



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 21, 2008

RECEIVED
CLERK'S OFFICE
NOV 25 2008
STATE OF ILLINOIS
Pollution Control Board

PCB09-35

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Alan Durkee, d/b/a Alan Durkee Swine Farm***

Dear Clerk:

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,

Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

ALAN DURKEE, d/b/a)

ALAN DURKEE SWINE FARM,)

Respondent.)

PCB No. 09-35
(Enforcement)

RECEIVED
CLERK'S OFFICE

NOV 25 2008

NOTICE OF FILING

To: Alan Durkee,
d/b/a Alan Durkee Swine Farm
Co. Rd. 800N & Co. Rd. 1700E
Stronghurst, IL 61480

STATE OF ILLINOIS
Pollution Control Board

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.

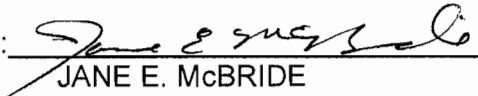
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

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: 
JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 24, 2008

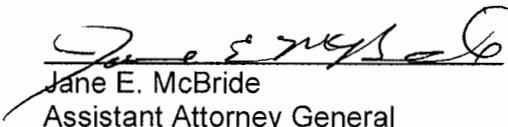
CERTIFICATE OF SERVICE

I hereby certify that I did on November 24, 2008, 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: Alan Durkee,
d/b/a Alan Durkee Swine Farm
Co. Rd. 800N & Co. Rd. 1700E
Stronghurst, IL 61480

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

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

ALAN DURKEE, d/b/a)
ALAN DURKEE SWINE FARM,)

Respondent.)

PCB No. 09-35
(Enforcement)

RECEIVED
CLERK'S OFFICE

NOV 25 2008

STATE OF ILLINOIS
Pollution Control Board

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, Jane E. McBride and Michael D. Mankowski, Assistant Attorneys General of the State of Illinois, hereby enter their appearance as attorneys 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: Jane E. McBride
Jane E. McBride
Michael D. Mankowski
Michael D. Mankowski

Environmental Bureau
Assistant Attorneys General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 24, 2008

4. Respondent Alan Durkee ("Durkee") is an individual engaged in the business of swine production. Respondent Durkee owns and operates a 2,200 swine feeder-to-finish facility consisting of two confinement buildings and a cement manure pit measuring 100 feet by 20 feet and 8 feet deep. Respondent Durkee's swine operation is located at the intersection of County Road 800N and County Road 1700E, approximately two miles east of Stronghurst, Illinois in Henderson County (the "facility" or "site").

5. Section 3.545 of the Act, 415 ILCS 5/3.545, provides:

"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 water 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.

6. Section 3.550 of the Act, 415 ILCS 5/3.550, provides:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

7. Section 3.165 of the Act, 415 ILCS 5/3.165, provides:

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

8. Section 12 (a) and (d) of the Act, 415 ILCS 5/12(a),(d), provides, in pertinent part, as follows:

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.

* * *

9. On April 24, 2007, an Illinois Department of Natural Resources ("IDNR") fisheries biologist reported to the Illinois EPA that Respondent Durkee surface applied livestock wastewater to pasture ground when precipitation was imminent. Rain did fall that evening, either during or immediately after Respondent land applied livestock wastewater.

10. On April 25, 2007, an Illinois EPA inspector conducted an inspection of Respondent Durkee's swine farm and observed that the manure pit had approximately five feet of available freeboard. Markings on the concrete wall of the manure pit indicated that the pit had recently been at full capacity. The inspector observed two waste application vehicles at the facility that were not equipped with injection/ incorporation equipment.

11. At the time of the inspection, the Illinois EPA inspector observed that livestock wastewater had recently been surface applied to a field adjacent to the facility. The wastewater formed ponds in the grass pasture next to the swine building and was draining to various off site areas. The wastewater drained to the north into an unnamed tributary of Middle Creek and to the west into a roadside ditch along County Road 1700E. The wastewater drained across County Road 1700E and into an adjacent field. The inspector observed a relatively strong swine waste odor west of the pasture and confinement buildings.

12. Samples taken in the vicinity of the Respondent Durkee's application of waste were turbid and odorous. A sample take from an unnamed tributary to Middle Creek near a

bridge along County Road 1700E, just north of the facility, was slightly turbid with a brown/gray color cast and an obvious swine waste odor. A sample taken from a roadside ditch along County Road 1700E, just west of the facility, was dark brown/black and turbid with a very strong swine waste odor.

13. On April 26, 2007, an Illinois Department of Natural Resources fisheries biologist inspected Dixon Creek and Middle Creek. The biologist did not observe dead fish. The biologist observed that the significant amount of rainfall most likely diluted the livestock waste which had been land applied and that subsequently discharged to surrounding streams.

14. On April 27, 2007, in a phone call with the Illinois EPA inspector, Respondent Durkee confirmed that he applied livestock wastewater to an 8-acre rye grass pasture on April 24 and to the row crop fields earlier in the week. Respondent Durkee explained his manure pit emptying procedures and the possibility of increasing the manure storage capacity at the facility. The Illinois EPA inspector advised Respondent Durkee to monitor the weather and not apply wastewater to any fields when precipitation is imminent, and also recommended that Respondent Durkee consider purchasing injection equipment or hiring an applicator to incorporate the waste, and to control the application rate to prevent any ponding in the fields.

15. On July 10, 2007, the Illinois EPA sent Respondent Durkee a violation notice letter ("VN"), W-2007-00230, for the livestock waste handling and storage violations.

16. On August 22, 2007, Respondent Durkee replied to the VN letter of the Illinois EPA by a Compliance Commitment Agreement ("CCA") and stated that he would not apply manure when rain is imminent, would avoid ponding when applying livestock wastewater, and would avoid any application in the field next to his neighbor except once in the fall. Respondent Durkee also stated he completed and implemented an emergency response protocol and was considering utilizing a commercial applicator and increasing storage capacity.

17. On September 18, 2007, Respondent Durkee supplemented his proposed CCA with the additional measure that any application of manure to the field adjacent to the hog building would be by injection only, and all fall applications to crop land would be injected or incorporated within 24 hours. On September 20, 2007, Illinois EPA sent Respondent Durkee a letter rejecting his proposed CCA. On November 28, 2007 the Illinois EPA sent Respondent Durkee a Notice of Intent to Pursue Legal Action ("NIPLA"). The NIPLA was returned to sender stamped "unclaimed" and no meeting regarding the NIPLA was conducted.

18. The Respondent has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants in the soil to remain on the land and subject to surface drainage or leaching into waters of the State.

19. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

20. The Respondent has caused or allowed the discharge of contaminants to waters of the State as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

21. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the state of Illinois, respectfully requests

that the Board enter an order against the Respondent Durkee:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Durkee has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Durkee to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Durkee a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a).

COUNT II

NPDES VIOLATION

1. This Count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2008) .

2-21. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 21 of Count I as paragraphs 2 through 21 of this Count II.

22. Section 12 (f) of the Act, 415 ILCS 5/12(f), provides, in pertinent part, as follows:

No person shall:

- 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.

* * *

23. Section 309.102 of the Board's water pollution regulations, 35 Ill. Adm. Code

309.102(a), states, in pertinent part :

NPDES Permit Required

- a. Except as in compliance with the provisions 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

24. At the time of the April 24, 2007 discharge from Respondent Durkee's facility, the facility did not have a National Pollution Discharge Elimination System Permit ("NPDES"), and Respondent had not applied for an NPDES permit for the facility. Discharges from a land application vehicle and land application site are point source discharges.

25. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondent Durkee has violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the state of Illinois, respectfully requests that the Board enter an order against the Respondent Durkee:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent Durkee has violated the Act and regulations as alleged herein;
- C. Ordering Respondent Durkee to cease and desist from any further violations of the Act and associated regulations; and
- D. Assessing against Respondent Durkee a civil penalty of ten thousand dollars (\$10,000) per day of violation, pursuant to Section 42(b)(1) of the Act, 414 ILCS 5/42(b)(1).

COUNT III

AGRICULTURE RELATED POLLUTION VIOLATIONS

1. This Count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e).

2-21. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 21 of Count I as paragraphs 2 through 21 of this Count III.

22. Section 501.405 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405, provides, in pertinent part, as follows:

- a. The quantity of livestock waste applied on soils shall not exceed a practical limit as determined by soil type, especially its permeability, the condition (frozen or unfrozen) of the soil, the percent slope of the land, cover mulch, proximity to surface waters and likelihood of reaching groundwater, and other relevant considerations. These livestock waste application guidelines will be adopted pursuant to 35 Ill. Adm. Code 502.305 unless otherwise provided for by Board regulations.

23. The April 24, 2007 discharge from Respondent Durkee's facility was the result of Respondent applying waste at a time when precipitation was imminent and, in fact, a significant rainfall did occur. Respondent applied livestock waste in exceedence of the practical limit based on existing weather and soil conditions.

24. By land applying livestock waste in exceedence of practical limits, and thereby allowing the discharge of facility contaminants to waters of the State, Respondent Durkee has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill.Adm. Code 501.405.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the state of Illinois, respectfully requests that the Board enter an order against the Respondent Durkee:

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

B. Finding that Respondent Durkee has violated the Act and regulations as alleged herein;

C. Ordering Respondent Durkee to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondent Durkee a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter, pursuant to Section 42(a) of the Act, 414 ILCS 5/42(a)(2008).

COUNT IV

OFFENSIVE CONDITIONS

1 . This Count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e).

2-19. Complainant re-alleges and incorporates by reference herein paragraphs 4 through 21 of Count I as paragraphs 2 through 19 of this Count IV.

20 . Section 302.203 of the Board's water pollution regulations, 35 Ill . Adm. Code 302.203, states, in pertinent part:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

* * *

21. Sample results from waters impacted by the April 24, 2007 discharge from Respondent Durkee's facility, indicated turbid, discolored and odor conditions in the waters of an unnamed tributary of Middle Creek and a roadside ditch along County Road 1700E.

22. By improperly applying livestock waste on land so as to allow a discharge and cause turbid, discolored and odorous waters in an unnamed tributary of Middle Creek and a roadside ditch along County Road 1700E , Respondent Durkee has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 302.203.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the state of Illinois, respectfully requests

that the Board enter an order against the Respondent Durkee:

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

B. Finding that Respondent Durkee has violated the Act and regulations as alleged herein;

C. Ordering Respondent Durkee to cease and desist from any further violations of the Act and associated regulations; and

D. Assessing against Respondent Durkee a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars

(\$10,000) for each day during which each violation has continued thereafter, pursuant to
Section 42(a) of the Act, 414 ILCS 5/42(a)(2008).

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
JANE E. MCBRIDE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 11/21/08

