



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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DEC 02 2005
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

November 29, 2005

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

PCB 06 83

Re: ***People v. Levi A. Kaufman***

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,

Delbert D. Haschemeyer
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

DDH/pp
Enclosures



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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DEC 02 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 LEVI A. KAUFMAN,)
)
 Respondent.)

PCB No. *06-83*
(Enforcement)

NOTICE OF FILING

To: LEVI A. KAUFMAN
R.R. 1, Box 84
Humboldt, IL 61931

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:



DELBERT D. HASCHEMEYER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 29, 2005

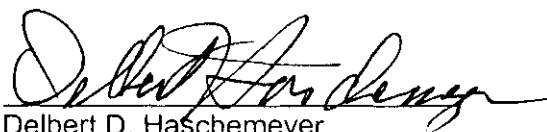
CERTIFICATE OF SERVICE

I hereby certify that I did on November 29, 2005, 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: LEVI A. KAUFMAN
R.R. 1, Box 84
Humboldt, IL 61931

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


Delbert D. Haschemeyer
Assistant Attorney General

This filing is submitted on recycled paper.

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DEC 02 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
LEVI A. KAUFMAN,)
)
Respondent.)

PCB No. 66-83
(Enforcement)


ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, DELBERT D. HASCHEMEYER, Assistant Attorney General of the State of Illinois, hereby enters his 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: 
DELBERT D. HASCHEMEYER
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 29, 2005

RECEIVED
CLERK'S OFFICE

DEC 02 2005

STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
COLES COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
LEVI A. KAUFMAN,)
)
Respondent.)

PCB No. 06-83

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, LEVI A. KAUFMAN, as follows:

COUNT I

OPEN DUMPING OF WASTE VIOLATIONS

1. This Complaint is brought on behalf of the People of the State of Illinois by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to the violations alleged in this Complaint, Respondent, Levi A. Kaufman, owned and/or operated a parcel of property (the "facility") located roughly at the north intersection of Roads 1600 N and 500 E, situated just east of the Kaskaskia River, Coles County, Illinois. The facility was an existing municipal solid waste and non-hazardous special waste landfill operated by Respondent, Levi A. Kaufman, pursuant to an Illinois EPA operating permit No. 1973-30.

4. The facility encompasses approximately 17 acres and was active from approximately May of 1973 until February, 1988. The facility had a trench and fill operation and was allowed to dispose of general municipal waste and other waste, including, but not limited to, empty herbicide and paint cans, automobile and farm equipment parts, refrigerators and ranges, oil, batteries, insulation, high graphite core sand, incineration ash, defective camera flash bulbs and empty barrels labeled "acetone" and "methyl chloride."

5. 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:

* * *

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

* * *

(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.

* * *

(o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

* * *

(3) leachate flows exiting the landfill confines (as determined by the boundaries established for the landfill by a permit issued by the Agency);

* * *

(11) failure to submit reports required by permits or Board regulations;

6. 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.

7. Section 3.445 of the Act, 415 ILCS 5/3.445 (2004), provides, in pertinent part, as follows:

“SANITARY LANDFILL” means a facility permitted by the Agency for the disposal of waste on land . . . without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each days’ operation, or by such other methods and intervals as the Board may provide by regulation.

8. On June 14, 2001, the Illinois EPA conducted an inspection of the Respondent’s property. A small open dump was observed in the southwest corner of the facility. Between the open dump and a roadway on or immediately adjacent to the facility was a pile of old lumber and approximately 25 used tires and some inner tubes. Similar waste was observed in this area during a November, 1996, inspection. Broken and crushed flash bulb waste was observed on the top of the ground on the south side.

9. Old lumber, tires, inner tubes and broken or crushed flash bulbs constitute “refuse” and “waste” as those terms are defined under Sections 3.385 and 3.535 of the Act, 415 ILCS 5/3.385, 3.535 (2004), as follows:

Section 3.385. “REFUSE” means waste.

Section 3.535. “WASTE” means any garbage . . . 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, . . .

10. On or before June 14, 2001, and continuing to a date known to the Respondent, the Respondent caused or allowed the open dumping of old lumber, inner-tubes and flash bulb waste

on, or immediately adjacent to, the Kaufman facility in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an order against Respondent for the following:

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

B. Finding that the Respondent, Levi A. Kaufman, has violated Sections 21(a) of the Act, 415 ILCS 5/21(a) (2004);

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

D. Assessing against the Respondent a monetary penalty of up to Fifty Thousand Dollars (\$50,000.00) for each violation and up to an additional Ten Thousand Dollars (\$10,000.00) for each day that the violation has continued;

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

F. Grant such other and further relief as this Board deems appropriate.

COUNT II

OPEN DUMPING OF TIRES

1-7. Complainant realleges and incorporates by reference paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count II.

8. Section 55(1)(a) of the Act, 415 ILCS 5/55(1)(a) (2004), provides:

(1) No person shall:

(a) cause or allow the open dumping of any used or waste tires.

9. Complainant realleges and incorporates by reference paragraph 8 of Count I as paragraph 9 of this Count II.

10. On or before June 14, 2001, and continuing to a date known to the Respondent, Respondent caused or allowed the open dumping of tires in violation of Section 55(1)(a) of the Act, 415 ILCS 5/55(1)(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an order against Respondent for the following:

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

B. Finding that the Respondent, Levi A. Kaufman, has violated Section 55(1)(a) of the Act, 415 ILCS 5/55(1)(a) (2004);

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

D. Assessing against the Respondent a monetary penalty of up to Fifty Thousand Dollars (\$50,000.00) for each violation and up to an addition Ten Thousand Dollars (\$10,000.00) for each day that the violation has continued;

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

F. Grant such other and further relief as this Board deems appropriate.

COUNT III

OPERATION OF A DISPOSAL SITE WITHOUT A PERMIT

1-8. Complainant realleges and incorporates by reference paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count III.

9. The disposal site described in paragraph 8 herein located on the Kaufman property is not currently permitted by the Illinois EPA as a "sanitary landfill," as that term is defined under Section 3.448 of the Act, 415 ILCS 5/3.448 (2004), nor does the disposal site meet the sanitary landfill requirements of the Act and its regulations.

10. On or before June 14, 2001, and continuing to a date known to the Respondent, the Respondent conducted a waste-storage or waste-disposal operation at the disposal site described in paragraph 8 herein without a permit granted by the Illinois EPA, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an order against Respondent for the following:

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

B. Finding that the Respondent, Levi A. Kaufman, has violated Section 21(d) of the Act, 415 ILCS 5/21(d) (2004);

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

D. Assessing against the Respondent a monetary penalty of up to Fifty Thousand Dollars (\$50,000.00) for each violation and up to an additional Ten Thousand Dollars (\$10,000.00) for each day that the violation has continued;

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

F. Grant such other and further relief as this Board deems appropriate.

COUNT IV

**DISPOSAL OF WASTE AT A SITE WHICH DOES
NOT MEET THE REQUIREMENTS OF THE ACT**

1-8. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count IV.

9. On or before June 14, 2001, and continuing through the date of filing of this Complaint, Respondent has disposed of or stored waste at a site located on the Kaufman property as described in paragraph 8 herein which does not meet the requirements of the Act and the regulations and standards promulgated thereunder, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an order against Respondent for the following:

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

B. Finding that the Respondent, Levi A. Kaufman, has violated Section 21(e) of the Act, 415 ILCS 5/21(e), (2004);

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

D. Assessing against the Respondent a monetary penalty of up to Fifty Thousand Dollars (\$50,000.00) for each violation and up to an additional Ten Thousand Dollars (\$10,000.00) for each day that the violation has continued;

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

F. Grant such other and further relief as this Board deems appropriate.

COUNT V

LEACHATE VIOLATIONS

1-7. Complainant realleges and incorporates by reference paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count V.

8. Section 807.314 of the Pollution Control Board's ("Board") Waste Disposal Regulations, 35 Ill. Adm. Code 807.314, provides, in relevant part:

Section 807.314 Standard Requirements

Except as otherwise authorized in writing by the Agency, no person shall cause or allow the development or operation of a sanitary landfill which does not provide:

* * *

(e) Adequate measures to monitor and control leachate;

9. Section 807.502 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.502, provides:

Section 807.502 Closure Performance Standard

In addition to the specific requirements of this Part, an operator of a waste management site shall close the site in a manner which:

- (a) Minimizes the need for further maintenance; and
- (b) Controls, minimizes or eliminates post-closure release of waste, waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment.

10. Commencing on or before June 14, 2001, and continuing to some date known to the Respondent, Respondent allowed leachate to seep from the facility on the east side in violation of Section 807.314 and 807.502 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.314 and 807.502, and Section 21(o)(3) of the Act, 415 ILCS 5/21(o)(3) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an order against Respondent for the following:

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

B. Finding that the Respondent, Levi A. Kaufman, has violated Sections 807.314 and 807.502 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.314 and 807.502, and Section 21(o)(3) of the Act, 415 ILCS 5/21(o)(3) (2004);

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

D. Assessing against the Respondent a monetary penalty of up to Fifty Thousand Dollars (\$50,000.00) for each violation and up to an additional Ten Thousand Dollars (\$10,000.00) for each day that the violation has continued;

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

F. Grant such other and further relief as this Board deems appropriate.

COUNT VI

CLOSURE VIOLATIONS

1-4. Complainant realleges and incorporates herein by reference paragraphs 1 through 4 of Count I as paragraphs 1 through 4 of this Count VI.

5. Section 21(o)(11) of the Act, 415 ILCS 5/21(o)(11) (2004), provides:

No person shall:

- o. conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

* * *

- (11) failure to submit reports required by permits or Board regulations;

* * *

6. Section 22.17 of the Act, 415 ILCS 5/22.17 (2004), provides in relevant part:

Section 22.17. Landfill post-closure care.

- a. The owner and operator of a sanitary landfill site that is not a site subject to subsection (a.5) or (a.10) of this Section shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.

* * *

- a.5 The owner and operator of a MSWLF unit that accepts household waste after October 8, 1993, shall conduct post-closure care at the site for a period of 30 years after the site is completed or closed, or such other period as may be approved by the Agency pursuant to Board or federal rules.

* * *

- a.10 The owner and operator of a MSWLF unit that accepts household waste on or after October 9, 1991, but stops receiving waste before October 9, 1993, and installs final cover more than 6 months after the receipt of the final volume of waste shall conduct post-closure care at the site for a period of 30 years after the site is completed or closed, or such other period as may be approved by the Agency pursuant to Board or federal rules.

- b. The owner and operator of a sanitary landfill that is not a facility subject to subsection (a.5) or (a.10) of this Section shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a). The owner and operator of a MSWLF unit that accepts household waste after October 8, 1993, shall take whatever remedial action is required under Section 22.40 and 22.41 of this Act during the period of time specified in subsection (a.5) or (a.10).

* * *

7. Commencing on or before June 14, 2001, and continuing thereafter to a date known to the Respondent, Respondent caused or allowed the site to have areas of poor drainage and areas of settlement, all in violation of Section 22.17(b) of the Act, 415 ILCS 5/22.17(b) (2004).

8. Section 807.305(c) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.305(c), provides:

Section 807.305 Cover

Unless otherwise specifically provided by permit, the following cover requirements shall be followed:

- (c) Final Cover - a compacted layer of not less than two feet of suitable material shall be placed over the entire surface of each portion of the final lift not later than 60 days following the placement of refuse in the final lift, unless a different schedule has been authorized in the Operating Permit.

9. Section 807.508 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.508, provides:

Section 807.508 Certification of Closure

- (a) When closure is completed, the operator of a waste management site shall submit to the Agency:
 - (1) Plan sheets for the closed site; and
 - (2) An affidavit by the operator and by a professional engineer that the site has been closed in accordance with the closure plan.
- (b) If the Agency finds that the site has been closed in accordance with the specifications of the closure plan, and the closure requirements of this Part, the Agency shall:
 - (1) Issue a certificate of closure for the site;
 - (2) Notify the operator in writing that any applicable post-closure period has begun; and
 - (3) Provide the date the post-closure care period begins.

10. Section 807.523 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.523, provides, in relevant part:

Section 807.523 Post-Closure Care Plan

- (a) An operator of a disposal site shall have a written post-closure care plan which shall be a condition of the site permit.
- (b) The post-closure care plan shall include as a minimum a description of methods for compliance with all post-closure care requirements of this Part.

11. Section 807.601 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.601, provides:

Section 807.601 Requirement to Obtain Financial Assurance

No person shall conduct a waste disposal operation or indefinite storage operation which requires a permit under Section 21(d) of the Act unless such person has provided financial assurance in accordance with this Subpart.

- (a) The financial assurance requirement does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government: provided, however, that any other persons who conduct such a waste disposal operation on a site which may be owned or operated by such a government entity must provide financial assurance for closure and post-closure care of the site.
- (b) Financial assurance is required of all sites which, on or after March 1, 1985, accept waste for disposal or for indefinite storage.

12. The site stopped receiving waste in the fall of 1998. Respondent submitted a certificate of closure to the Agency in 1998. The closure and post-closure plan application was denied in March, 1999, for incompleteness in the areas of groundwater monitoring, geology testing, and landfill gas.

13. Commencing on some date prior to June 14, 2001, and continuing to the present, Respondent has possessed and controlled a closed landfill, the site, without submitting an adequate closure plan, in violation of Section 807.508 and 807.523 of the Board's Regulations,

35 Ill. Adm. Code 807.508 and 807.523, and Section 21(o)(11) of the Act, 415 ILCS 5/21(o)(11) (2004).

14. Commencing on some date prior to June 14, 2001, and continuing to the present, Respondent has possessed and controlled a closed landfill, the site, without providing adequate financial assurance, in violation of Section 807.601 of the Board's Regulations, 35 Ill. Adm. Code 807.601, and Section 21(o)(11) of the Act, 415 ILCS 5/21(o)(11) (2004).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an order against Respondent for the following:

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

B. Finding that the Respondent, Levi A. Kaufman, has violated Sections 807.305(c), 807.314, 807.502, 807.508, 807.523 and 807.601 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.305(c), 807.314, 807.502, 807.508, 807.523 and 807.601, and Sections 21(o)(11) and 22.17 of the Act, 415 ILCS 5/21(o)(11) and 5/22.17 (2004);

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

D. Assessing against the Respondent a monetary penalty of up to Fifty Thousand Dollars (\$50,000.00) for each violation and up to an additional Ten Thousand Dollars (\$10,000.00) for each day that the violation has continued;

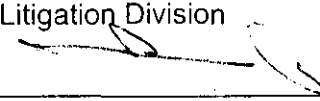
E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), award the Complainant its costs and reasonable attorney's fees; and

F. Grant such other and further relief as this Board deems appropriate.

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: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
DELBERT D. HASCHEMEYER
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 11/29/05