

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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JUL 12 2005

STATE OF ILLINOIS
Pollution Control Board

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

PCB No. 05-193
(Citizen's Enforcement, Air)

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies each of an **ENTRY OF APPEARANCE OF THOMAS G. SAFLEY, ENTRY OF APPEARANCE OF GALE W. NEWTON, STATUS REPORT, VERIFIED MOTION TO STAY PROCEEDINGS and MOTION FOR EXTENSION OF TIME** on behalf of Respondents, Wabash Valley Service Company, Noah D. Horton and Steve Kinder, copies of which are herewith served upon you.

Respectfully submitted,

WABASH VALLEY SERVICE COMPANY,
NOAH D. HORTON, and STEVE KINDER,
Respondents,

Dated: July 8, 2005

By: Thomas G. Safley
One of Their Attorneys

Thomas G. Safley
Gale W. Newton
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, certify that I have served the attached
ENTRY OF APPEARANCE OF THOMAS G. SAFLEY, ENTRY OF APPEARANCE
OF GALE W. NEWTON, STATUS REPORT, VERIFIED MOTION TO STAY
PROCEEDINGS and MOTION FOR EXTENSION OF TIME upon:

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

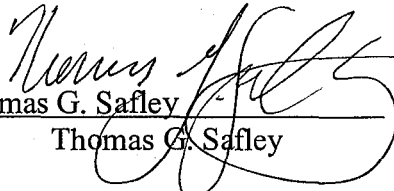
via electronic mail on July 8, 2005, and upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Stephen F. Hedinger, Esq.
Hedinger Law Office
2601 South Fifth Street
Springfield, Illinois 62703

Thomas H. Bryan, Esq.
Fine & Hatfield, P.C.
520 N.W. Second Street
Post Office Box 779
Evansville, Indiana 47705-0779

by depositing said documents in the United States Mail in Springfield, Illinois, postage
prepaid, on July 8, 2005.



/s/ Thomas G. Safley
Thomas G. Safley

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 Respondents.)

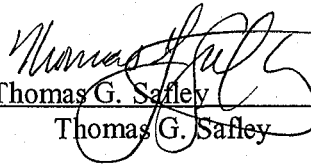
PCB No. 05-193
(Citizen's Enforcement, Air)

ENTRY OF APPEARANCE OF THOMAS G. SAFLEY

NOW COMES Thomas G. Safley, of the law firm of HODGE DWYER ZEMAN,
and hereby enters his appearance on behalf of Respondents, WABASH VALLEY
SERVICE COMPANY, NOAH D. HORTON, and STEVE KINDER, in the above-
referenced matter.

Respectfully submitted,

WABASH VALLEY SERVICE COMPANY,
NOAH D. HORTON, and STEVE KINDER,
Respondents,


By: Thomas G. Safley
Thomas G. Safley

Dated: July 8, 2005

Thomas G. Safley
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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VERNON and ELAINE ZOHFELD,)

Complainants,)

vs.)

BOB DRAKE, WABASH VALLEY)
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STEVE KINDER,)

Respondents.)

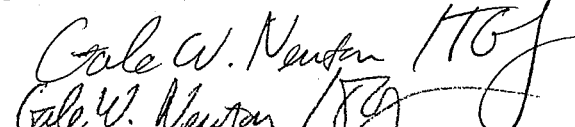
PCB No. 05-193
(Citizen's Enforcement, Air)

ENTRY OF APPEARANCE OF GALE W. NEWTON

NOW COMES Gale W. Newton, of the law firm of HODGE DWYER ZEMAN,
and hereby enters his appearance on behalf of Respondents, WABASH VALLEY
SERVICE COMPANY, NOAH D. HORTON, and STEVE KINDER, in the above-
referenced matter.

Respectfully submitted,

WABASH VALLEY SERVICE COMPANY,
NOAH D. HORTON, and STEVE KINDER,
Respondents,

By: 
Gale W. Newton

Dated: July 8, 2005

Gale W. Newton
HODGE DWYER ZEMAN
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WVSC:002/Fil/EOA-GWN

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 12 2005

VERNON and ELAINE ZOHFELD,)
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Complainants,)
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Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-193
(Citizen's Enforcement, Air)

STATUS REPORT

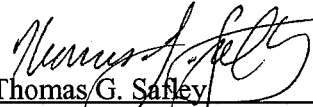
NOW COME Respondents, WABASH VALLEY SERVICE COMPANY, NOAH D. HORTON, and STEVE KINDER ("Respondents"), by their attorneys, HODGE DWYER ZEMAN, and submit the following Status Report to the Illinois Pollution Control Board ("Board") in conjunction with their Motion to Stay Proceedings, as required by 35 Ill. Admin. Code § 101.514, stating as follows:

1. On May 9, 2005, Complainants filed their initial Complaint with the Board in this matter.
2. The Complaint was served on the Respondents on May 7, 9, and/or 10, 2005.
3. No discovery, scheduling conference, or other activity has occurred with regard to the above captioned matter.

WHEREFORE, Respondents, WABASH VALLEY SERVICE COMPANY,
NOAH D. HORTON, and STEVE KINDER, respectfully request that the Illinois
Pollution Control Board stay this matter as set forth in Respondents' Motion to Stay
Proceedings.

Respectfully submitted,

WABASH VALLEY SERVICE
COMPANY, NOAH D. HORTON, and
STEVE KINDER,
Respondents,


By: /s/ Thomas G. Safley
One of Their Attorneys

Dated: July 8, 2005

Thomas G. Safley
Gale W. Newton
HODGE DWYER ZEMAN
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STEVE KINDER,)
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Respondents.)

PCB No. 05-193
(Citizen's Enforcement, Air)

VERIFIED MOTION TO STAY PROCEEDINGS

NOW COME Respondents, WABASH VALLEY SERVICE COMPANY, NOAH D. HORTON, and STEVE KINDER ("Respondents"), by their attorneys, HODGE DWYER ZEMAN, and move the Illinois Pollution Control Board ("Board") to stay the proceedings in this matter, pending the conclusion of a related criminal action initiated against Respondents, stating as follows:

1. "The Board has 'inherent authority to a grant stay under certain circumstances,'" Israel-Gerold's, v. Illinois EPA, PCB No. 91-108, 1991 Ill. ENV LEXIS 517, at *2 (Ill.Pol.Control.Bd. July 11, 1991) (citations omitted), including the authority to stay its own proceedings.

2. A party seeking a stay must submit a motion to the Board "accompanied by sufficient information detailing why a stay is needed," and "[a] status report detailing the progress of the proceeding must be included in the motion." 35 Ill. Admin. Code § 101.514.

3. The Board routinely grants stays of its own orders and permit conditions, and has granted stays of its own proceedings pending the outcome of related cases in other courts. See Carl and Edna Ball, d/b/a C & E Recycling and Resource Recovery v. Illinois EPA, PCB No. 95-182, 1996 Ill. ENV LEXIS 181 (Ill.Pol.Control.Bd. Feb. 15, 1996) (granting an additional stay of Board proceedings to allow the parties time in which to resolve a related circuit court matter); Lefton Iron and Metal v. Moss-American Corp. and Kerr-McGee Chemical Corp., PCB No. 87-191, 1990 Ill. ENV LEXIS 981, 4-5 (Ill.Pol.Control.Bd. Nov. 9, 1990) (discussing a motion brought by Kerr-McGee to stay the Board proceedings pending the outcome of a circuit court action, which stay was granted by the hearing officer); and Citizens of Lombard, et al. v. Village of Lombard and the People of the State of Illinois, PCB No. 79-98, 1982 Ill. ENV LEXIS 242 (Ill.Pol.Control.Bd. Dec. 2, 1982) (resuming matter before the Board following conclusion of the proceedings in the Circuit Court after the Board had earlier granted a motion to stay the Board proceedings pending final action in the Circuit Court case).¹

4. The Board has noted that, with respect to Board proceedings that have been filed after Circuit Court proceedings, "if the parties believe that resolution of the

¹ On occasion, the Board has refused to grant a motion for stay of its own proceedings based on a related civil case pending in another court. However, such denials were based on factors specific to civil cases (see Environmental Site Developers, Inc. v. White & Brewer Trucking, Inc., PCB Nos. 96-180, 97-11, 1997 Ill. ENV LEXIS 409 (Ill.Pol.Control.Bd. July 10, 1997) or where the related civil action was filed after the matter filed with the Board (see Village of Park Forest v. Sears, Roebuck, & Co., PCB No. 01-77, 2001 Ill. ENV LEXIS 101, at *16 (Ill.Pol.Control.Bd. Feb. 15, 2001). In contrast, the current case involves a criminal case rather than a civil matter, and the criminal case at issue here was filed before the related matter was filed with the Board.

circuit court case will expedite the Board's decision, the parties are free to request the Board to grant a stay of this proceeding pending the outcome of the circuit court case.” Morton College Board of Trustees of Illinois Community College Dist. No. 527 v. Town of Cicero, PCB No. 98-59, 1998 Ill. ENV LEXIS 13, at *9 (Ill.Pol.Control.Bd. Jan. 8, 1998).

5. On May 9, 2005, Complainants filed their Complaint with the Board in this matter.

6. The Complaint alleges that “on or about May 8, 2000, and at other times known better to Respondents . . . [Respondents] sprayed agricultural chemicals . . . in a manner that allowed the agricultural chemicals to . . . drift and cloud onto and across the adjacent property owned and occupied by the [Complainants].” Complaint at 3.

7. Almost four years earlier, On May 20, 2001, Complainants filed a civil complaint with the Circuit Court of the Second Judicial Circuit, White County, Illinois (the “Civil Matter”), relating to this same “incident,” and alleging, inter alia, that “on or about May 8, 2000” Respondents “applied agrichemicals” to a field and “allowed the agrichemicals to drift onto the adjacent property owned and occupied by the [Complainants].” See Vernon and Elaine Zohfeld v. Bob Drake, Wabash Valley Serv. Co., Michael J. Pfister, and Noah D. Horton, Case No. 2001-L-21, (2d Cir. 2001) (Complaint attached).

8. Further, on April 26, 2005, a criminal Information (the “Information”) was filed with the United States District Court of the Southern District of Illinois relating to this same “incident.” See United States of America v. Wabash Valley Service Co., Glen

S. Kinder, and Noah David Horton, Criminal No. 05-40029-JPG, a copy of which Information is attached hereto.

9. The criminal Information alleges that “on or about May 8, 2000, . . . [Respondents] did use a registered pesticide in a manner inconsistent with its labeling.”

Id.

10. The Illinois Appellate Court has held that:

A party may claim the fifth amendment privilege in a pending civil matter to protect from involuntarily disclosing information which may implicate him criminally. Where a criminal action is simultaneously pending with a civil action, courts may stay the civil proceeding based on the fifth amendment until the resolution of the criminal matter. Courts are willing to defer civil proceedings in such a manner inter alia: to protect a party from making admissions or furnishing other proof of a crime; to protect the party from not being able to defend a civil suit regarding the same matter; to protect the party from abuse of discovery in the criminal matter; and to protect the party from otherwise prejudicing his criminal case.

People, ex rel. Hartigan v. Kafka & Sons Bldg. & Supply Co., 252 Ill. App. 3d 115, 119 (1st Dist. 1993). (Citations omitted.)

11. In addition:

The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made ‘in light of the particular circumstances and competing interests involved in the case.’ This means the decisionmaker should consider ‘the extent to which the defendant’s fifth amendment rights are implicated.’ In addition, the decisionmaker should generally consider the following factors: (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its

cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.

Keating v. Office of Thrift Supervision, 45 F.3d 322, 324-325 (9th Cir. 1995).

(Citations omitted.)

12. Although a stay of a civil proceeding due to a possible criminal investigation “is not normally appropriate when a defendant has not been formally charged,” “[c]ourts have indicated that an announced [criminal] charge against a defendant weighs heavily in the defendant’s favor in deciding whether to stay civil proceedings.” Jacksonville Sav. Bank v. Kovack, 326 Ill. App. 3d 1131, 1137 (4th Dist. 2002). (Emphasis added.)

13. Here, Respondents have been formally charged in a criminal matter in connection with the same “incident” that forms the basis of Complainants’ Complaint before the Board. See Criminal Information.

14. In light of this fact, for the reasons set forth below, Respondents move the Board to stay this case pending the resolution of that criminal matter. (Respondents do not by this Motion move the Board for a stay of this matter pending the resolution of the Civil Matter, if that matter is still pending after the criminal matter is concluded.)

15. First, Complainants would not be prejudiced by any delay caused by a stay since before the Board they are seeking only civil penalties that would be paid to the State and an order to cease and desist from future violations of the Illinois Environmental Protection Act where the violation alleged was a discrete “overspray” incident rather than a continuous and ongoing source of air emissions such as emissions from a point source,

and since the Civil Matter, if successful, may provide Complainants with money damages for their alleged injuries.

16. Second, Respondents would maintain their rights against self-incrimination by appropriate application of the Fifth Amendment in any civil matter, including this case, and, therefore, the burden on Respondents would be onerous because should they invoke their rights against self-incrimination in this matter to protect themselves from use of such testimony in the criminal case, the fact finder in this matter could be “entitled to draw negative inferences against those who assert fifth amendment rights against self-incrimination.” People v. \$1,124,905 United States Currency, 177 Ill. 2d 314, 362 (Ill. 1997).

17. Third, a stay would not inconvenience the Board in the management of its cases since no schedule has yet been established in this case, and a stay would promote the efficient use of judicial resources since some of the facts at issue could be decided during the criminal case.

18. Fourth, no persons who are not parties to the Complaint have expressed interest in the civil matters involved in the Complaint.

19. Fifth, the public has not expressed any particular interest in the pending civil matters involved in the Complaint.

20. Sixth, Bob Drake, who owns the property adjacent to Complainants’ property, on which Respondents allegedly “sprayed agricultural chemicals,” and Michael J. Pfister, are Respondents in the present matter but are not named in the Information.

21. Bob Drake and Michael J. Pfister would be prejudiced in the present matter if a stay were not issued because they would be unable to obtain information from Respondents in respect to their defenses or in respect to any cross-complaints they may file, since Respondents intend to maintain their Fifth Amendment rights against self-incrimination.

22. In addition, counsel for Bob Drake has indicated to the undersigned that he agrees to the issuance of a stay, and Michael J. Pfister, whom the undersigned also represents in this matter, also agrees to the issuance of a stay.

23. Seventh, since the Complaint only alleges one discrete identifiable incident which allegedly occurred on May 8, 2000, more than five years ago, neither the public nor the environment would be harmed by the granting of a stay.

24. This Motion is made in good faith and not for purposes of undue delay.

25. At the time of filing this Motion for Stay of Proceedings, Respondents also are filing a Motion for Extension of Time to Respond to the Complaint pending the Board's resolution of this Motion for Stay.

26. Pursuant to 35 Ill. Admin. Code § 101.514, Respondents also have filed herewith a Status Report detailing the progress of this matter to date.

WHEREFORE, Respondents, WABASH VALLEY SERVICE COMPANY, NOAH D. HORTON, and STEVE KINDER, respectfully move the Illinois Pollution Control Board to stay the proceedings in this matter based on Respondents' Fifth

Amendment rights until the conclusion of the criminal matter referred to herein, and to award Respondents all other relief just and proper in the premises.

VERIFICATION

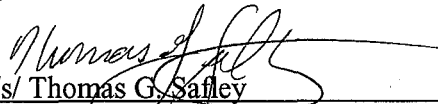
STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

Thomas G. Safley, being first duly sworn on oath, deposes and states, under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth above are true and correct, except as to matters herein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Respectfully submitted,

WABASH VALLEY SERVICE
COMPANY, NOAH D. HORTON, and
STEVE KINDER,
Respondents,

Dated: July 8, 2005


By: /s/ Thomas G. Safley
One of Their Attorneys

Thomas G. Safley
Gale W. Newton
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, ILLINOIS

FILED
2001

Ellen J. Pettigrew
CIRCUIT COURT
WHITE COUNTY

ELAINE and VERNON ZOHFELD
as individuals and d/b/a EZ FARMS,

Plaintiffs,

v.

BOB DRAKE, WABASH VALLEY SERVICE
COMPANY, MICHAEL J. PFISTER, and
NOAH D. HORTON,

Defendants.

Case No. 2001-L-21

COMPLAINT

NOW COME Plaintiffs, ELAINE and VERNON ZOHFELD, as individuals and d/b/a EZ FARMS, by and through their undersigned attorneys, HEDINGER & HOWARD, by Stephen F. Hedinger, and for their Complaint against Defendants, BOB DRAKE (hereinafter "Drake"), WABASH VALLEY SERVICE COMPANY (hereinafter "Wabash Valley"), MICHAEL J. PFISTER (hereinafter "Pfister"), and NOAH D. HORTON (hereinafter "Horton") state as follows:

Allegations Applicable to All Counts

1. Plaintiffs Elaine and Vernon Zohfeld (hereinafter collectively "the Zohfelds") are residents of the County of Hamilton, State of Illinois and have been at all times relevant to this Complaint.

2. The Zohfelds own and run an equine breeding business located in Hamilton County which is adjacent to property owned by Drake. They breed and raise thoroughbred horses until they are about two years old, initially train them at a racetrack to race, and then sell them at auction to trainers and others as racehorses.

3. Drake is a resident of the County of Hamilton, State of Illinois, who owns a forty-four acre tract of land (hereinafter referred to as "field") adjacent to the property of the Zohfelds.

4. Wabash Valley is an agricultural cooperative with at least one office, including its main office, located in White County.

5. 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 White and Hamilton Counties. Wabash Valley maintains its primary place of business in White County.

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

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

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

9. 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 fields.

COUNT I - NEGLIGENCE OF DEFENDANTS DRAKE, WABASH VALLEY SERVICE COMPANY AND PFISTER FOR PROPERTY DAMAGE RELATING TO THE JUNE 26, 1998 OVERSPRAY

10. Plaintiffs repeat and re-allege Paragraphs 1 - 9, inclusive, as and for their paragraph 10.

11. On or about June 26, 1998, at Drake's request, Wabash Valley sprayed Drake's field with agrichemicals, including, but not limited to, Butyrac-200 and Roundup Ultra.

12. Two of the agrichemicals used by Defendants Drake, Wabash Valley and Pfister relevant to this Complaint, and sprayed by Wabash Valley upon Drake's field on June 26, 1998, include, but may not be limited to, Butyrac 200 and Roundup Ultra.

13. Some of the information on the specimen label for Butyrac 200 includes, but is not limited to:

- Butyrac 200 is a hazard to both humans and domestic animals;
- Butyrac 200 is a corrosive that causes irreversible eye damage;
- Butyrac 200 is harmful if swallowed or absorbed through the skin;
- One should avoid breathing Butyrac 200 spray mist;
- Butyrac 200 spray mist should not be permitted to drift onto susceptible plants (cotton, okra, grapes, tomatoes, fruit trees, vegetables, flowers or other desirable crop or ornamental plants) since very small quantities of Butyrac 200 can cause severe injury during the growing or dormant periods.
- A coarse spray should be used to minimize drift;
- Spray nozzles that produce fine spray droplets should not be used to apply Butyrac 200;
- Spray drift of Butyrac 200 can be minimized by not spraying when wind exceeds 5 miles per hour;
- Butyrac 200 should not be applied in a way that will contact workers or other persons, either directly or through drift. (See Exhibit A)

14. Some of the information on the specimen label for Roundup Ultra includes, but is not limited to:

- Ingestion of Roundup Ultra or large amounts of freshly sprayed vegetation by domestic animals may result in temporary gastrointestinal irritation;
- Roundup Ultra should not be applied in a way that will contact workers or other persons, either directly or through spray drift;
- Only protected handlers should be in the area during application of Roundup Ultra;

- Roundup Ultra should not be applied in a manner to allow mist, drip, drift or splash onto desirable vegetation since minute quantities of this product can cause severe damage or destruction to the crops, plants or other areas on which treatment was not intended.
- The likelihood of injury occurring from the use of Roundup Ultra increases when winds are gusty, as wind velocity increases, when wind direction is constantly changing or when there are other meteorological conditions that favor spray drift;
- Avoid applying Roundup Ultra at extensive speeds or pressures. (See Exhibit B)

15. On or about June 26, 1998, Wabash Valley, through its agent and/or employee, Pfister, applied agrichemicals to the field owned by Drake during weather conditions and in a manner that allowed the agrichemicals to drift onto the adjacent property owned and occupied by the Zohfelds.

16. Defendants Wabash Valley, Pfister, and/or Drake owed a duty to Zohfelds to apply or facilitate the application of agrichemicals in accordance with applicable specimen labels and in a non-negligent manner that would prevent the agrichemicals from drifting from Drake's field onto Zohfeld's adjacent property.

17. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Defendants Wabash Valley, Pfister and/or Drake breached their duty to Zohfelds.

18. Zohfelds' injuries and property damages were caused by one or more of the following acts of Defendants Wabash Valley, Pfister, and/or Drake, done in breach of their duty to the Zohfelds:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;

- b. Spraying agrichemicals in high temperatures of 98° or above where agrichemical spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto Zohfelds' adjacent property;
- d. Spraying agrichemicals in a manner which was not possible to prevent drifting from Drake's field onto the property of others, including the adjacent property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons and/or animals coming into contact with the agrichemicals via drifting;
- f. Spraying agrichemicals when persons and/or animals were outdoors and would come in direct contact with the agrichemicals;
- g. Failing to warn the Zohfelds to avoid contact with plants and trees which had been contaminated by drifting agrichemicals;
- h. Failing to warn the Zohfelds to avoid contact with areas that had been contaminated by drifting agrichemicals; and
- i. Failing to warn the Zohfelds not to feed livestock from areas contaminated by drifting agrichemicals.

19. As a direct and proximate result of one or more of the foregoing acts or omissions of the Defendants Drake, Wabash Valley and/or Pfister, Plaintiffs have suffered severe and permanent injuries to their horses and as a consequence, their business as race horse breeders; Plaintiffs have incurred and will continue to incur veterinary expenses as a result of the incident;

Plaintiffs will incur future losses from the inability to breed and sell horses as a result of the incident.

20. The severe and permanent injuries suffered by the horses include, but are not limited to the following:

- a. increase in temperature;
- b. increase in respiration;
- c. labored breathing and bloody-looking, flared nostrils;
- d. rash, hives, hair loss and bloody patches;
- e. teary eyes;
- f. restlessness;
- g. decrease in appetite and increase in water consumption;
- h. lethargy;
- i. fever;
- j. cough and increase in mucus; and
- k. permanent injury and damages to the horses' internal organs and systems, including but not limited to lungs and respiratory systems, which rendered the horses incapable and unsuitable for breeding and racing purposes, and has and will result in death.

21. The severe and permanent injuries suffered by the Zohfelds' equine stock have caused the Zohfelds to incur damages in an amount in excess of \$10,000 for veterinary care and other assistance to the injured horses, and damages in excess of \$250,000 in the Zohfelds' horse breeding business through permanent loss of breeding stock.

WHEREFORE, Plaintiffs, Vernon and Elaine Zohfeld request entry of a judgment against Defendants Robert Drake, Wabash Valley Service Company and/or Michael J. Pfister, jointly and severally, as follows:

- a. Damages in an amount in excess of \$10,000.00 for the costs of veterinary expenses already incurred and future veterinary expenses;
- b. Damages in an amount in excess of \$250,000.00 for the loss of the business, including the inability to breed and sell horses;
- c. Court costs and such other relief as this Court may deem proper.

PLAINTIFFS DEMAND TRIAL BY JURY AS TO COUNT I

**COUNT II - NEGLIGENCE OF DEFENDANTS DRAKE AND
WABASH VALLEY SERVICE COMPANY FOR PERSONAL INJURIES
OF PLAINTIFF ELAINE ZOHFELD RELATING TO THE
JUNE 26, 1998 OVERSPRAY**

22. Plaintiffs repeat and re-allege Paragraphs 1 - 21, inclusive, as and for their paragraph 22.

23. On or about June 26, 1998, Wabash Valley, through its agents and/or employees, applied agrichemicals to the field owned by Drake and allowed the agrichemicals to drift onto the person of Plaintiff Elaine Zohfeld who was located on her property adjacent to Drake's field, and onto desirable vegetation, including edible vegetation, on the Zohfelds' property.

24. Wabash Valley and Drake owed a duty to Plaintiff Elaine Zohfeld to apply or facilitate the application of agrichemicals in accordance with applicable specimen labels and in a non-negligent manner that would prevent the agrichemicals from drifting from Drake's field onto Zohfelds' adjacent property, where they may come in contact with Elaine Zohfeld.

25. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Wabash Valley and Drake breached their duty to Elaine Zohfeld.

26. Plaintiff Elaine Zohfeld's injuries and damages were caused by one or more of the following acts or omissions of Wabash Valley and Drake:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;
- b. Spraying agrichemicals in high temperatures of 98° or above where agrichemical spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto Plaintiff Elaine Zohfeld's person, or beneficial vegetation, including edible vegetation, on the Zohfelds' property;
- d. Spraying agrichemicals in a manner which was not possible to prevent drifting from Drake's field onto the property of others, including the adjacent property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons, including Plaintiff Elaine Zohfeld, coming into contact with the agrichemicals through spray drifting;
- f. Spraying agrichemicals when Plaintiff Elaine Zohfeld was outdoors and would come in direct contact with the agrichemicals through skin absorption and inhalation;

g. Failing to warn Plaintiffs to avoid contact with plants and trees that had been contaminated by drifting agrichemicals;

h. Failing to warn Plaintiffs to avoid contact with areas that had been contaminated by drifting agrichemicals.

27. The agrichemicals applied on June 26, 1998 by Wabash Valley as requested by Drake upon Drake's field over drifted onto Zohfelds' property where they immediately came in contact with Elaine Zohfeld's person, and they also came in contact with and contaminated numerous beneficial plants upon Zohfelds' property. The direct contact of the agrichemicals upon the person of Elaine Zohfeld has caused serious and permanent injuries, and in addition, Elaine Zohfeld, unaware that the beneficial plants on her property had been contaminated by the over drift, ate contaminated blackberries harvested from her property, which ingestion of agrichemicals caused further and additional serious and permanent injuries to Elaine Zohfeld.

28. As a direct and proximate result of one or more of the foregoing acts or omissions of the Defendants Drake and Wabash Valley, Plaintiff Elaine Zohfeld has suffered severe and permanent injuries to her body; Plaintiff Elaine Zohfeld has incurred and will continue to incur medical expenses as a result of the incident; and Plaintiff Elaine Zohfeld has experienced and will continue to experience great pain and suffering as a result of this incident.

29. The severe and permanent injuries suffered by Elaine Zohfeld include, but are not limited to the following:

- a. frequent headaches;
- b. dizziness and shakiness;
- c. difficulty thinking and disorientation;
- d. rubbery, shaky and unsteady legs;

- e. tiredness;
- f. burning sensation in throat and mouth;
- g. nauseousness;
- h. irritated, raw throat;
- i. trouble breathing;
- j. rash; and
- k. damages and injuries to internal organs and systems, including damages to her heart and lungs.

30. The exposure to the agrichemicals experienced by Plaintiff Elaine Zohfeld, in addition to causing the injuries identified above, will also likely cause future medical conditions and complications for which Plaintiff Elaine Zohfeld will be required to monitor, thereby incurring additional injuries through stress and uncertainty, as well as incurring additional medical expenses.

31. The injuries suffered by Plaintiff Elaine Zohfeld have caused and will cause her to incur damages in an amount in excess of \$10,000.00 for medical expenses already incurred, an amount in excess of \$50,000.00 for future medical expenses, and an amount in excess of \$250,000.00 for her pain, suffering and loss of functions and pleasures of life, and an amount in excess of \$100,000.00 for lost earning capacity.

WHEREFORE, Plaintiff, Elaine Zohfeld requests entry of a judgment against Defendants Robert Drake and Wabash Valley Service Company, jointly and severally, as follows:

- a. Damages in an amount in excess of \$60,000.00 for the costs of medical expenses already incurred and future medical expenses that she will incur;

b. Damages in an amount of \$250,000.00 for Plaintiff Elaine Zohfeld's pain, suffering and loss of functions and pleasures of life;

c. Damages in an amount in excess of \$100,000.00 for lost earning capacity; and

d. Court costs and such other relief as this Court may deem proper.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO COUNT II

**COUNT III - LOSS OF CONSORTIUM OF PLAINTIFF VERNON ZOHFELD
RELATING TO THE JUNE 26, 1998 OVERSPRAY**

32. Plaintiffs repeat and re-allege Paragraphs 1 - 31 inclusive, as and for their paragraph 32.

33. Plaintiff Vernon Zohfeld has been the lawful husband of Elaine Zohfeld at all times relevant to this Complaint.

34. By reason of the injuries and damages sustained by Plaintiff Elaine Zohfeld, Plaintiff Vernon Zohfeld has suffered the loss of services of his wife; Plaintiff Vernon Zohfeld has been and will continue to be deprived of the companionship, company, affection and love of his wife; Plaintiff Vernon Zohfeld has been compelled and will be compelled in the future to expend sums of money having services performed for him which have been previously performed by his wife.

WHEREFORE, Plaintiff Vernon Zohfeld prays judgment against Defendant Wabash Valley Service Company and Defendant Robert Drake, jointly and severally, in an amount in excess of \$100,000.00 that is reasonable and equitable for his loss, and for Court costs and such other relief as this Court may deem proper.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO COUNT III

**COUNT IV - NEGLIGENCE OF DEFENDANTS DRAKE, WABASH VALLEY
SERVICE COMPANY AND HORTON FOR PROPERTY DAMAGE RELATING TO
THE MAY 8, 2000 OVERSPRAY**

35. Plaintiffs repeat and re-allege Paragraphs 1 - 9, inclusive, as and for their paragraph 35.

36. On or about May 8, 2000, at Drake's request, Wabash Valley, through its agent and employee Horton, sprayed Drake's field with agrichemicals, including Bicep II Magnum and Aatrex, and Celatom MP-79 which includes diatomaceous earth and crystalline silica.

37. Some of the information on the specimen label for Bicep II Magnum includes, but is not limited to:

- Bicep II Magnum is a hazard to both humans and domestic animals;
- Bicep II Magnum causes eye irritation;
- Bicep II Magnum is harmful if swallowed, inhaled or absorbed through the skin;
- One should avoid breathing Bicep II Magnum spray mist;
- Bicep II Magnum may cause skin sensitization reactions in some people;
- Bicep II Magnum should not be applied in a manner that will contact workers or other persons, either directly or through drift;
- To avoid spray drift, do not apply Bicep II Magnum under windy conditions;
- Drift potential is lowest between wind speeds of 2-10 mph; however, many factors, including droplet size and equipment type, determine drift potential at any given speed;
- Bicep II Magnum should only be applied when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitat for threatened or endangered species, nontarget crops) is minimal (e.g., when wind is blowing away from the sensitive areas). (See Exhibit C)

38. Some of the information on the specimen label for Aatrex includes, but is not limited to:

- Aatrex is a hazard to both humans and domestic animals;
- Aatrex is harmful if swallowed, inhaled or absorbed through skin;
- One should avoid breathing Aatrex vapors or spray mist;
- Aatrex should not be applied in a manner that will contact workers or other persons, either directly or through drift;
- Aatrex should not be used near adjacent desirable plants or in greenhouses or injury may occur;
- To avoid spray drift, Aatrex should not be applied under windy conditions. (See Exhibit D)

39. Some of the information on the Material Safety Data Sheet for Celatom MP-79

includes, but is not limited to:

- Upper respiratory irritant that can cause coughing or throat irritation from acute exposure to product;
- The International Agency for Research on Cancer and National Toxicology Program have recognized crystalline silica as carcinogenic to humans;
- Workers are requested to wear respirators when celatom dust is present;
- The handling procedures say to avoid creating celatom dust;
- Celatom may cause eye irritation or inflammation;
- Inhalation can cause dryness of nasal passages and congestion. (See Exhibit E.)

40. On or about May 8, 2000, Wabash Valley, through its agent and/or employee, Horton, applied agrichemicals to the field owned by Drake and allowed the agrichemicals to drift onto the adjacent property owned and occupied by the Zohfelds.

41. Wabash Valley, Horton, and Drake owed a duty to the Zohfelds to apply or facilitate the application of the agrichemicals in accordance with applicable specimen labels and in a non-

negligent manner that would not allow the agrichemicals to drift from Drake's field onto Zohfelds' adjacent property.

42. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Wabash Valley, Drake and Horton breached their duty to the Zohfelds.

43. Plaintiffs' injuries and property damages were caused by one or more of the following acts or omissions of Wabash Valley, Horton, and/or Drake:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;
- b. Spraying agrichemicals in high temperatures of 98° or above where agricultural spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto the Zohfelds' adjacent property;
- d. Spraying agrichemicals in a manner which was not possible to control drifting from Drake's field onto the property of others, including the property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons and/or animals coming into contact with those agrichemicals through spray drift;
- f. Spraying agrichemicals when persons and/or animals were outdoors and would come in direct contact with the agrichemicals through spray drift;
- g. Failing to warn the Zohfelds to avoid contact with plants and trees which had been contaminated by drifting agrichemicals;

h. Failing to warn the Zohfelds to avoid contact with areas that had been contaminated by drifting agrichemicals; and

i. Failing to warn the Zohfelds not to feed livestock in or from areas contaminated by the drifting agrichemicals.

44. As a direct and proximate result of one or more of the foregoing acts or omissions of the Defendants Drake, Wabash Valley and Horton, the Zohfelds have suffered severe and permanent injuries to their horses and as a consequence, to their business as horse breeders; the Zohfelds have incurred and will continue to incur veterinary expenses as a result of the May 8, 2000 overspray incident; the Zohfelds will incur future losses from inability to breed and sell horses as a result of the May 8, 2000 overspray incident.

45. The severe injuries suffered by the horses include, but are not limited to the following:

- a. increase in respiration;
- b. labored breathing;
- c. restlessness;
- d. decrease in appetite and increase in water consumption;
- e. cough and increase in mucus; and
- f. coats lost luster.
- g. permanent injury and damage to the horses' internal organs and systems, including but not limited to respiratory systems, which rendered the horses incapable and unsuitable for breeding and racing purposes, and has and will result in death.

46. The severe and permanent injuries suffered by the Zohfelds' equine stock have caused the Zohfelds to incur damages in an amount in excess of \$10,000 for veterinary care and

other assistance to the injured horses, and damages in excess of \$250,000 in the Zohfelds' horse breeding business through permanent loss of breeding stock.

WHEREFORE, Plaintiffs, Vernon and Elaine Zohfeld request entry of a judgment against Defendants Robert Drake, Wabash Valley Service Company and Noah D. Horton, jointly and severally as follows:

- a. Damages in an amount in excess of \$10,000.00 for the costs of veterinary expenses already incurred and future veterinary expenses;
- b. Damages in an amount in excess of \$250,000.00 for the costs of loss of the business, including the inability to breed and sell horses;
- c. Court costs and such other relief as this Court may deem proper.

PLAINTIFFS DEMAND TRIAL BY JURY AS TO COUNT IV

**COUNT V - NEGLIGENCE OF DEFENDANTS DRAKE,
WABASH VALLEY SERVICE COMPANY AND HORTON FOR PERSONAL
INJURIES OF PLAINTIFF ELAINE ZOHELD RELATING TO THE
MAY 8, 2000 OVERSPRAY**

47. Plaintiffs repeat and re-allege Paragraphs 1 - 9, and 35 - 46, inclusive, as and for their paragraph 47.

48. On or about May 8, 2000, Wabash Valley, through its employee, Horton, applied agrichemicals to Drake's field and allowed the agrichemicals to drift onto the person of Plaintiff Elaine Zohfeld.

49. Wabash Valley, Horton and Drake owed a duty to Plaintiff Elaine Zohfeld to apply or facilitate the application of the agrichemicals in accordance with applicable specimen labels and in a non-negligent manner that would not allow the agrichemicals to drift from Drake's field onto Zohfelds' adjacent property.

50. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Wabash Valley, Horton and Drake breached their duty to the Zohfelds.

51. Plaintiff Elaine Zohfeld's injuries and damages were caused by one or more of the following acts or omissions of Wabash Valley, Horton and Drake:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;
- b. Spraying agrichemicals in high temperatures of 98° or above where agrichemical spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto Plaintiff Elaine Zohfeld's person;
- d. Spraying agrichemicals in a manner in which spray drifting was uncontrolled causing the agrichemicals to drift from Drake's property onto the property of others, including the adjacent property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons, including Plaintiff Elaine Zohfeld, coming into contact with agrichemicals through spray drifting;
- f. Spraying agrichemicals when Plaintiff Elaine Zohfeld was outdoors and would come in direct contact with the agrichemicals through skin absorption and inhalation;

- g. Failing to warn Plaintiffs to avoid contact with plants and trees which had been contaminated by drifting agrichemicals;
- h. Failing to warn Plaintiffs to avoid contact with areas that had been contaminated by drifting agrichemicals.

52. The agrichemicals applied on May 8, 2000, by Wabash Valley and Horton as requested by Drake upon Drake's field over drifted onto Zohfelds' property where they immediately came in contact with, and were ingested and inhaled by, Elaine Zohfeld. The direct contact of the agrichemicals upon the person of Elaine Zohfeld has caused serious and permanent injuries.

53. As a direct and proximate result of one or more of the foregoing acts or omissions of Drake, Wabash Valley and Horton, Plaintiff Elaine Zohfeld has suffered severe and permanent injuries to her body; Plaintiff has incurred and will continue to incur medical expenses as a result of the incident; and Plaintiff has experienced and will continue to experience great pain and suffering as a result of this incident.

54. The severe and permanent injuries suffered by Elaine Zohfeld include, but are not limited to the following:

- a. frequent headaches;
- b. difficulty breathing;
- c. sensitivity to bright light;
- d. reactive airways syndrome disease;
- e. chest pain;
- f. heart muscle damage; and
- g. chemical sensitivity.

55. The exposure to the agrichemicals experienced by Plaintiff Elaine Zohfeld, in addition to causing the injuries identified above, will also likely cause future medical conditions and complications for which Plaintiff Elaine Zohfeld will be required to monitor, thereby incurring additional injuries through stress and uncertainty, as well as incurring additional medical expenses.

56. The injuries suffered by Plaintiff Elaine Zohfeld have caused and will cause her to incur damages in an amount in excess of \$10,000.00 for medical expenses already incurred, an amount in excess of \$50,000.00 for future medical expenses, and an amount in excess of \$250,000.00 for her pain, suffering and loss of functions and pleasures of life, and an amount in excess of \$100,000.00 for lost earning capacity.

WHEREFORE, Plaintiff, Elaine Zohfeld requests entry of a judgment against Defendants Robert Drake, Noah D. Horton, and Wabash Valley Service Company, jointly and severally, as follows:

- a. Damages in an amount in excess of \$10,000.00 for the costs of medical expenses already incurred and future medical expenses that she will incur;
- b. Damages in an amount in excess of \$250,000.00 for Plaintiff Elaine Zohfeld's pain and suffering and loss of pleasures and functions of life;
- c. Damages in an amount in excess of \$100,000.00 for lost earning capacity; and
- d. Court costs and such other relief as this Court may deem proper.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO COUNT V

COUNT VI - LOSS OF CONSORTIUM OF PLAINTIFF VERNON ZOHELD
RELATING TO THE MAY 8, 2000 OVERSPRAY

57. Plaintiffs repeat and re-allege Paragraphs 1-9 and 35-56 inclusive, as and for their paragraph 57.

58. Plaintiff Vernon Zohfeld has been the lawful husband of Elaine Zohfeld at all times relevant to this Complaint.

59. By reason of injuries and damages sustained by Plaintiff Elaine Zohfeld, Plaintiff Vernon Zohfeld has suffered the loss of services of his wife; Plaintiff Vernon Zohfeld has been and will continue to be deprived of the companionship, company, affection and love of his wife; Plaintiff Vernon Zohfeld has been compelled and will be compelled in the future to expend sums of money having services performed for him which have been previously performed by his wife.

WHEREFORE, Plaintiff Vernon Zohfeld prays judgment against Defendants Wabash Valley Service Company, Noah D. Horton, and Robert Drake, jointly and severally, in an amount in excess of \$100,000.00 that is reasonable and equitable for his loss, and for Court costs, and for such other relief as this Court may deem proper.

PLAINTIFF DEMAND TRIAL BY JURY AS TO COUNT VI

Respectfully submitted,

Vernon and Elaine Zohfeld,
Plaintiffs,

By their attorneys,

HEDINGER & HOWARD

By


Stephen F. Hedinger

Hedinger & Howard
1225 S. Sixth St.
Springfield, IL 62703
(217) 523-2753 phone
(217) 523-4366 fax

ORIGINAL

FILED

APR 26 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
BENTON OFFICE

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

WABASH VALLEY SERVICE CO.,)

GLEN S. KINDER, and)

NOAH DAVID HORTON,)

Defendants.)

CRIMINAL NO. 05-40029-JPG

Title 7, United States Code,
Sections 136j(a)(2), 136l(b)(1)(B), and
136l(b)(4), and Title 18, United States Code,
Section 2

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

On or about May 8, 2000, in Hamilton County, within the Southern District of Illinois,

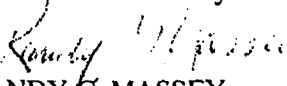
**WABASH VALLEY SERVICE COMPANY,
GLEN S. KINDER, and
NOAH DAVID HORTON,**


Defendants herein, each of whom was a commercial applicator of pesticides as defined by federal regulations and statutes, did use a registered pesticide in a manner inconsistent with its labeling, in that said Defendants did cause AAtrax 4L and Bicep II Magnum, each of which is a registered pesticide, to be used in a manner inconsistent with its labeling – that is, said defendants caused AAtrax 4L and Bicep II Magnum to be applied to a field located in Hamilton County, Illinois, during a time when wind speed was approximately 20 m.p.h., which was inconsistent with the labeling of both AAtrax 4L and Bicep II Magnum.

All in violation of Title 7, United States Code, Sections 136j(a)(2)(G) and 136l(b)(1)(B) and 136l(b)(4), and Title 18, United States Code, Section 2.

UNITED STATES OF AMERICA

RONALD J. TENPAS
United States Attorney


RANDY G. MASSEY
First Assistant United States Attorney


ROBERT L. SIMPKINS
Assistant United States Attorney

RECOMMENDED BOND:

WABASH VALLEY SERVICE CO.:	\$5,000 unsecured
GLEN S. KINDER:	\$5,000 unsecured
NOAH DAVID HORTON:	\$5,000 unsecured

RECEIVED
CLERK'S OFFICE

JUL 12 2005

STATE OF ILLINOIS
Pollution Control Board

THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB No. 05-193
(Citizen's Enforcement, Air)

MOTION FOR EXTENSION OF TIME

NOW COME Respondents WABASH VALLEY SERVICE COMPANY, NOAH D. HORTON, and STEVE KINDER ("Respondents"), by their attorneys, HODGE DWYER ZEMAN, and move Carol Webb, Hearing Officer in this matter, to enter an Order granting Respondents an extension of time in which to answer or otherwise respond to Complainant's Complaint. In support of this Motion, Respondents state as follows:

1. "The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time." 35 Ill. Admin. Code § 101.522.
2. On May 9, 2005, Complainants filed their Complaint with the Illinois Pollution Control Board ("Board") in this matter.
3. On May 20, 2001, Complainants filed a civil complaint with the Circuit Court of the Second Judicial Circuit, White County, Illinois (the "Civil Matter"), relating

to this same "incident." See Vernon and Elaine Zohfeld v. Bob Drake, Wabash Valley Serv. Co., Michael J. Pfister, and Noah D. Horton, Case No. 2001-L-21, (2d Cir. 2001), a copy of which Complaint is attached hereto as Exhibit A.

4. Further, on April 26, 2005, a criminal Information ("Information") was filed with the United States District Court of the Southern District of Illinois relating to this same "incident." See United States of America v. Wabash Valley Service Co., Glen S. Kinder, and Noah David Horton, Criminal No. 05-40029-JPG, a copy of which Information is attached hereto as Exhibit B.

5. Concurrently with the filing of this Motion, Respondents are filing a Motion to Stay Proceedings ("Motion to Stay") with the Board, moving the Board to stay the proceedings in this case until the conclusion of the criminal matter described in the Information.

6. The Motion to Stay was filed to protect the Respondents' Fifth Amendment rights against self-incrimination in the related criminal case. See Motion to Stay.

7. If the Motion to Stay is granted by the Board, the Board proceedings would not continue until the conclusion of the criminal matter described in the Information.

8. If Respondents are required to file their Answer in the matter before the Board prior to the Board's ruling on the Motion to Stay, the purpose and intent of the Motion to Stay would be thwarted, and, should the Board rule favorably on the Motion to Stay, the purpose and intent of the Board's issuance of a stay would be thwarted because

Respondents potentially could be required to either invoke their rights under the Fifth Amendment or Answer the Complaint, and, thereby, potentially lose their rights against self-incrimination.

9. Respondents, therefore, request an extension of time to answer Complainants' Complaint until: (1) in the event that the Board grants the Motion to Stay, thirty (30) days after the conclusion of the criminal matter described in the Information; or, (2) in the event that the Board denies the Motion to Stay, thirty (30) days after the Board's denial of the Motion to Stay.

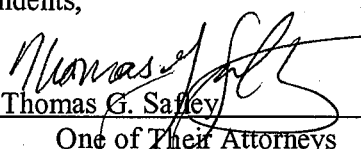
10. In addition, counsel for Bob Drake has indicated to the undersigned that he agrees to the grant of an extension of time to answer, and Michael J. Pfister, whom the undersigned also represents in this matter, also agrees to the grant of an extension of time to answer.

WHEREFORE, Respondents, WABASH VALLEY SERVICE COMPANY, NOAH D. HORTON, and STEVE KINDER, respectfully move the Hearing Officer to enter an Order granting their request for an extension of time to answer Complainants' Complaint until: (1) in the event that the Board grants the Motion to Stay,

thirty (30) days after the conclusion of the criminal matter described in the Information;
or, (2) in the event that the Board denies the Motion to Stay, thirty (30) days after the
Board's denial of the Motion to Stay.

Respectfully submitted,

WABASH VALLEY SERVICE
COMPANY, NOAH D. HORTON, and
STEVE KINDER,
Respondents,


By: /s/ Thomas G. Safley
One of Their Attorneys

Dated: July 8, 2005

Thomas G. Safley
Gale W. Newton
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

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IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, ILLINOIS

FILED
2001

Ellen A. Pettigrew
CIRCUIT COURT
WHITE COUNTY

ELAINE and VERNON ZOHFELD)
as individuals and d/b/a EZ FARMS,)
)
Plaintiffs,)
)
v.)
)
BOB DRAKE, WABASH VALLEY SERVICE)
COMPANY, MICHAEL J. PFISTER, and)
NOAH D. HORTON,)
)
Defendants.)

Case No. 2001-L-21

COMPLAINT

NOW COME Plaintiffs, ELAINE and VERNON ZOHFELD, as individuals and d/b/a EZ FARMS, by and through their undersigned attorneys, HEDINGER & HOWARD, by Stephen F. Hedinger, and for their Complaint against Defendants, BOB DRAKE (hereinafter "Drake"), WABASH VALLEY SERVICE COMPANY (hereinafter "Wabash Valley"), MICHAEL J. PFISTER (hereinafter "Pfister"), and NOAH D. HORTON (hereinafter "Horton") state as follows:

Allegations Applicable to All Counts

1. Plaintiffs Elaine and Vernon Zohfeld (hereinafter collectively "the Zohfelds") are residents of the County of Hamilton, State of Illinois and have been at all times relevant to this Complaint.
2. The Zohfelds own and run an equine breeding business located in Hamilton County which is adjacent to property owned by Drake. They breed and raise thoroughbred horses until they are about two years old, initially train them at a racetrack to race, and then sell them at auction to trainers and others as racehorses.

EXHIBIT A

3. Drake is a resident of the County of Hamilton, State of Illinois, who owns a forty-four acre tract of land (hereinafter referred to as "field") adjacent to the property of the Zohfelds.

4. Wabash Valley is an agricultural cooperative with at least one office, including its main office, located in White County.

5. 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 White and Hamilton Counties. Wabash Valley maintains its primary place of business in White County.

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

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

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

9. 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 fields.

COUNT I - NEGLIGENCE OF DEFENDANTS DRAKE, WABASH VALLEY SERVICE COMPANY AND PFISTER FOR PROPERTY DAMAGE RELATING TO THE JUNE 26, 1998 OVERSPRAY

10. Plaintiffs repeat and re-allege Paragraphs 1 - 9, inclusive, as and for their paragraph 10.

11. On or about June 26, 1998, at Drake's request, Wabash Valley sprayed Drake's field with agrichemicals, including, but not limited to, Butyrac-200 and Roundup Ultra.

12. Two of the agrichemicals used by Defendants Drake, Wabash Valley and Pfister relevant to this Complaint, and sprayed by Wabash Valley upon Drake's field on June 26, 1998, include, but may not be limited to, Butyrac 200 and Roundup Ultra.

13. Some of the information on the specimen label for Butyrac 200 includes, but is not limited to:

- Butyrac 200 is a hazard to both humans and domestic animals;
- Butyrac 200 is a corrosive that causes irreversible eye damage;
- Butyrac 200 is harmful if swallowed or absorbed through the skin;
- One should avoid breathing Butyrac 200 spray mist;
- Butyrac 200 spray mist should not be permitted to drift onto susceptible plants (cotton, okra, grapes, tomatoes, fruit trees, vegetables, flowers or other desirable crop or ornamental plants) since very small quantities of Butyrac 200 can cause severe injury during the growing or dormant periods.
- A coarse spray should be used to minimize drift;
- Spray nozzles that produce fine spray droplets should not be used to apply Butyrac 200;
- Spray drift of Butyrac 200 can be minimized by not spraying when wind exceeds 5 miles per hour;
- Butyrac 200 should not be applied in a way that will contact workers or other persons, either directly or through drift. (See Exhibit A)

14. Some of the information on the specimen label for Roundup Ultra includes, but is not limited to:

- Ingestion of Roundup Ultra or large amounts of freshly sprayed vegetation by domestic animals may result in temporary gastrointestinal irritation;
- Roundup Ultra should not be applied in a way that will contact workers or other persons, either directly or through spray drift;
- Only protected handlers should be in the area during application of Roundup Ultra;

- Roundup Ultra should not be applied in a manner to allow mist, drip, drift or splash onto desirable vegetation since minute quantities of this product can cause severe damage or destruction to the crops, plants or other areas on which treatment was not intended.
- The likelihood of injury occurring from the use of Roundup Ultra increases when winds are gusty, as wind velocity increases, when wind direction is constantly changing or when there are other meteorological conditions that favor spray drift;
- Avoid applying Roundup Ultra at extensive speeds or pressures. (See Exhibit B)

15. On or about June 26, 1998, Wabash Valley, through its agent and/or employee, Pfister, applied agrichemicals to the field owned by Drake during weather conditions and in a manner that allowed the agrichemicals to drift onto the adjacent property owned and occupied by the Zohfelds.

16. Defendants Wabash Valley, Pfister, and/or Drake owed a duty to Zohfelds to apply or facilitate the application of agrichemicals in accordance with applicable specimen labels and in a non-negligent manner that would prevent the agrichemicals from drifting from Drake's field onto Zohfeld's adjacent property.

17. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Defendants Wabash Valley, Pfister and/or Drake breached their duty to Zohfelds.

18. Zohfelds' injuries and property damages were caused by one or more of the following acts of Defendants Wabash Valley, Pfister, and/or Drake, done in breach of their duty to the Zohfelds:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;

- b. Spraying agrichemicals in high temperatures of 98° or above where agrichemical spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto Zohfelds' adjacent property;
- d. Spraying agrichemicals in a manner which was not possible to prevent drifting from Drake's field onto the property of others, including the adjacent property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons and/or animals coming into contact with the agrichemicals via drifting;
- f. Spraying agrichemicals when persons and/or animals were outdoors and would come in direct contact with the agrichemicals;
- g. Failing to warn the Zohfelds to avoid contact with plants and trees which had been contaminated by drifting agrichemicals;
- h. Failing to warn the Zohfelds to avoid contact with areas that had been contaminated by drifting agrichemicals; and
- i. Failing to warn the Zohfelds not to feed livestock from areas contaminated by drifting agrichemicals.

19. As a direct and proximate result of one or more of the foregoing acts or omissions of the Defendants Drake, Wabash Valley and/or Pfister, Plaintiffs have suffered severe and permanent injuries to their horses and as a consequence, their business as race horse breeders; Plaintiffs have incurred and will continue to incur veterinary expenses as a result of the incident;

Plaintiffs will incur future losses from the inability to breed and sell horses as a result of the incident.

20. The severe and permanent injuries suffered by the horses include, but are not limited to the following:

- a. increase in temperature;
- b. increase in respiration;
- c. labored breathing and bloody-looking, flared nostrils;
- d. rash, hives, hair loss and bloody patches;
- e. teary eyes;
- f. restlessness;
- g. decrease in appetite and increase in water consumption;
- h. lethargy;
- i. fever;
- j. cough and increase in mucus; and
- k. permanent injury and damages to the horses' internal organs and systems, including but not limited to lungs and respiratory systems, which rendered the horses incapable and unsuitable for breeding and racing purposes, and has and will result in death.

21. The severe and permanent injuries suffered by the Zohfelds' equine stock have caused the Zohfelds to incur damages in an amount in excess of \$10,000 for veterinary care and other assistance to the injured horses, and damages in excess of \$250,000 in the Zohfelds' horse breeding business through permanent loss of breeding stock.

WHEREFORE, Plaintiffs, Vernon and Elaine Zohfeld request entry of a judgment against Defendants Robert Drake, Wabash Valley Service Company and/or Michael J. Pfister, jointly and severally, as follows:

- a. Damages in an amount in excess of \$10,000.00 for the costs of veterinary expenses already incurred and future veterinary expenses;
- b. Damages in an amount in excess of \$250,000.00 for the loss of the business, including the inability to breed and sell horses;
- c. Court costs and such other relief as this Court may deem proper.

PLAINTIFFS DEMAND TRIAL BY JURY AS TO COUNT I

**COUNT II - NEGLIGENCE OF DEFENDANTS DRAKE AND
WABASH VALLEY SERVICE COMPANY FOR PERSONAL INJURIES
OF PLAINTIFF ELAINE ZOHELD RELATING TO THE
JUNE 26, 1998 OVERSPRAY**

22. Plaintiffs repeat and re-allege Paragraphs 1 - 21, inclusive, as and for their paragraph 22.

23. On or about June 26, 1998, Wabash Valley, through its agents and/or employees, applied agrichemicals to the field owned by Drake and allowed the agrichemicals to drift onto the person of Plaintiff Elaine Zohfeld who was located on her property adjacent to Drake's field, and onto desirable vegetation, including edible vegetation, on the Zohfelds' property.

24. Wabash Valley and Drake owed a duty to Plaintiff Elaine Zohfeld to apply or facilitate the application of agrichemicals in accordance with applicable specimen labels and in a non-negligent manner that would prevent the agrichemicals from drifting from Drake's field onto Zohfelds' adjacent property, where they may come in contact with Elaine Zohfeld.

25. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Wabash Valley and Drake breached their duty to Elaine Zohfeld.

26. Plaintiff Elaine Zohfeld's injuries and damages were caused by one or more of the following acts or omissions of Wabash Valley and Drake:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;
- b. Spraying agrichemicals in high temperatures of 98° or above where agrichemical spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto Plaintiff Elaine Zohfeld's person, or beneficial vegetation, including edible vegetation, on the Zohfelds' property;
- d. Spraying agrichemicals in a manner which was not possible to prevent drifting from Drake's field onto the property of others, including the adjacent property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons, including Plaintiff Elaine Zohfeld, coming into contact with the agrichemicals through spray drifting;
- f. Spraying agrichemicals when Plaintiff Elaine Zohfeld was outdoors and would come in direct contact with the agrichemicals through skin absorption and inhalation;

g. Failing to warn Plaintiffs to avoid contact with plants and trees that had been contaminated by drifting agrichemicals;

h. Failing to warn Plaintiffs to avoid contact with areas that had been contaminated by drifting agrichemicals.

27. The agrichemicals applied on June 26, 1998 by Wabash Valley as requested by Drake upon Drake's field over drifted onto Zohfelds' property where they immediately came in contact with Elaine Zohfeld's person, and they also came in contact with and contaminated numerous beneficial plants upon Zohfelds' property. The direct contact of the agrichemicals upon the person of Elaine Zohfeld has caused serious and permanent injuries, and in addition, Elaine Zohfeld, unaware that the beneficial plants on her property had been contaminated by the over drift, ate contaminated blackberries harvested from her property, which ingestion of agrichemicals caused further and additional serious and permanent injuries to Elaine Zohfeld.

28. As a direct and proximate result of one or more of the foregoing acts or omissions of the Defendants Drake and Wabash Valley, Plaintiff Elaine Zohfeld has suffered severe and permanent injuries to her body; Plaintiff Elaine Zohfeld has incurred and will continue to incur medical expenses as a result of the incident; and Plaintiff Elaine Zohfeld has experienced and will continue to experience great pain and suffering as a result of this incident.

29. The severe and permanent injuries suffered by Elaine Zohfeld include, but are not limited to the following:

- a. frequent headaches;
- b. dizziness and shakiness;
- c. difficulty thinking and disorientation;
- d. rubbery, shaky and unsteady legs;

- e. tiredness;
- f. burning sensation in throat and mouth;
- g. nauseousness;
- h. irritated, raw throat;
- i. trouble breathing;
- j. rash; and
- k. damages and injuries to internal organs and systems, including damages to her heart and lungs.

30. The exposure to the agrichemicals experienced by Plaintiff Elaine Zohfeld, in addition to causing the injuries identified above, will also likely cause future medical conditions and complications for which Plaintiff Elaine Zohfeld will be required to monitor, thereby incurring additional injuries through stress and uncertainty, as well as incurring additional medical expenses.

31. The injuries suffered by Plaintiff Elaine Zohfeld have caused and will cause her to incur damages in an amount in excess of \$10,000.00 for medical expenses already incurred, an amount in excess of \$50,000.00 for future medical expenses, and an amount in excess of \$250,000.00 for her pain, suffering and loss of functions and pleasures of life, and an amount in excess of \$100,000.00 for lost earning capacity.

WHEREFORE, Plaintiff, Elaine Zohfeld requests entry of a judgment against Defendants Robert Drake and Wabash Valley Service Company, jointly and severally, as follows:

- a. Damages in an amount in excess of \$60,000.00 for the costs of medical expenses already incurred and future medical expenses that she will incur;

b. Damages in an amount of \$250,000.00 for Plaintiff Elaine Zohfeld's pain, suffering and loss of functions and pleasures of life;

c. Damages in an amount in excess of \$100,000.00 for lost earning capacity; and

d. Court costs and such other relief as this Court may deem proper.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO COUNT II

**COUNT III - LOSS OF CONSORTIUM OF PLAINTIFF VERNON ZOHFELD
RELATING TO THE JUNE 26, 1998 OVERSPRAY**

32. Plaintiffs repeat and re-allege Paragraphs 1 - 31 inclusive, as and for their paragraph 32.

33. Plaintiff Vernon Zohfeld has been the lawful husband of Elaine Zohfeld at all times relevant to this Complaint.

34. By reason of the injuries and damages sustained by Plaintiff Elaine Zohfeld, Plaintiff Vernon Zohfeld has suffered the loss of services of his wife; Plaintiff Vernon Zohfeld has been and will continue to be deprived of the companionship, company, affection and love of his wife; Plaintiff Vernon Zohfeld has been compelled and will be compelled in the future to expend sums of money having services performed for him which have been previously performed by his wife.

WHEREFORE, Plaintiff Vernon Zohfeld prays judgment against Defendant Wabash Valley Service Company and Defendant Robert Drake, jointly and severally, in an amount in excess of \$100,000.00 that is reasonable and equitable for his loss, and for Court costs and such other relief as this Court may deem proper.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO COUNT III

**COUNT IV - NEGLIGENCE OF DEFENDANTS DRAKE, WABASH VALLEY
SERVICE COMPANY AND HORTON FOR PROPERTY DAMAGE RELATING TO
THE MAY 8, 2000 OVERSPRAY**

35. Plaintiffs repeat and re-allege Paragraphs 1 - 9, inclusive, as and for their paragraph 35.

36. On or about May 8, 2000, at Drake's request, Wabash Valley, through its agent and employee Horton, sprayed Drake's field with agrichemicals, including Bicep II Magnum and Aatrex, and Celatom MP-79 which includes diatomaceous earth and crystalline silica.

37. Some of the information on the specimen label for Bicep II Magnum includes, but is not limited to:

- Bicep II Magnum is a hazard to both humans and domestic animals;
- Bicep II Magnum causes eye irritation;
- Bicep II Magnum is harmful if swallowed, inhaled or absorbed through the skin;
- One should avoid breathing Bicep II Magnum spray mist;
- Bicep II Magnum may cause skin sensitization reactions in some people;
- Bicep II Magnum should not be applied in a manner that will contact workers or other persons, either directly or through drift;
- To avoid spray drift, do not apply Bicep II Magnum under windy conditions;
- Drift potential is lowest between wind speeds of 2-10 mph; however, many factors, including droplet size and equipment type, determine drift potential at any given speed;
- Bicep II Magnum should only be applied when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitat for threatened or endangered species, nontarget crops) is minimal (e.g., when wind is blowing away from the sensitive areas). (See Exhibit C)

38. Some of the information on the specimen label for Aatrex includes, but is not limited to:

- Aatrex is a hazard to both humans and domestic animals;
- Aatrex is harmful if swallowed, inhaled or absorbed through skin;
- One should avoid breathing Aatrex vapors or spray mist;
- Aatrex should not be applied in a manner that will contact workers or other persons, either directly or through drift;
- Aatrex should not be used near adjacent desirable plants or in greenhouses or injury may occur;
- To avoid spray drift, Aatrex should not be applied under windy conditions. (See Exhibit D)

39. Some of the information on the Material Safety Data Sheet for Celatom MP-79

includes, but is not limited to:

- Upper respiratory irritant that can cause coughing or throat irritation from acute exposure to product;
- The International Agency for Research on Cancer and National Toxicology Program have recognized crystalline silica as carcinogenic to humans;
- Workers are requested to wear respirators when celatom dust is present;
- The handling procedures say to avoid creating celatom dust;
- Celatom may cause eye irritation or inflammation;
- Inhalation can cause dryness of nasal passages and congestion. (See Exhibit E.)

40. On or about May 8, 2000, Wabash Valley, through its agent and/or employee, Horton, applied agrichemicals to the field owned by Drake and allowed the agrichemicals to drift onto the adjacent property owned and occupied by the Zohfelds.

41. Wabash Valley, Horton, and Drake owed a duty to the Zohfelds to apply or facilitate the application of the agrichemicals in accordance with applicable specimen labels and in a non-

negligent manner that would not allow the agrichemicals to drift from Drake's field onto Zohfelds' adjacent property.

42. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Wabash Valley, Drake and Horton breached their duty to the Zohfelds.

43. Plaintiffs' injuries and property damages were caused by one or more of the following acts or omissions of Wabash Valley, Horton, and/or Drake:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;
- b. Spraying agrichemicals in high temperatures of 98° or above where agricultural spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto the Zohfelds' adjacent property;
- d. Spraying agrichemicals in a manner which was not possible to control drifting from Drake's field onto the property of others, including the property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons and/or animals coming into contact with those agrichemicals through spray drift;
- f. Spraying agrichemicals when persons and/or animals were outdoors and would come in direct contact with the agrichemicals through spray drift;
- g. Failing to warn the Zohfelds to avoid contact with plants and trees which had been contaminated by drifting agrichemicals;

- h. Failing to warn the Zohfelds to avoid contact with areas that had been contaminated by drifting agrichemicals; and
- i. Failing to warn the Zohfelds not to feed livestock in or from areas contaminated by the drifting agrichemicals.

44. As a direct and proximate result of one or more of the foregoing acts or omissions of the Defendants Drake, Wabash Valley and Horton, the Zohfelds have suffered severe and permanent injuries to their horses and as a consequence, to their business as horse breeders; the Zohfelds have incurred and will continue to incur veterinary expenses as a result of the May 8, 2000 overspray incident; the Zohfelds will incur future losses from inability to breed and sell horses as a result of the May 8, 2000 overspray incident.

45. The severe injuries suffered by the horses include, but are not limited to the following:

- a. increase in respiration;
- b. labored breathing;
- c. restlessness;
- d. decrease in appetite and increase in water consumption;
- e. cough and increase in mucus; and
- f. coats lost luster.
- g. permanent injury and damage to the horses' internal organs and systems, including but not limited to respiratory systems, which rendered the horses incapable and unsuitable for breeding and racing purposes, and has and will result in death.

46. The severe and permanent injuries suffered by the Zohfelds' equine stock have caused the Zohfelds to incur damages in an amount in excess of \$10,000 for veterinary care and

other assistance to the injured horses, and damages in excess of \$250,000 in the Zohfelds' horse breeding business through permanent loss of breeding stock.

WHEREFORE, Plaintiffs, Vernon and Elaine Zohfeld request entry of a judgment against Defendants Robert Drake, Wabash Valley Service Company and Noah D. Horton, jointly and severally as follows:

- a. Damages in an amount in excess of \$10,000.00 for the costs of veterinary expenses already incurred and future veterinary expenses;
- b. Damages in an amount in excess of \$250,000.00 for the costs of loss of the business, including the inability to breed and sell horses;
- c. Court costs and such other relief as this Court may deem proper.

PLAINTIFFS DEMAND TRIAL BY JURY AS TO COUNT IV

**COUNT V - NEGLIGENCE OF DEFENDANTS DRAKE,
WABASH VALLEY SERVICE COMPANY AND HORTON FOR PERSONAL
INJURIES OF PLAINTIFF ELAINE ZOHFELD RELATING TO THE
MAY 8, 2000 OVERSPRAY**

47. Plaintiffs repeat and re-allege Paragraphs 1 - 9, and 35 - 46, inclusive, as and for their paragraph 47.

48. On or about May 8, 2000, Wabash Valley, through its employee, Horton, applied agrichemicals to Drake's field and allowed the agrichemicals to drift onto the person of Plaintiff Elaine Zohfeld.

49. Wabash Valley, Horton and Drake owed a duty to Plaintiff Elaine Zohfeld to apply or facilitate the application of the agrichemicals in accordance with applicable specimen labels and in a non-negligent manner that would not allow the agrichemicals to drift from Drake's field onto Zohfelds' adjacent property.

50. By applying agrichemicals during unfavorable weather conditions and/or in a manner inconsistent with the agrichemicals' specimen labels, Wabash Valley, Horton and Drake breached their duty to the Zohfelds.

51. Plaintiff Elaine Zohfeld's injuries and damages were caused by one or more of the following acts or omissions of Wabash Valley, Horton and Drake:

- a. Spraying agrichemicals in windy conditions where winds exceeded 5 miles per hour;
- b. Spraying agrichemicals in high temperatures of 98° or above where agrichemical spraying is not to occur at temperatures above 89°, according to the specimen labels;
- c. Spraying agrichemicals in a manner that caused drifting from Drake's field onto Plaintiff Elaine Zohfeld's person;
- d. Spraying agrichemicals in a manner in which spray drifting was uncontrolled causing the agrichemicals to drift from Drake's property onto the property of others, including the adjacent property owned and occupied by the Zohfelds;
- e. Spraying agrichemicals in a manner which resulted in persons, including Plaintiff Elaine Zohfeld, coming into contact with agrichemicals through spray drifting;
- f. Spraying agrichemicals when Plaintiff Elaine Zohfeld was outdoors and would come in direct contact with the agrichemicals through skin absorption and inhalation;

g. Failing to warn Plaintiffs to avoid contact with plants and trees which had been contaminated by drifting agrichemicals;

h. Failing to warn Plaintiffs to avoid contact with areas that had been contaminated by drifting agrichemicals.

52. The agrichemicals applied on May 8, 2000, by Wabash Valley and Horton as requested by Drake upon Drake's field over drifted onto Zohfelds' property where they immediately came in contact with, and were ingested and inhaled by, Elaine Zohfeld. The direct contact of the agrichemicals upon the person of Elaine Zohfeld has caused serious and permanent injuries.

53. As a direct and proximate result of one or more of the foregoing acts or omissions of Drake, Wabash Valley and Horton, Plaintiff Elaine Zohfeld has suffered severe and permanent injuries to her body; Plaintiff has incurred and will continue to incur medical expenses as a result of the incident; and Plaintiff has experienced and will continue to experience great pain and suffering as a result of this incident.

54. The severe and permanent injuries suffered by Elaine Zohfeld include, but are not limited to the following:

- a. frequent headaches;
- b. difficulty breathing;
- c. sensitivity to bright light;
- d. reactive airways syndrome disease;
- e. chest pain;
- f. heart muscle damage; and
- g. chemical sensitivity.

55. The exposure to the agrichemicals experienced by Plaintiff Elaine Zohfeld, in addition to causing the injuries identified above, will also likely cause future medical conditions and complications for which Plaintiff Elaine Zohfeld will be required to monitor, thereby incurring additional injuries through stress and uncertainty, as well as incurring additional medical expenses.

56. The injuries suffered by Plaintiff Elaine Zohfeld have caused and will cause her to incur damages in an amount in excess of \$10,000.00 for medical expenses already incurred, an amount in excess of \$50,000.00 for future medical expenses, and an amount in excess of \$250,000.00 for her pain, suffering and loss of functions and pleasures of life, and an amount in excess of \$100,000.00 for lost earning capacity.

WHEREFORE, Plaintiff, Elaine Zohfeld requests entry of a judgment against Defendants Robert Drake, Noah D. Horton, and Wabash Valley Service Company, jointly and severally, as follows:

- a. Damages in an amount in excess of \$10,000.00 for the costs of medical expenses already incurred and future medical expenses that she will incur;
- b. Damages in an amount in excess of \$250,000.00 for Plaintiff Elaine Zohfeld's pain and suffering and loss of pleasures and functions of life;
- c. Damages in an amount in excess of \$100,000.00 for lost earning capacity; and
- d. Court costs and such other relief as this Court may deem proper.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO COUNT V

COUNT VI - LOSS OF CONSORTIUM OF PLAINTIFF VERNON ZOHFELD
RELATING TO THE MAY 8, 2000 OVERSPRAY

57. Plaintiffs repeat and re-allege Paragraphs 1-9 and 35-56 inclusive, as and for their paragraph 57.

58. Plaintiff Vernon Zohfeld has been the lawful husband of Elaine Zohfeld at all times relevant to this Complaint.

59. By reason of injuries and damages sustained by Plaintiff Elaine Zohfeld, Plaintiff Vernon Zohfeld has suffered the loss of services of his wife; Plaintiff Vernon Zohfeld has been and will continue to be deprived of the companionship, company, affection and love of his wife; Plaintiff Vernon Zohfeld has been compelled and will be compelled in the future to expend sums of money having services performed for him which have been previously performed by his wife.

WHEREFORE, Plaintiff Vernon Zohfeld prays judgment against Defendants Wabash Valley Service Company, Noah D. Horton, and Robert Drake, jointly and severally, in an amount in excess of \$100,000.00 that is reasonable and equitable for his loss, and for Court costs, and for such other relief as this Court may deem proper.

PLAINTIFF DEMAND TRIAL BY JURY AS TO COUNT VI

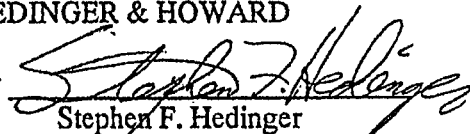
Respectfully submitted,

Vernon and Elaine Zohfeld,
Plaintiffs,

By their attorneys,

HEDINGER & HOWARD

By


Stephen F. Hedinger

Hedinger & Howard
1225 S. Sixth St.
Springfield, IL 62703
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(217) 523-4366 fax

ORIGINAL

FILED

APR 26 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
BENTON OFFICE

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

WABASH VALLEY SERVICE CO.,)

GLEN S. KINDER, and)

NOAH DAVID HORTON,)

Defendants.)

CRIMINAL NO. 05-40029-JPG

Title 7, United States Code,
Sections 136j(a)(2), 136l(b)(1)(B), and
136l(b)(4), and Title 18, United States Code,
Section 2

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

On or about May 8, 2000, in Hamilton County, within the Southern District of Illinois,

**WABASH VALLEY SERVICE COMPANY,
GLEN S. KINDER, and
NOAH DAVID HORTON,**

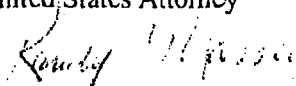
Defendants herein, each of whom was a commercial applicator of pesticides as defined by federal regulations and statutes, did use a registered pesticide in a manner inconsistent with its labeling, in that said Defendants did cause AAttrax 4L and Bicep II Magnum, each of which is a registered pesticide, to be used in a manner inconsistent with its labeling – that is, said defendants caused AAttrax 4L and Bicep II Magnum to be applied to a field located in Hamilton County, Illinois, during a time when wind speed was approximately 20 m.p.h., which was inconsistent with the labeling of both AAttrax 4L and Bicep II Magnum.


EXHIBIT B

All in violation of Title 7, United States Code, Sections 136j(a)(2)(G) and 136l(b)(1)(B) and 136l(b)(4), and Title 18, United States Code, Section 2.

UNITED STATES OF AMERICA

RONALD J. TENPAS
United States Attorney


RANDY G. MASSEY
First Assistant United States Attorney


ROBERT L. SIMPKINS
Assistant United States Attorney

RECOMMENDED BOND:

WABASH VALLEY SERVICE CO.:	\$5,000 unsecured
GLEN S. KINDER:	\$5,000 unsecured
NOAH DAVID HORTON:	\$5,000 unsecured