

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 01 2000

STATE OF ILLINOIS
Pollution Control Board

VILLAGE OF PARK FOREST, an Illinois
municipal corporation,

Complainant,

v.

SEARS, ROEBUCK & CO., a New York
corporation,

Respondent.

PCB 01-77
(Enforcement - Land, Water)

NOTICE OF FILING

TO: Sears, Roebuck & Co.
c/o Frederick J. Kulevich, Esq.
Senior Counsel, Law Department
3333 Beverly Road, B6-379B
Hoffman Estates, Illinois 60179

PLEASE TAKE NOTICE that on November 1, 2000, the undersigned caused to be filed with the Illinois Pollution Control Board, 100 West Randolph, Suite 11-500, Chicago, Illinois, the Village of Park Forest's Complaint, a copy of which is attached and hereby served upon you. Pursuant to Section 103.122 of the Board's rules, you may be required to attend a hearing at a date set by the Board.

VILLAGE OF PARK FOREST,

By Kenneth W. Funk
One of its Attorneys

Kenneth W. Funk, Esq.
Karen Kavanagh Mack, Esq.
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Chicago, IL 60606
(312) 346-1460

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COMPLAINT

Now comes Complainant, the Village of Park Forest, an Illinois municipal corporation, by and through its attorneys, DEUTSCH, LEVY & ENGEL, CHARTERED, and hereby files its Complaint against Respondent, Sears Roebuck & Co., a New York corporation, and states as follows:

THE PARTIES

1. Complainant, the Village of Park Forest ("Village") is an Illinois municipal corporation with its principal place of business at 350 Victory Drive, Park Forest, Illinois.
2. Respondent, Sears, Roebuck & Co. ("Sears"), is a New York corporation with its principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois.

THE FACTS

3. On or about April 1, 1965, Sears acquired title to the real estate commonly known as 100 Victory Boulevard, Park Forest, Illinois and legally described in Exhibit "A" attached hereto and incorporated herein (the "Site").
4. Thereafter, in 1965, Sears constructed or caused to be constructed a retail automotive service and gasoline station on the Site.

5. Upon information and belief, the improvements at the Site, which were constructed, owned and operated by Sears, included five (5) underground storage tanks ("USTs") containing gasoline, related piping and dispensers, a waste oil UST and related piping, eighteen (18) hydraulic lifts and an oil/water separator (collectively, the "Systems").

6. Upon information and belief, Sears operations at the site included the retail sale of gasoline and various automotive repairs, including oil and antifreeze/coolant changes.

7. Upon information and belief, Sears caused the gasoline product to be pumped, through the piping and dispensers, from the USTs at the Site.

8. Upon information and belief, Sears caused the waste oil generated from its automotive services, including oil changes, to be stored in the waste oil UST at the Site.

9. Sears retained ownership and control of the Site and its improvements, until the Village's acquisition of the Site in December 1995.

10. Upon information and belief, prior to the Village's acquisition of the Site in 1995, releases of petroleum and other petroleum related products and by-products leaked and/or were released into the land and groundwater at the Site from the Systems while they were still in operation and/or during and subsequent to the removal of the USTs and related piping at the Site.

11. After acquiring the Site, the Village did not conduct business, lease or use the Site in any material manner. Instead, the Site remained vacant until the Village caused various environmental site assessments ("ESAs") to be conducted on or about the Site on April 8, 1998, May 26, 1998, August 25, 1998 and December 2, 1998.

12. The ESAs revealed the existence of significant petroleum related contamination in the soil and groundwater on or about the Site, including elevated concentrations of benzene,

ethylbenzene, toluene, xylene, and certain polynuclear aromatic hydrocarbons, all at levels exceeding applicable remedial objectives.

13. As a consequence of the existence of said petroleum contamination, the Village reported an "incident" with the Illinois Emergency Management Agency (No. 992237) and sought participation in the Illinois Environmental Agency's (the "Agency") Leaking Underground Storage Tank program ("LUST").

14. Additionally, the Village has expended substantial amounts of money to fully assess the extent of the contamination and to remediate the site to applicable remedial objectives.

15. To date, the cost to assess and remediate the petroleum contamination at the Site exceeds \$650,000.00.

COUNT I: Violation of 415 ILCS 5/21(a) - Open Dumping of Waste

16. The Village re-alleges and incorporates the allegations as set forth in items 1 through 15, as paragraphs 1 through 15 of Count I.

17. Sears was the legal owner and operator of the Site and the Systems at the Site until December, 1995.

18. Upon information and belief, releases of gasoline, waste oil and other petroleum related products and by-products occurred from the Systems at the Site while Respondent was the owner and operator of the Site and the Systems at the Site.

19. Under Section 5/3.24 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/3.24 (1998), "open dumping" is defined as: "consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill."

20. Under Section 5/3.31 of the Act, "refuse" is defined as "waste."

21. Under Section 5/3.53 of the Act, "waste" is defined as: "any garbage, ...or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from ... commercial ... operations."

22. Under Section 5/3.08 of the Act, "disposal" is defined as: "the discharge, deposit, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."

23. Respondent, in allowing gasoline, waste oil and other petroleum related products and by-products to leak from the Systems at the Site, during its ownership and management of the Site, violated Section 5/21(a), which provides: "No person shall ... [c]ause or allow the open dumping of any waste."

24. As a consequence of Respondent's violation of Section 5/21(a), the Site was contaminated with gasoline, waste oil and other petroleum related products and by-products.

25. In response to the contamination, the Village has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable State and Federal standards and to allow for future development of the Site.

Wherefore, the Village respectfully requests that the Illinois Pollution Control Board grant the following relief:

1. Find that Respondent violated Section 5/21(a) of the Illinois Environmental Protection Act;
2. Issue an order requiring Respondent to reimburse the Village for the expenditures made to remediate the contamination caused by these violations at the Site;
3. Issue an order finding Respondent liable for any future liability or expense

incurred by the Village stemming from the violation set forth above;

4. Issue an order awarding all costs of this proceeding, including but not limited to expert witness fees and attorneys' fees, against Respondent; and
5. Grant such other relief as the Board deems just.

COUNT II: Violation of 415 ILCS 5/21(e) - Illegal Waste Disposal

16. The Village re-alleges and incorporates the allegations as set forth in items 1 through 15, as paragraphs 1 through 15 of Count II;

17. Sears was the legal owner and operator of the Site and the USTs at the Site until December, 1995;

18. Upon information and belief, releases of gasoline, waste oil and other petroleum related products and by-products occurred from the Systems at the Site while Respondent was the owner and operator of the Site and the Systems at the Site;

19. Pursuant to Section 5/21(e) of the Act, it is illegal to: "dispose, treat, store or abandon any waste ..., except at a site or facility which meets the requirements of the Act and of regulations and standards thereunder;"

20. Under Section 5/3.08 of the Act, "disposal" is defined as: "the discharge, deposit, dumping, spilling, leaking or placing of any waste ... into or on any land or water or into any well so that such waste ... may enter the environment or be ... discharged into any waters, including ground waters;"

21. Under Section 5/3.53 of the Act, "waste" is defined as: "any garbage, ...or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from ... commercial ... operations;"

22. Respondent, in allowing gasoline, waste oil and other petroleum related products and by-products to leak from the USTs and possible other unknown sources at the Site, during its ownership and management of the Site, violated Section 5/21(e);

23. As a consequence of Respondents' violation of Section 5/21(e), the Site was contaminated with gasoline, waste oil and other petroleum related products and by-products;

24. In response to the contamination, the Village has expended and will continue to expend considerable money to remediate the Site to meet applicable State and Federal standards and to allow for future development of the Site.

Wherefore, the Village respectfully requests that the Illinois Pollution Control Board grant the following relief:

1. Find that Respondent violated Section 5/21(e) of the Illinois Environmental Protection Act;
2. Issue an order requiring Respondent to reimburse the Village for the expenditures made to remediate the contamination caused by these violations at the Site;
3. Issue an order finding Respondent liable for any future liability or expense incurred by the Village stemming from the violation set forth above;
4. Issue an order awarding all costs of this proceeding, including but not limited to expert witness fees and attorneys' fees, against Respondent; and
5. Grant such other relief as the Board deems just.

COUNT III: Violation of 415 ILCS 5/12(a) - Water Pollution

16. The Village re-alleges and incorporates the allegations as set forth in items 1 through 15, as paragraphs 1 through 15 of Count III;

17. Sears was the legal owner and operator of the Site and the Systems at the Site until December, 1995;

18. Upon information and belief, releases of gasoline, waste oil and petroleum related products and by-products occurred from the Systems at the Site while Respondent was the owner and operator of the Site and the Systems at the Site;

19. Under Section 5/12(a) of the Act, it is illegal to "[c]ause 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 . . . ;"

20. Section 5/3.06 of the Act defines "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source."

21. By allowing the release of gasoline, waste oil and other petroleum related products and by-products to leak into and remain in the land and groundwater at the Site, Respondent violated Section 5/12(a) of the Act;

22. As a consequence of Respondents' violation of Section 5/12(a), the Site was contaminated with gasoline, waste oil and other petroleum related products and by-products;

23. In response to the contamination, the Village has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable State and Federal standards and to allow for future development of the Site.

Wherefore, the Village respectfully requests that the Illinois Pollution Control Board grant the following relief:

1. Find that Respondent violated Section 5/12(a) of the Illinois Environmental Protection Act;
2. Issue an order requiring Respondent to reimburse the Village for the expenditures made to remediate the contamination caused by these violations at the Site;
3. Issue an order finding Respondent liable for any future liability or expense

incurred by the Village stemming from the violation set forth above;

4. Issue an order awarding all costs of this proceeding, including but not limited to expert witness fees and attorneys' fees, against Respondent; and
5. Grant such other relief as the Board deems just.

COUNT IV: Violation of 415 ILCS 5/12(d) - Creation of a Water Pollution Hazard

16. The Village re-alleges and incorporates the allegations as set forth in items 1 through 15, as paragraphs 1 through 15 of Count IV;

17. Sears was the legal owner and operator of the Site and the Systems at the Site until December, 1995;

18. Upon information and belief, releases of gasoline, waste oil and petroleum related products and by-products occurred from the Systems at the Site while Respondent was the owner and operator of the Site and the Systems at the Site;

19. Under Section 5/12(d) of the Act, it is illegal to "[d]eposit any contaminants upon the land in such a place and manner so as to create a water pollution hazard;"

20. By allowing the release of gasoline, waste oil and other petroleum related products and by-products to leak into and remain in the land and groundwater at the Site, Respondent created a water pollution hazard thereby violating Section 5/12(d) of the Act;

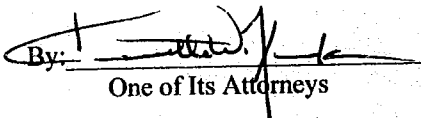
21. As a consequence of Respondents' violation of Section 5/12(d), the Site was contaminated with gasoline, waste oil and other petroleum related products and by-products;

22. In response to the contamination, the Village has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable State and Federal standards and to allow for future development of the Site.

Wherefore, the Village respectfully requests that the Illinois Pollution Control Board grant the following relief:

1. Find that Respondent violated Section 5/12(d) of the Illinois Environmental Protection Act;
2. Issue an order requiring Respondent to reimburse the Village for the expenditures made to remediate the contamination caused by these violations at the Site;
3. Issue an order finding Respondent liable for any future liability or expense incurred by the Village stemming from the violation set forth above;
4. Issue an order awarding all costs of this proceeding, including but not limited to expert witness fees and attorneys' fees, against Respondent; and
5. Grant such other relief as the Board deems just.

THE VILLAGE OF PARK FOREST

By: 
One of Its Attorneys

Kenneth W. Funk
Phillip J. Zisook
Karen Kavanagh Mack
DEUTSCH, LEVY & ENGEL, CHARTERED
225 West Washington Street, Suite 1700
Chicago, Illinois 60606
312-346-1460

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 25 AND THE NORTHEAST 1/4 OF SECTION 36, ALL IN TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE NORTH 0 DEGREES 03 MINUTES 15 SECONDS WEST ALONG THE EAST LINE OF SAID SECTION 25, 394.80 FEET; THENCE SOUTH 68 DEGREES 40 MINUTES 50 SECONDS WEST 1230.32 FEET; THENCE SOUTH 8 DEGREES 37 MINUTES 17 SECONDS WEST 178.48 FEET; THENCE SOUTH 7 DEGREES 34 MINUTES 49 SECONDS EAST 80 FEET; THENCE SOUTH 30 DEGREES 18 MINUTES 31 SECONDS EAST 160 FEET; THENCE SOUTH 25 DEGREES 31 MINUTES 30 SECONDS EAST 150 FEET; THENCE NORTH 68 DEGREES 40 MINUTES 50 SECONDS EAST 1091.78 FEET TO THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 36; THENCE NORTH 0 DEGREES 4 MINUTES 45 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 36, 184.82 FEET TO THE NORTHEAST CORNER OF SAID SECTION 36 AND THE SOUTHEAST CORNER OF SAID SECTION 25 AND THE PLACE OF BEGINNING, EXCEPTING THEREFROM THE EAST 50 FEET TAKEN FOR WESTERN AVENUE; ALSO EXCEPTING THEREFROM TWO STRIPS OF LAND FOR PUBLIC THOROUGHFARE AS SHOWN ON PLAT OF DEDICATION DATED JUNE 19, 1962 AND RECORDED OCTOBER 3, 1962 AS DOCUMENT NUMBER 18608144; IN COOK COUNTY, ILLINOIS.