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FEB 28 2007

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 26, 2007

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

PCB 07-81

Re: ***People v. Durre Bros. Welding and Machine Shop, Inc.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 28 2007

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 DURRE BROS. WELDING AND)
 MACHINE SHOP, INC.,)
 an Illinois corporation,)
)
 Respondent.)

PCB No. 87-81
(Enforcement)

NOTICE OF FILING

To: Marc L. Durre, R.A.
Durre Bros. Welding and Machine Shop, Inc.
So. Chestnut Street
P.O. Box 39
Minonk, IL 61760

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this 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.


FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 26, 2007


CERTIFICATE OF SERVICE

I hereby certify that I did on February 26, 2007, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Marc L. Durre, R.A.
Durre Bros. Welding and Machine Shop, Inc.
So. Chestnut Street
P.O. Box 39
Minonk, IL 61760

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Jennifer Bonkowski
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 28 2007

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 DURRE BROS. WELDING AND)
 MACHINE SHOP, INC.,)
 an Illinois corporation,)
)
 Respondent.)

PCB No. 07-81
(Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JENNIFER BONKOWSKI, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: Jennifer Bonkowski
JENNIFER BONKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 26, 2007

5. Since 1998, Durre has conducted the following industrial activities at the site: metal sawing, flame and laser cutting, press break welding, shot blasting, drilling, spray washing and powder coat painting.

6. A one-third acre, seventeen foot deep pond on site is stocked with fish and is a water of the State.

7. A smaller, approximately 400 square foot pond is also on site, discharges to the pond referenced in paragraph 6, and is also a water of the State.

8. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations.

9. Section 12 of the Act, 415 ILCS 5/12 (2004), provides the following prohibitions:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as

defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

* * *

10. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides:

- a) Except as in compliance with the provision of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

11. The Respondent is a "person" as that term is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), as follows:

"Person" is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

12. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the following definition:

"Water Pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

14. On April 19, 2005, the Illinois EPA inspected the site. On that date, an active industrial storm water discharge was present on site. Wastewater from the shot blaster equipment was discharged to the stocked pond.

15. Unpermitted effluent from a private sewage system on site enters the small pond. A sample from the small pond taken on April 19, 2005, was later analyzed and results demonstrated high levels of organic wastes, comparable to that of raw sewage.

16. On or before April 19, 2005, Respondent caused, allowed or threatened the discharge of wastewater from the site into waters of the State so as to cause or tend to cause water pollution by creating a nuisance or rendering such waters harmful or detrimental or injurious to fish or other aquatic life.

17. On or before April 19, 2005, Respondent caused, allowed or threatened the discharge of effluent containing high levels of organic wastes from the site into waters of the State so as to cause or tend to cause water pollution by likely rendering such waters harmful or detrimental or injurious to aquatic life.

18. By so causing, allowing or threatening to cause water pollution, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC., has violated the Act and regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), awarding to Complainant its costs and reasonable attorney fees; and

E. Grant such other and further relief as the Board deems appropriate.

COUNT II

OPERATION WITHOUT AN NPDES PERMIT

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 to 14 of Count I as paragraphs 1 to 14 of this Count II.

15. The following industrial activities conducted at the site fall under Standard Industrial Classification ("SIC") code 35, industrial machinery and equipment: metal sawing, flame and laser cutting, press break welding, shot blasting, drilling, spray washing and powder coat painting.

16. Pursuant to 40 C.F.R. 122.26(b)(14), such activities trigger the NPDES industrial storm water permit requirement.

17. On April 19, 2005, the site was not covered by an NPDES industrial storm water permit.

18. By conducting SIC code 35 industrial activities at the site, and discharging wastewater associated from these activities without an NPDES permit, the Respondent caused, threatened or allowed the discharge of any contaminant into the waters of the State in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC., has violated the Act and regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondent a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), awarding to Complainant its costs and reasonable attorney fees; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT III

WATER POLLUTION HAZARD

1-14. Complainant realleges and incorporates herein by reference paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count III.

15. On or before April 19, 2005, the site discharged wastewater from its wash line onto the land surface on the north side of the facility.

16. The Respondent therefore caused or allowed wastewater, a contaminant, to remain on land surfaces on site in close proximity to the ponds on site.

17. The Respondent caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to waters of the State, thereby violating Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC., has violated the Act and regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondents a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), awarding to Complainant its costs and reasonable attorney fees; and

E. Grant such other and further relief as the Board deems appropriate.

COUNT IV

LAND POLLUTION VIOLATIONS

1-7. Complainant realleges and incorporates by reference herein paragraphs 1 through 5 and 14 of Count I, and paragraph 15 of Count III, as paragraphs 1 through 7 of this Count IV.

8. Section 21 of the Act, 415 ILCS 5/21 (2004), provides, in pertinent part, as follows:

No person shall:

- (a) Cause or allow the open dumping of any waste.

* * *

- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

- (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit;

* * *

- (2) in violation of any regulations or standards adopted by the Board under this Act;

* * *

- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

- 9. Section 3.305 of the Act, 415 ILCS 5/3.305 (2004), provides as follows:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

- 10. Section 3.535 of the Act, 415 ILCS 5/3.535 (2004), provides as follows:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. . . .

11. On or before April 19, 2005, and continuing through a date better known to Respondent, Durre caused or allowed the open dumping of waste at the site through the consolidation and land application of industrial liquid waste. The site is not permitted by the Illinois EPA as a sanitary landfill nor does the site meet the requirements of the Act and of the regulations and the standards promulgated thereunder.

12. By causing or allowing the open dumping of waste, Durre violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

13. By disposing of waste at a site that is not permitted by the Illinois EPA as a sanitary landfill, Durre violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2004).

14. By disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, Durre violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC., has violated the Act and regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), awarding to Complainant its costs and reasonable attorney fees; and

E. Grant such other and further relief as the Board deems appropriate.

COUNT V

USED OIL MANAGEMENT STANDARD VIOLATIONS

1-6. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 5 and 14 of Count I as paragraphs 1 through 6 of this Count V.

7. Section 739.122 of the Pollution Control Board's Standards for the Management of Used Oil, 35 Ill. Adm. Code 739.122, provides as follows:

Used Oil Storage

* * *

c) Labels.

1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

8. On April 19, 2005, containers that stored used oil were not labeled with the words "used oil."

9. By storing containers filled with used oil without clearly labeling them as to the containers' contents, the Respondent violated Section 739.122 of the Pollution Control Board's Standards for the Management of Used Oil, 35 Ill. Adm. Code 739.122.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent, DURRE BROS. WELDING AND MACHINE SHOP, INC., has violated the Act and regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), awarding to Complainant its costs and reasonable attorney fees; and

E. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

JENNIFER BONKOWSKI
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 2/26/07