

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|------------------------------|---|------------------------------|
| VERNON and ELAINE ZOHFELD, |) | |
| |) | |
| Complainants, |) | |
| |) | |
| vs. |) | PCB No. 05-193 |
| |) | (Citizen's Enforcement, Air) |
| BOB DRAKE, WABASH VALLEY |) | |
| SERVICE COMPANY, MICHAEL J. |) | |
| PFISTER, NOAH D. HORTON, and |) | |
| STEVE KINDER, |) | |
| |) | |
| Respondents. |) | |

NOTICE OF FILING

| | |
|----------------------------------|----------------------------------|
| TO: Ms. Dorothy M. Gunn | Carol Webb, Esq. |
| Clerk of the Board | Hearing Officer |
| Illinois Pollution Control Board | Illinois Pollution Control Board |
| 100 West Randolph Street | 1021 North Grand Avenue East |
| Suite 11-500 | Post Office Box 19274 |
| Chicago, Illinois 60601 | Springfield, Illinois 62794-9274 |
| (VIA ELECTRONIC MAIL) | (VIA ELECTRONIC MAIL) |

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **NOAH D. HORTON'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINANTS' COMPLAINT** on behalf of Respondents, Wabash Valley Service Company, Michael J. Pfister, Noah D. Horton and Steve Kinder, a copy of which is herewith served upon you.

Respectfully submitted,

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

Dated: March 24, 2006

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

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, certify that I have served the attached
NOAH D. HORTON'S ANSWER AND AFFIRMATIVE DEFENSES TO
COMPLAINANTS' COMPLAINT upon:

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

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 March 24, 2006, and upon:

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 March 24, 2006.

/s/ Thomas G. Safley
Thomas G. Safley

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| |) | |
| Respondents. |) | |

NOAH D. HORTON'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINANTS' COMPLAINT

NOW COMES Respondent NOAH D. HORTON ("Horton"), by and through his attorneys, HODGE DWYER ZEMAN, and hereby files his Answer and Affirmative Defenses to Complainants' Complaint in this matter stating as follows:

1. Paragraph 1 of Complainants' Complaint states a legal conclusion to which no response is required. To the extent that paragraph 1 states any factual allegation, Horton denies the same.
2. Horton admits the allegations contained in paragraph 2 of Complainants' Complaint.
3. Horton is without sufficient knowledge or information to form a belief regarding the truth of the allegations contained in paragraph 3 of Complainants' Complaint, and therefore, Horton denies the same.
4. Horton admits the allegations contained in paragraph 4 of Complainants' Complaint.
5. Horton admits the allegations contained in paragraph 5 of Complainants' Complaint.

6. Horton admits the allegations in paragraph 6 of Complainants' Complaint.

7. Horton admits the allegations in paragraph 7 of Complainants' Complaint.

8. Horton denies the allegations in paragraph 8 of Complainants' Complaint.

9. Horton admits the allegations in paragraph 9 of Complainants' Complaint.

10. Horton admits the allegations in paragraph 10 of Complainants' Complaint.

11. Horton admits the allegations in paragraph 11 of Complainants' Complaint.

12. Horton admits the allegations in paragraph 12 of Complainants' Complaint to the extent that Pfister and Horton were and/or are employed by Wabash Valley Service Company to drive spray equipment and to apply agrichemicals at various times and locations. Horton further admits that Kinder was, and is, a supervisor of Pfister and Horton. With regard to the allegation in paragraph 12 that "Kinder . . . is and was responsible for directing their [i.e., Pfister's and Horton's] work, including with respect to when and how to apply the agrichemicals to Drake's field," this allegation states a legal conclusion to which no response is required. Horton denies all remaining allegations and inferences contained in paragraph 12 of Complainants' Complaint.

13. Horton denies the allegations in paragraph 13 of Complainants' Complaint.

14. Horton denies the allegations in paragraph 14 of Complainants' Complaint.

15. Horton denies the allegations in paragraph 15 of Complainants' Complaint.

16. Horton denies the allegations in paragraph 16 of Complainants' Complaint.

17. Horton denies the allegations in paragraph 17 of Complainants' Complaint.

18. In response to paragraph 18 of Complainants' Complaint, Horton denies that chemicals were "sprayed onto Zohfelds' property." The remainder of paragraph 18 states a legal conclusion to which no response is required. To the extent that paragraph 18 states any further factual allegations, Horton denies the same.

19. Horton denies the allegations in paragraph 19 of Complainants' Complaint.

20. In response to paragraph 20 of Complainants' Complaint, Horton denies that he or anyone "caus[ed] and/or allow[ed] agrichemicals to drift and cloud onto the adjacent property owned and occupied by the Zohfelds." The remainder of paragraph 20 states a legal conclusion to which no response is required. To the extent that paragraph 20 states any further factual allegations, Horton denies the same.

WHEREFORE, the Respondent, NOAH D. HORTON, respectfully requests that the Illinois Pollution Control Board deny the relief sought by the Complainants, VERNON and ELAINE ZOHFELD.

FIRST AFFIRMATIVE DEFENSE

As his First Affirmative Defense to the Complainants' Complaint, the Respondent, Horton, by his counsel, asserts that any claims in the Complainants' Complaint that refer to any incident, act, omission or any matter whatsoever that occurred before May 8, 2000, are barred by the applicable statute of limitations, and in support of this Affirmative Defense, Horton states as follows:

1. Complainants' claims alleging air pollution are not brought by the State.
2. Claims under the Illinois Environmental Protection Act that are brought by individuals are subject to the five-year statute of limitations set forth in 735 ILCS 5/13-205.
3. With regard to any claim made by Complainants in their Complaint relating to any alleged incident, act, omission or any matter whatsoever that occurred before May 8, 2000, Complainants failed to bring such claim within the time limit provided by said statute of limitations.
4. As a result of Complainants' failure to file their claims referring to any incident, act, omission or any matter whatsoever that occurred before May 8, 2000, within the time limit provided by said statute of limitations, any such claims are barred.

WHEREFORE, the Respondent, NOAH D. HORTON, respectfully requests that the Illinois Pollution Control Board find in his favor and against Complainants on this Affirmative Defense and award him all relief just and proper in the premises.

SECOND AFFIRMATIVE DEFENSE

Horton reserves the right to assert additional affirmative defenses upon completion of discovery.

Respectfully submitted,
NOAH D. HORTON,
Respondent,

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

Dated: March 24, 2006

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