

MAR 29 2006

STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**VERNON AND ELAINE ZOHFELD,**

**COMPLAINANTS**

**vs.**

**CAUSE NO. PCB 2005-193**

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

**RESPONDENTS**

**NOTICE OF FILING AND PROOF OF SERVICE**

The undersigned certifies that on today's date an original and nine (9) copies of **Respondent Drake's Amended Answer and Affirmative Defenses**, and of this Notice of Filing, were served by U.S. mail upon the Clerk of the Illinois Pollution Control Board and Hearing Officer Carol Webb, Esq., and one (1) copy to each of the following parties of record in this cause:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601-3218

Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

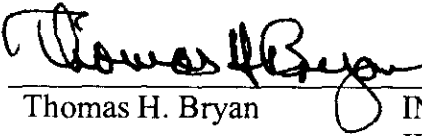
Stephen F. Hedinger, Esq.  
Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703

Thomas G. Safley, Esq.  
Gale W. Newton, Esq.  
HODGE DWYER ZERMAN  
3150 Roland Avenue  
P.O. Box 5776  
Springfield IL 62705-5776

by enclosing same in an envelope with postage fully prepaid, and by depositing said envelope with the United States Postal Service in Evansville Indiana before 5:30 p.m. on 27 March, 2006.

**THIS FILING SUBMITTED ON RECYCLED PAPER**

Respectfully submitted,



Thomas H. Bryan

IN # 2958-82

IL # 328367

A Member with the law firm of:

FINE & HATFIELD, A Professional Corporation

520 N.W. Second Street

P.O. Box 779

Evansville, Indiana 47705-0779

Telephone: (812) 425-3592

Fax: (812) 421-4269

E-mail: [thb@fine-hatfield.com](mailto:thb@fine-hatfield.com)

Attorneys for Robert Drake  
Respondent

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**RESPONDENTS**

**RESPONDENT DRAKE'S AMENDED ANSWER AND AFFIRMATIVE  
DEFENSES**

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

**AMENDED ANSWER**

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

FINE & HATFIELD  
P.O. BOX 779  
EVANSVILLE, INDIANA 47705-0779  
8121425-3592

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

3. To the extent that Paragraph 3 indicates that the Zohfelds were located in Hamilton County, Drake admits such allegation; further answering, has insufficient information to admit or deny any and all the remaining allegations contained in Paragraph 3, and therefore denies this allegation and respectfully demands strict proof thereof.

4. Drake admits the allegations contained in Paragraph 4.

5. Drake admits that in May, 2000 he was the owner or one of the owners of the property referenced in this Paragraph 5, but denies that he is the current owner thereof and therefore denies the remaining allegations contained in Paragraph 5 not specifically admitted.

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

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

the allegations contained in Paragraph 7, and therefore denies this allegation and respectfully demands strict proof thereof.

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

9. This allegation is not directed to this Respondent, and therefore Drake makes no response; further answering, to the extent any facts alleged therein have reference to this respondent, has insufficient information to admit or deny any and all the allegations contained in Paragraph 9, and therefore denies this allegation and respectfully demands strict proof thereof.

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

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

12. This Respondent has insufficient information to admit or deny knowing the actual relationship between the parties referenced in this paragraph 12, but further

answering, and upon information and belief, believes the allegations therein to be true.

13. Drake admits only so much of Paragraph 13, as follows: that prior to the planting season for the spring of the year 2000, he informed Wabash Valley of the crops he intended to plant for the year, and that following that arrangement, Wabash Valley selected an agrichemical/fertilizer program to be used on Drake's farm property, to be applied at the time of and under the direction and control of Wabash Valley; further answering, denies the allegations contained in Paragraph 13 which assert: "at Drake's express request and with his knowledge, support, and involvement," the activities occurred; further answering has insufficient information to admit or deny any and all the remaining allegations contained in Paragraph 13, and therefore denies these remaining allegations and respectfully demands strict proof thereof.

14. Drake denies the allegations contained in Paragraph 14.

15. Drake denies the allegations contained in Paragraph 15.

16. Drake denies the allegations contained in Paragraph 16.

17. Drake denies the allegations contained in Paragraph 17.

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

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

20. Drake denies the allegations contained in Paragraph 20.

### **AFFIRMATIVE DEFENSES**

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

#### **First Affirmative Defense:**

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

2. Drake approached Wabash in the spring of 2000, and informed representatives of that company as to what crops he intended to plant that year, and the fertilizer he wanted applied. Thereafter, as customary for Drake and his dealings with Wabash Valley Service Company, the company made the decision on what agrichemicals to apply to support that planting.

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

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

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

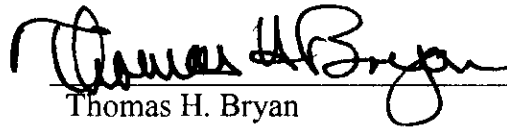
**Second Affirmative Defense:**

1. Any claim for any alleged wrongdoing, improper application of agrichemicals, or any action related to any acts or omissions of Drake or the other defendants prior to May 8, 2000 is barred by the applicable statute of limitations.

**REQUEST FOR RELIEF**

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





Thomas H. Bryan

IN # 2958-82

IL # 328367

A member with the law firm of:

FINE & HATFIELD, A Professional Corporation

520 N.W. Second Street

P.O. Box 779

Evansville, Indiana 47705-0779

Telephone: (812) 425-3592

Attorneys for Robert Drake

Respondent

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