, support, and involvement, and in his presence, Wabash Valley, Pfister, Horton and Kinder sprayed agrichemicals, including, but not limited to,

Butyrac-200 (a listed hazardous air pollutant), RoundUp Ultra, Bicep II Magnum, Aatrex, and Celatom MP-79 (which includes diatomaceous earth and crystalline silica) on and around Drake's field, in a manner that allowed the agrichemicals to, and in fact ensured that they would, drift and cloud onto and across the adjacent property owned and occupied by the Zohfelds.

14. The agrichemicals came in contact with Elaine Zohfeld's person by absorption through the skin, by Elaine Zohfeld's ingestion of blackberries that were covered with the pollutants, and by aspiration. The direct contact of the agrichemicals upon the person of Elaine Zohfeld has caused serious and permanent injuries to her health.

15. The agrichemicals also came in contact with the Zohfelds' horses by absorption through the skin, by ingestion of grass and plants that were overdrafted, and by aspiration, thus causing severe and permanent injuries to all of the horses. Among other things, two of the horses have died as a direct result of the air pollutants, and the entire herd has been rendered incapable of performing as racing or breeding stock, also as a direct result of coming into contact with the air pollutants. The incident ended the business affairs of Complainants' equine breeding business.

16. The agrichemicals also came in contact with and contaminated numerous beneficial plants upon Zohfelds' property. Because of ingestion of the plants by Elaine Zohfeld and by the Zohfelds' horses, Elaine Zohfeld and their horses have suffered severe and permanent injuries and damages.

17. The Zohfelds have also suffered a loss of enjoyment of their property by being exposed to these agrichemical air pollutants. The Zohfelds live in fear that their property will be overdrafted by agrichemicals whenever Drake has his field sprayed. When the Zohfelds are home

and if they see and/or hear sprayer trucks on Drake's field, they run to get their horses inside the barn and to close their windows in their home, and then they stay secluded and sequestered inside until the spraying ends and the pollutants settle, which seriously disrupts their enjoyment of their property. The Zohfelds have had to move their horses' grazing area to the other side of their farm to try to minimize further damage being done to their horses from future sprays. Also, the Zohfelds have not planted any new garden plants or additional trees or plants on their property for fear that they will be polluted and be made unfit to eat.

18. The chemicals sprayed onto Zohfelds' property are contaminants as that term is defined in Section 3.06 of the Act, 415 ILCS 5/3.06.

19. The overdrift events have occurred many times, both before and after the May 8, 2000 incident. It is the Zohfelds' belief, better known to these Respondents, that their property is overdrifted virtually every spring by the hazardous and careless actions of the Respondents.

20. By causing and/or allowing agrichemicals to drift and cloud onto the adjacent property owned and occupied by the Zohfelds, Bob Drake, Wabash Valley Service Company, Michael J. Pfister, Noah D. Horton, and Steve Kinder have caused or tended to cause air pollution as that term is defined in Section 3.02 of the Act, 415 ILCS 5/3.02, and have violated Section 9(a) of the Act, 415 ILCS 5/9(a), and Section 201.141 of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 201.141.

Request For Relief

WHEREFORE, the Complainants, VERNON and ELAINE ZOHFELD, respectfully request that this Board enter an order against the Respondents, BOB DRAKE, WABASH

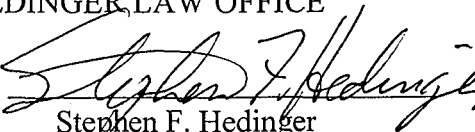
VALLEY SERVICE COMPANY, MICHAEL J. PFISTER, NOAH D. HORTON, and STEVE KINDER, as follows:

- A. Authorize a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Find that the Respondents have violated the Act and regulations as alleged herein;
- C. Order Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Assess against each Respondent civil penalties of fifty thousand dollars (\$50,000.00) for each violation of the Act and regulations;
- E. Award to Complainants their costs and reasonable attorney's fees; and
- F. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

Vernon and Elaine Zohfeld,
Complainants,
By their attorney,

HEDINGER, LAW OFFICE

By 
Stephen F. Hedinger

Hedinger Law Office
2601 South Fifth Street
Springfield, IL 62703
(217) 523-2753 phone
(217) 523-4366 fax

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NOTICE OF COMPLAINT

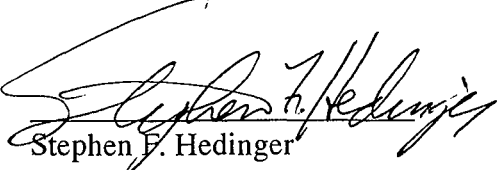
TO: Steve Kinder
 c/o Wabash Valley Service Company
 909 N. Court St.
 Grayville, IL 62844

Notice is hereby given of the filing with the Illinois Pollution Control Board of the accompanying Complaint. You are hereby notified that you may be required to attend a hearing at a date set by the Board.

“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 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.”

Any documents you file in this proceeding must be served upon the undersigned counsel for Complainants.

Counsel for Complainants:



Stephen F. Hedinger

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 hedinger@cityscape.net

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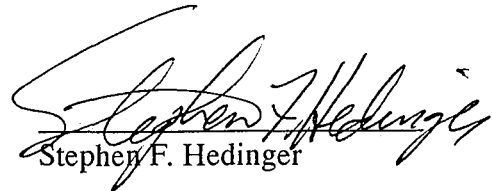
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909 N. Court St.
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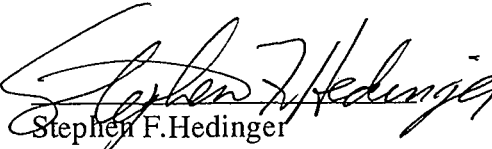
TO: Bob Drake
Route 2, Box 253
McLeansboro, IL 62859

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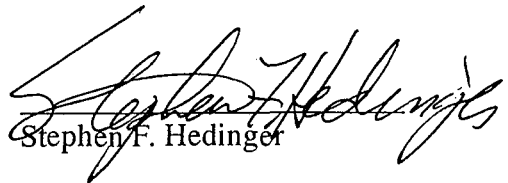
TO: Noah D. Horton
1014 Beulah
Eldorado, IL 62930

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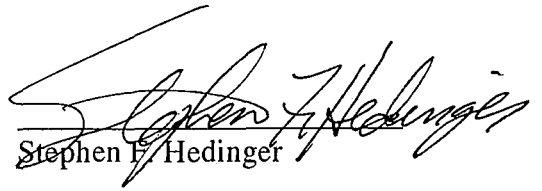
TO: Michael J. Pfister
R.R. 2
McLeansboro, IL 62859

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NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and nine copies of the foregoing Notice of Complaint and Complaint, and of this Notice of Filing, were served upon the Clerk of the Illinois Pollution Control Board, and one copy to each of the following parties of record in this cause by enclosing same in an envelope addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Wabash Valley Service Company
909 N. Court Street
Grayville, IL 62844

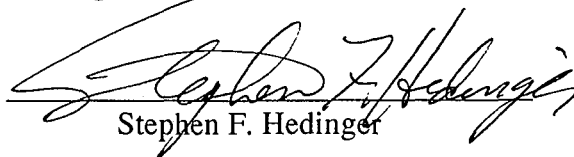
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Noah D. Horton
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Eldorado, IL 62930

with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on 6 May, 2005.


Stephen F. Hedinger

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Springfield, IL 62703
(217) 523-2753 phone
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This document prepared on recycled paper