

State of Illinois  
POLLUTION CONTROL BOARD  
JAMES R. THOMPSON CENTER  
100 W. RANDOLPH STREET, SUITE 11-500  
CHICAGO, ILLINOIS 60601

**RECEIVED**  
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MAY - 3 2006

STATE OF ILLINOIS  
Pollution Control Board

**FORMAL COMPLAINT**

**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

THE THEODORE KOSLOFF TRUST )  
(As formed by the Irrevocable Agreement of )  
Trust of Theodore Kosloff, dated )  
December 6, 1989, for Rachel Kosloff and )  
Abigail Kosloff, a Pennsylvania trust) )  
Complainant, )  
v. )  
A&B WIREFORM CORPORATION )  
Respondent. )

PCB 06-163  
(For Board use)

1. Complainant's name, street address, county, state: The Theodore Kosloff Trust  
c/o Sean Bezark  
Greenberg Traurig, LLP  
77 West Wacker Drive, Suite 2500  
Chicago, IL 60601  
Phone: (312) 476-5027
2. Place where Complainant can be contacted during normal business hours (if different from above): The Theodore Kosloff Trust  
c/o Sean Bezark  
Greenberg Traurig, LLP  
77 West Wacker Drive, Suite 2500  
Chicago, IL 60601  
Phone: (312) 476-5027
3. Name and address of Respondent (alleged polluter): A&B Wireform Corporation  
ATTN: Mr. Connor Creevy  
7525 Industrial Drive  
Forest Park, IL 60130
4. Describe the type of business or activity that Complainant alleges is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above:

Respondent A&B Wireform Corporation maintains an exterior drum storage area in the northwestern corner of its property, located at 7525 Industrial Drive, Forest Park, Illinois (the "A&B Property"). The drum storage area is located along the property line, directly adjacent to property formerly owned by The Theodore Kosloff Trust, located at 7609 Industrial Drive, Forest Park, Illinois ("the Trust Property"). Upon information and belief, releases of hazardous substances from 55-gallon drums and containers of unknown substances in the drum storage area have migrated onto the Trust Property and impacted soil. The Theodore Kosloff Trust has incurred investigation and remediation costs to address the contamination migrating from the A&B Property, and suffered diminution in the value of the Trust Property (as evidenced by a substantial concession in the sale price of the Trust Property directly attributable to the contamination caused by Respondent described herein).

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that Complainant alleges have been or are being violated:

Respondent A&B Wireform Corporation ("A&B") has violated and, upon information and belief, continues to violate, *inter alia*, sections 21 (d) and (e) of the Illinois Environmental Protection Act (415 ILCS 5/21).

6. Describe the type of pollution that Complainant alleges (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution.

Hazardous substances consisting of, *inter alia*, polycyclic aromatic hydrocarbons ("PAHs"), migrated from the drum storage area on the A&B Property onto the

immediately adjacent Trust Property, resulting in concentrations of PAHs in soil on the Trust Property in excess of Illinois soil remediation objectives ("SROs").

7. Describe the duration and frequency of the alleged pollution.

The pollution was first identified in a Phase I Environmental Site assessment of the Trust Property, dated September 1, 2005, prepared by Bradburne, Briller and Johnson, LLC ("BB&J"). On information and belief, A&B has stored chemicals and waste material in the drum storage area in the northwest corner of the A&B Property for an extended period of time, and continues to do so, resulting in the release and migration of hazardous substances onto the Trust Property as described above.

8. Describe any bad effects that Complainant believes the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity:

Contaminants migrating from the drum storage area at the A&B Property have impacted soil on the A&B Property, as evidenced by staining beneath and around the drum storage area. This contamination also has migrated onto the Trust Property, as was evidenced by surficial staining extending from the drum storage area onto the Trust Property. A Phase II Environmental Site Assessment, dated September 21, 2005, prepared by BB&J, detected concentrations of PAHs in subsurface soil on the Trust Property, immediately adjacent to the drum storage area on the A&B Property in excess of Illinois soil and groundwater criteria for Class I Groundwater and commercial-industrial SROs.

9. Describe the relief that Complainant seeks from the Board (e.g., an order that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that Complainant incurs by pursuing an enforcement action)):

The Theodore Kosloff Trust seeks (1) reimbursement of costs it incurred to investigate and remediate the described contamination caused by Respondent on the Trust Property, (2) an order requiring respondent A&B to cease and desist its chemical and waste storage practices in the northwest corner of its parking lot, and to conduct a subsurface investigation and any required remediation in the vicinity of the drum storage area, and (3) recovery of amounts lost as diminution in property value in a recent sale of the Trust Property that resulted directly from the described contamination caused by Respondent.

10. Identify any identical or substantially similar case Complainant knows of that is already pending before the Board or in another forum against this respondent for the same alleged pollution:

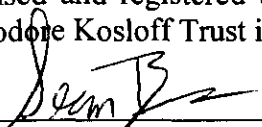
None.

11. State whether Complainant is representing (a) itself as an individual or (b) itself as an unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an

association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.):

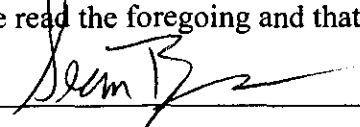
The Irrevocable Agreement of Trust of Theodore Kosloff for Rachel Kosloff and Abigail Kosloff dated December 6, 1989, is a Pennsylvania trust. I, Sean Bezark, am an attorney licensed and registered to practice law in the State of Illinois. I am representing The Theodore Kosloff Trust in this matter before the Board.

12.

  
(Complainant's signature) Sean Bezark, not personally, but solely as attorney for The Theodore Kosloff Trust

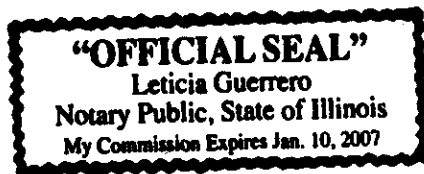
#### CERTIFICATION

I, Sean Bezark, not personally, but solely as attorney for The Theodore Kosloff Trust, state that I have read the foregoing and that it is accurate to the best of my knowledge.

  
Subscribed to and sworn before me  
this 3<sup>rd</sup> day  
of May, 2006.

  
Notary Public

My commission expires: 1-10-07



## **NOTICE TO RESPONDENT**

**NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT**

### **INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT**

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

#### **Board Accepting Formal Complaint for Hearing; Motions**

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger

service. Mail service is presumed complete four days after mailing. *See* 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. *See* 35 Ill. Adm. Code 103.212(a).

### **Answer to Complaint**

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. *See* 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**

### **Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. *See* 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

### **Costs**

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

## CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on May 3, 2006, I served the attached formal complaint and notice on the respondent by: (check appropriate line)

X certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

\_\_\_\_\_ registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

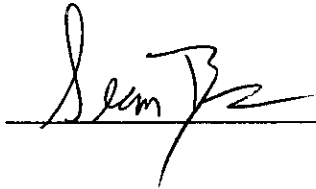
\_\_\_\_\_ messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

\_\_\_\_\_ personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the address below:

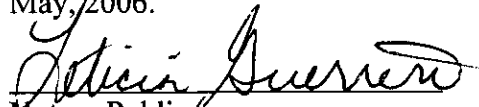
### RESPONDENT'S ADDRESS:

A&B Wireform Corporation  
7525 Industrial Drive  
Forest Park, Illinois 60130

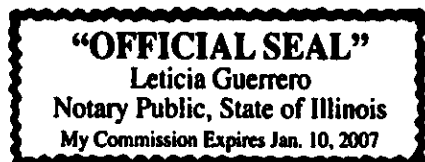


Sean W. Bezark  
Greenberg Traurig, LLP  
77 West Wacker Drive, Suite 2500  
Chicago, Illinois 60601

Subscribed to and sworn before me  
this 3<sup>rd</sup> day  
May, 2006.

  
Notary Public

My commission expires: 1-10-07



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Pollution Control Board

**APPEARANCE**  
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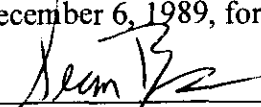
v. )

PCB 06-163

A&B WIREFORM CORPORATION )

Respondent. )

I hereby file my appearance in this proceeding, on behalf of THE THEODORE KOSLOFF TRUST (As formed by the Irrevocable Agreement of Trust of Theodore Kosloff, dated December 6, 1989, for Rachel Kosloff and Abigail Kosloff, a Pennsylvania trust)

  
\_\_\_\_\_  
Sean Bezark  
Greenberg/Traurig  
77 West Wacker Drive, Suite 2500  
Chicago, Illinois 60601  
(312) 476-5027

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