

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
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA ELECTRONIC MAIL)</b>

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **STEVE KINDER'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  
STEVE KINDER'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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STEVE KINDER,	)	
	)	
Respondents.	)	

**STEVE KINDER'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINANTS' COMPLAINT**

NOW COMES Respondent STEVE KINDER ("Kinder"), 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 allegations, Kinder denies the same.

2. Kinder admits the allegations contained in paragraph 2 of Complainants' Complaint.

3. Kinder 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, Kinder denies the same.

4. Kinder admits the allegations contained in paragraph 4 of Complainants' Complaint.

5. Kinder admits the allegations contained in paragraph 5 of Complainants' Complaint.

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

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

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

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

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

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

12. Kinder 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. Kinder further admits that Kinder is, and was, 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. Kinder denies all remaining allegations and inferences contained in paragraph 12 of Complainants' Complaint.

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

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

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

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

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

18. In response to paragraph 18 of Complainants' Complaint, Kinder 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, Kinder denies the same.

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

20. In response to paragraph 20 of Complainants' Complaint, Kinder 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, Kinder denies the same.

WHEREFORE, the Respondent, STEVE KINDER, 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, Kinder, 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, Kinder 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, STEVE KINDER, 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**

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

Respectfully submitted,

STEVE KINDER,  
Respondent,

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

Dated: March 24, 2006

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