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JUL 08 2005

BEFORE THE ILLINOIS POLLUTION CONTROL
BOARD

STATE OF ILLINOIS
Pollution Control Board

VERNON AND ELAINE ZOHFELD,

COMPLAINANTS

vs.

CAUSE NO. PCB 2005-193

ROBERT DRAKE, WABASH
VALLEY SERVICE COMPANY,
MICHAEL J. PFISTER, NOAH D.
HORTON AND STEVE KINDER,

RESPONDENTS

NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and nine copies of the foregoing Appearance of Thomas H. Bryan on behalf of Respondent Bob Drake, Respondent Drake's Motion To Stay Proceedings and Answer and Affirmative Defense in Lieu of Motion to Stay Proceedings, Status Report, 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:

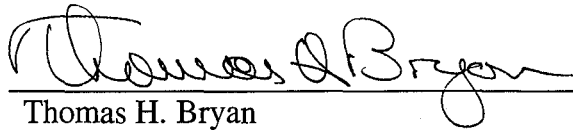
Illinois Pollution Control Board
Dorothy Guna, Clerk
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Stephen F. Hedinger, Esq.
HEDINGER & HOWARD
1225 S. Sixth St.
Springfield, IL 62703

Thomas Safley, Esq.
Hodge Dwyer Zerman
P.O. Box 5776
Springfield IL 62705-5776

With postage fully prepaid, and by deposition said envelope in a U.S. Post Office Mail Box in Evansville Indiana before 5:30 p.m. on 6 July, 2005.

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P.O. BOX 779
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Thomas H. Bryan

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Attorneys for Robert Drake

Respondent

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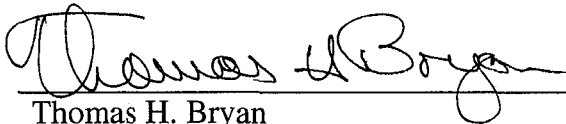
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RESPONDENTS

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Robert Drake.



Thomas H. Bryan

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RESPONDENT DRAKE'S MOTION TO STAY PROCEEDINGS AND
ANSWER AND AFFIRMATIVE DEFENSE IN LIEU OF MOTION TO STAY
PROCEEDINGS

MOTION TO STAY PROCEEDINGS

Comes now Respondent Robert Drake (hereafter "Drake"), by counsel,
Thomas H. Bryan of the firm of Fine & Hatfield, a professional corporation, and for
his Answer and Affirmative Defenses to the Complaint filed by Complainants,
Vernon and Elaine Zohfeld (hereafter collectively "Zohfelds"), states as follows:

1. That Complainants have fostered a number of actions as a result of the
alleged injuries and damages claimed from the application of agricultural products.
This includes a criminal action against one or more of the Respondents other than
Drake. It also includes a Department of Agriculture action against one or more
Respondents other than Drake.

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2. In addition, Complainants have a civil action pending in Hamilton County against the Respondents in Hamilton County making allegations arising out of the alleged overspray or drift asserted in this matter. As will be noted in the Affirmative Defense pled in the Answer and Affirmative Defenses herein, plaintiffs initially filed in Hamilton County, voluntarily dismissed and refilled in White County, only to have the matter transferred back to Hamilton County on a motion for *Forum Non Conveniens*. That decision was appealed to the Illinois Appellate Court, but that Court affirmed in September 2004. The case now resides in Hamilton County on a Third Amended Complaint and discovery is ongoing.

3. That counsel for Drake has been informed that counsel for the remaining Respondents intends to seek a stay of this matter because of the pending criminal case, because of the potential unavailability of witnesses until that criminal matter has been concluded. Counsel for the remaining Respondents is tendering to this Board copies of the relevant documents referenced in this motion.

4. That if such witnesses are unavailable, the Respondent Drake will be without the means and witnesses to properly defend this matter.

5. That ultimately, Complainants will have the opportunity to have a full adjudication of their complaints against respondents, when the civil case is concluded. But until discovery is available and complete, Respondent Drake will be unable to properly defend himself in this action. This is particularly true if the Board agrees to stay the action against the other Respondents, without staying the complete case. It would be patently unfair to permit this action to proceed on fewer than all named Respondents.

WHEREFORE, Respondent Drake, through his counsel, Thomas H. Bryan, of the firm of Fine & Hatfield, a professional corporation prays that the Board enter an Order staying this matter until the criminal matter against the other named Respondents has been concluded.

RESPONDENT DRAKE'S ANSWER AND AFFIRMATIVE DEFENSE IN LIEU OF MOTION TO STAY PROCEEDINGS

Comes now Respondent Robert Drake (hereafter "Drake"), by counsel, Thomas H. Bryan of the firm of Fine & Hatfield, a professional corporation, and for his Answer and Affirmative Defenses to the Complaint filed by Complainants, Vernon and Elaine Zohfeld (hereafter collectively "Zohfelds"), states as follows:

ANSWER

1. The allegation that the "Complaint is being brought pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31" states a legal conclusion to which no response is required. To the extent that Paragraph 1 makes any further allegations of fact, Drake denies the same.

2. Drake admits that Zohfelds have property located in Hamilton County, but has insufficient information to admit or deny whether each of them were in residence at any or all the times referenced in the Complaint, and therefore deny all remaining allegations contained in Paragraph 2, and respectfully demand strict proof thereof.

3. To the extent that Paragraph 3 indicates that the Zohfelds were located in Hamilton County, Drake admits such allegation; further answering, has insufficient

information to admit or deny any and all the remaining allegations contained in Paragraph 3, and therefore denies this allegation and respectfully demands strict proof thereof.

4. Drake admits the allegations contained in Paragraph 4.

5. Drake admits the allegations contained in Paragraph 5.

6. This allegation is not directed to this Respondent, and therefore Drake makes no response; further answering, to the extent any facts alleged therein have reference to this respondent, has insufficient information to admit or deny any and all the allegations contained in Paragraph 6, and therefore denies this allegation and respectfully demands strict proof thereof.

7. This allegation is not directed to this Respondent, and therefore Drake makes no response; further answering, to the extent any facts alleged therein have reference to this respondent, has insufficient information to admit or deny any and all the allegations contained in Paragraph 7, and therefore denies this allegation and respectfully demands strict proof thereof.

8. Without admitting that the same has occurred in this matter as described by the Complainants, or with any legal effect of the labeling of the movement of agrichemical spray particles and vapors, Drake will accept Complainants' use of the descriptive words reference.

9. This allegation is not directed to this Respondent, and therefore Drake makes no response; further answering, to the extent any facts alleged therein have reference to this respondent, has insufficient information to admit or deny any and all

the allegations contained in Paragraph 9, and therefore denies this allegation and respectfully demands strict proof thereof.

10. This allegation is not directed to this Respondent, and therefore Drake makes no response; further answering, to the extent any facts alleged therein have reference to this respondent, has insufficient information to admit or deny any and all the allegations contained in Paragraph 10, and therefore denies this allegation and respectfully demands strict proof thereof.

11. This allegation is not directed to this Respondent, and therefore Drake makes no response; further answering, to the extent any facts alleged therein have reference to this respondent, has insufficient information to admit or deny any and all the allegations contained in Paragraph 11, and therefore denies this allegation and respectfully demands strict proof thereof.

12. This Respondent has insufficient information to admit or deny knowing the actual relationship between the parties referenced in this paragraph 12, but further answering, and upon information and belief, believes the allegations therein to be true.

13. Drake admits only so much of Paragraph 13, as follows: that prior to the planting season for the spring of the year 2000, he informed Wabash Valley of the crops he intended to plant for the year, and that following that arrangement, Wabash Valley selected an agrichemical/fertilizer program to be used on Drake's farm property, to be applied at the time of and under the direction and control of Wabash Valley; further answering, denies the allegations contained in Paragraph 13 which assert: "at Drake's express request and with his knowledge, support, and involvement,

and in his presence” the activities occurred; further answering has insufficient information to admit or deny any and all the remaining allegations contained in Paragraph 13, and therefore denies these remaining allegations and respectfully demands strict proof thereof.

14. Drake denies the allegations contained in Paragraph 14.

15. Drake denies the allegations contained in Paragraph 15.

16. Drake denies the allegations contained in Paragraph 16.

17. Drake denies the allegations contained in Paragraph 17.

18. Drake has insufficient information to admit or deny the allegations contained in Paragraph 18, and therefore denies them and respectfully demands strict proof thereof.

19. Drake denies the allegations contained in Paragraph 19, and specifically denies the application of any agricultural chemicals or fertilizers on Drake’s property in the vicinity of the Zohfeld property since May of the year 2000.

20. Drake denies the allegations contained in Paragraph 20.

AFFIRMATIVE DEFENSE

For his affirmative defenses to the Complaint, Drake says and alleges as follows:

1. Drake owned and farmed property in Hamilton County Illinois in the year 2000. A part of his property abuts that of the Complainants to the west and south of the property of Complainants.

2. Drake approached Wabash in the spring of 2000, and informed representatives of that company as to what crops he intended to plant that year, and

the fertilizer he wanted applied. Thereafter, as customary for Drake and his dealings with Wabash Valley Service Company, the company made the decision on what agrichemicals to apply to support that planting.

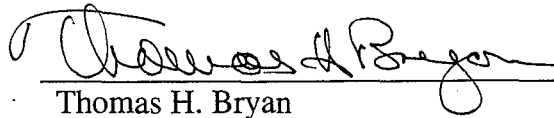
3. Prior to the application, he asked Wabash to inform him when the application would occur, and was notified of same, though the decision on how the application would be made and the equipment to be used was solely that of Wabash.

4. That although Drake observed the application, he did not direct or control in any way the process of the application of May 8, 2000 nor the chemicals which were applied, other than as mentioned above, the initial decision on the fertilizer he desired to have placed on his fields. The operation of the applicators, mixing of products for application, and the actual application of those products was solely within the direction and control of Wabash Valley Service Company.

5. That the Complainants filed a civil suit against Drake and Wabash Valley, as well as several manufacturers of agricultural products, alleging injury to their horses as a result of an alleged spray drift incident on June 26, 1998. Plaintiffs chose to file it in Hamilton County, but took a voluntary dismissal in December of 2000 and refiled the case in White County. The Respondents requested that the case be moved back to Hamilton County on a *Forum Non Conveniens* basis which the White County Court granted, and the Appellate Court affirmed, September 8, 2004. The case is now pending in Hamilton County involving the present parties, and discovery is ongoing.

REQUEST FOR RELIEF

WHEREFORE, Respondent Drake by his attorneys, Thomas H. Bryan of the firm of Fine & Hatfield, a professional corporation, prays the Board to find against Complainants and for Respondent Drake, and that the Board award all relief just and proper in the premises.



Thomas H. Bryan

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STATUS REPORT PURSUANT TO 35 ILL. ADMIN. CODE § 101.514

Comes now Respondent Robert Drake (hereafter "Drake"), by counsel, Thomas H. Bryan of the firm of Fine & Hatfield, a professional corporation, and for his Status Report to the Board, states as follows:

1. That Complainants filed their case styled as "Vernon and Elaine Zohfeld v. Bob Drake, Wabash Valley Service Company, Michael J. Pfister, Noah D. Horton, and Steve Kinder" on May 9, 2005 according to the Board's website, and service on defendant Drake occurred on May 9, 2005.

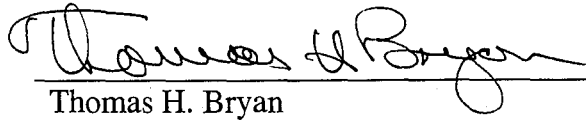
2. No party has appeared other than this party (Bob Drake), by pleading filed concurrently this date, which pleading is styled as a Motion to Stay and Answer and Affirmative Defenses in Lieu of Motion to Stay.

3. It is anticipated that the remaining Respondents will appear by counsel at or near the same time as this status report is filed.

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4. There has been no status or scheduling conferences in the matter.

Respectfully submitted:



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