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JUL 30 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois)
)
Complainant,)
)
v.)
)
ATKINSON GRAIN & FERTILIZER, INC.,)
a Delaware Corporation,)
)
Respondent.)

PCB 04- 15
(Enforcement-Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 30, 2003, we filed with the Illinois Pollution Control Board a Complaint and Appearance, a true and correct copy of which is attached and hereby served upon you.

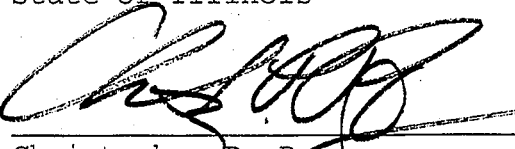
Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer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

Financing to correct the violations alleged may be available through the Illinois Environmental Facilities Financing Act 20 ILCS 3515/1, et seq.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3532

SERVICE LIST

Atkinson Grain & Fertilizer, Inc.
c/o Virgil T. Harbach, Reg. Agent
1006 S. Quincy Street
Clinton, Illinois 61727

Mr. Kurt J. Horberg
Telleen, Braendle, Horberg & Smith, P.C.
124 West Exchange Street
Post Office Box 178
Cambridge, Illinois 61238

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, ATKINSON GRAIN & FERTILIZER, INC., as follows:

COUNT I

WATER POLLUTION

1. This Complaint is brought by the Attorney General on her own motion and upon the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, ATKINSON GRAIN & FERTILIZER, INC. ("AGF"), is a Delaware corporation registered to do business in Illinois and headquartered at 400 N. Spring Street, Atkinson, Henry County, Illinois.

4. AGF is a wholesale agricultural chemical and fertilizer

mixer and distributor.

5. As part of its business, AGF sells fertilizer and other agricultural chemicals to farmers and others.

6. On May 1, 2002, an AGF employee in the course of his employment was driving a truck from the property of a customer of AGF to AGF's facility located in Atkinson, Illinois.

7. The truck driven by the AGF employee belonged to the AGF customer, not to AGF.

8. The truck carried a 1600 gallon capacity polyethylene tank owned by AGF.

9. The polyethylene tank contained approximately 1000 gallons of liquid fertilizer. The fertilizer was of the type known as 10-34-0 fertilizer.

10. The fertilizer contained, among other things, ammonia, nitrate, phosphate and sulfate. Ammonia, nitrate, phosphate and sulfate when present at significant levels in the environment can cause harm to animal and plant life.

11. As the AGF employee driving the truck was turning a corner at the intersection of U.S. Route 6 and Spring Street in Atkinson, the truck overturned on its side. The polyethylene tank then ruptured, releasing its contents.

12. The AGF employee was issued a traffic citation for violation of 625 ILCS 5/15-109 (2002).

13. The investigating police officer further described the nature of the offense as "Spilling load on highway (Load not secured)" on the face of the citation.

14. The AGF employee pled guilty to the citation on May 15, 2002 and paid a fine.

15. From the origin point of the spill, the liquid fertilizer flowed into a storm sewer inlet near the spill site. The storm sewer runs under U.S. Route 6 for approximately forty (40) feet and then joins a culvert. The culvert discharges into a ditch which runs approximately fifty (50) feet east along U.S. Route 6. At that point liquid coming from the storm sewer pools, then flows into a riser pipe connected to an underground tile leading to an unnamed stream tributary to Green River. (This route is hereinafter referred to as the "drainage route".)

16. The spilled fertilizer flowed along the drainage route reaching at least to the unnamed stream tributary to Green River.

17. AGF's initial response to the spill included flushing of the fertilizer into the storm sewer inlet. The Atkinson Fire Department ("AFD") responded to the spill and, after consultations between AGF and the AFD, the AFD also flushed the fertilizer into the storm sewer inlet. The flushing resulted in additional and accelerated flow of the fertilizer into the storm sewer and downstream along the drainage route. AGF did not attempt to contain or collect the spilled fertilizer on May 1, 2002.

18. On May 2, 2002 an Illinois EPA inspector observed turbid, dark-colored, odorous liquid in the ditch downstream from the spill area. These conditions appeared at various distances from the spill site to a distance of at least 200 feet from the spill site.

19. Also on May 2, 2002 the Illinois EPA inspector noted a dead

fish in the liquid located at the riser pipe. Dead fish (minnows) were also noted in the unnamed stream tributary to Green River approximately two miles from the spill site.

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), contains 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 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.

21. Section 3.315 the Act, 415 ILCS 5/3.315(2002), provides the following definition:

"Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, federal government, or interstate body.

22. Respondent is a person as that term is defined in 415 ILCS 5/3.315(2002).

23. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), contains the following definition:

"WATERS" means all accumulation 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.

24. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), contains the following definition:

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

25. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), states 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 the State of 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;

26. The fertilizer as a mixture and its constituents ammonia, nitrate, phosphate and sulfate are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

27. The storm sewer, ditch, drain tile and unnamed tributary to Green River are waters of the State of Illinois.

28. The presence of the fertilizer and its constituents in the waters of the State of Illinois constituted water pollution. The presence of elevated levels of contaminants as alleged in this count constituted a public nuisance.

29. The facts as alleged in this Count I constitute a violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), by the Respondent, AGF.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, AGF, with respect to this Count I:

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

2. Finding that Respondent violated Section 12(a) of the

Act;

3. Ordering Respondent to cease and desist from further violations of Section 12(a) of the Act;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each and every day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in pursuit of this action; and

6. Granting such additional relief as the Board deems appropriate and just.

COUNT II

CREATION OF A WATER POLLUTION HAZARD

1 to 27. Complainant realleges and incorporates by reference herein paragraphs 1 through 24 and 26 through 28 of Count I as paragraphs 1 through 27 of this Count II.

28. Section 12 of the Act, 415 ILCS 5/12 states as follows:

No person shall:

* * *

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

29. The discharge fertilizer as alleged resulted in the deposition of contaminants, including nitrate, in the sediments along the discharge route, including in the ditch between the culvert and

the riser pipe.

30. The levels of nitrate in the sediments after the discharge exceeded the Tiered Approach to Cleanup Objectives level for the residential / class I soil component for groundwater ingestion exposure route value of 10 milligrams per liter ("mg/L"), 35 Ill. Adm. Code 742 Appendix B, Table A.

31. Sediments containing levels of nitrate in exceedance of 10 mg/L remained in the ditch area at least through January 2003. Results of sampling by AGF include levels of 22 parts per million ("ppm"), 60 ppm, 13 ppm, 12 ppm, 23 ppm, 61 ppm, 26 ppm, 15 ppm, 14 ppm, and 12 ppm of nitrate in the sediments (ppm is equivalent to mg/L).

32. The level described in paragraph 30 is a measure of the amount of a substance in soil that may contaminate water with which it is in contact to a level that may be harmful to human health or the environment. Sediments with contaminants exceeding that level have the potential to contaminate groundwater.

33. The facts as alleged in this count constitute the creation of a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, AGF, with respect to this Count II:

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

2. Finding that Respondent violated Section 12(d) of the Act;
3. Ordering Respondent to cease and desist from further violations of Section 12(d) of the Act;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each and every day of violation;
5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in pursuit of this action; and
6. Granting such additional relief as the Board deems appropriate and just.

COUNT III

VIOLATION OF WATER QUALITY STANDARDS

1 to 28. Complainant realleges and incorporates by reference herein paragraphs 1 through 28 of Count I as paragraphs 1 through 28 of this Count III.

29. Part 302 of Title 35 of the Illinois Administrative Code ("Code") regulates water quality standards in the State of Illinois.

30. Section 302.203 of Part 302, Title 35 of the Code, 35 Ill. Adm. Code 302.203, states as follows:

Waters of the State shall be free of sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.

31. Section 302.208(g) of Part 302, Title 35 of the Code, 35

Ill. Adm. Code 302.208(g), states as follows:

Concentrations of the following chemical constituents shall not be exceeded except in waters for which mixing is allowed pursuant to Section 302.102:

<u>Constituent</u>	<u>Unit</u>	<u>STORET Number</u>	<u>Standard</u>
* * *			
Sulfate	mg/L	00945	500

32. Section 302.212(a) of the Code, 35 Ill. Adm. Code

302.212(a), states as follows:

Total ammonia nitrogen (as N:STORET Number 00610) shall in no case exceed 15 mg/L.

33. Laboratory analysis of samples taken on May 2, 2002

indicated five exceedances of the standard for sulfate at locations along the drainage route from the spill origin to approximately two (2) miles from the spill site. Sample results showed 6,270 mg/L; 10,600 mg/L; 510 mg/L; 515 mg/L ; and 688 mg/L sulfate.

34. Laboratory analysis of samples taken on May 2, 2002

indicated six exceedances of the standard for total ammonia nitrogen at locations along the drainage route from the spill origin to approximately two (2) miles from the spill site. Sample results showed 3,000 mg/L; 4,500 mg/L; 18 mg/L; 84 mg/L; 34 mg/L and 69 mg/L total ammonia nitrogen.

35. On May 2, 2002 the Illinois EPA noted offensive conditions at locations along the drainage route up to two (2) miles from the spill origin.

36. The facts as alleged in this Count II constitute a violation

of the water quality standards of Section 302.203, 302.208(g) and 302.212(a) of the Code as well as Section 12(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, AGF, with respect to this Count III:

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

2. Finding that Respondent violated Section 12(a) of the Act and 35 Ill. Adm. Code 302.203, 302.208(g) and 302.212(a);

3. Ordering Respondent to cease and desist from further violations of Section 12(a) of the Act and 35 Ill. Adm. Code 302.203, 302.208(g) and 302.212(a);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each and every day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in pursuit of this action; and

6. Granting such additional relief as the Board deems appropriate and just.

COUNT IV

DISCHARGE OF CONTAMINANTS WITHOUT NPDES PERMIT

1 to 34. Complainant realleges and incorporates by reference herein paragraphs 1 through 24 and 26 through 35 of Count III as paragraphs 1 through 34 of this Count IV.

35. Section 12(f) of the Act, 415 ILCS 5/12(f)(2002), provides as follows:

No person shall:

. . . .

- f. Cause, threaten or allow the discharge of any contaminant into the water of the State, as defined herein, including but not limited to, water 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.

36. Section 309.102(a) of the Code, 35 Ill. Adm. Code 309.102(a), states as follows:

- a) Except as in compliance with 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 into the waters of the State from a point source or into a well shall be unlawful.

37. The discharge from the tank and the flushing of the contaminants into the storm sewer inlet constituted point source discharges of contaminants into waters of the State of Illinois.

38. AGF did not have a National Pollution Discharge Elimination System ("NPDES") permit for the discharges of the contaminants.

39. The discharge of contaminants from a point source into a water of the State as alleged in this Count constituted a violation of 415 ILCS 5/12(f) and 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondent, AGF, with respect to this Count IV:

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

2. Finding that Respondent violated Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);

3. Ordering Respondent to cease and desist from further violations of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);

4. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each and every day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in pursuit of this action; and

6. Granting such additional relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

By: 

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

CHRISTOPHER P. PERZAN
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601
(312) 814-3532

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APPEARANCE

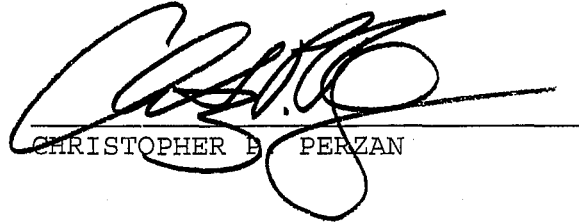
I hereby file my appearance in this proceedings, on behalf of the
Complainant, People of the State of Illinois.



CHRISTOPHER P. PERZAN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
312 814-3532

CERTIFICATE OF SERVICE

I, CHRISTOPHER P. PERZAN, an Assistant Attorney General, certify that on the 30th day of July, 2003, I caused to be served by Registered Certified Mail, Return Receipt Requested, the foregoing Complaint and Appearance to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



CHRISTOPHER P PERZAN