



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE
SEP 21 2005
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

September 19, 2005

PCB 06-45

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

Re: ***People v. Ecolab, 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,

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

KL/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
ECOLAB, INC., a Delaware corporation,)
and CHARLES A. WINSLETT,)
)
Respondents.)

RECEIVED
CLERK'S OFFICE
SEP 21 2005
STATE OF ILLINOIS
Pollution Control Board

PCB No. 06-45
(Enforcement)

NOTICE OF FILING

To: ECOLAB, INC.
c/o CT Corporation Systems
208 South LaSalle Street, Ste. 814
Chicago, IL 60604-1101

CHARLES A. WINSLETT
1929 Saint Claire Street
Pekin, IL 61554

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.

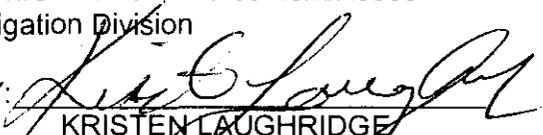
Respectfully submitted,

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:


KRISTEN LAUGHRIDGE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 19, 2005

CERTIFICATE OF SERVICE

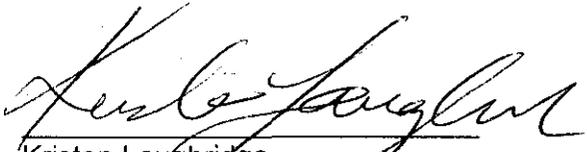
I hereby certify that I did on September 19, 2005, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: ECOLAB, INC.
c/o CT Corporation Systems
208 South LaSalle Street, Ste. 814
Chicago, IL 60604-1101

CHARLES A. WINSLETT
1929 Saint Claire Street
Pekin, IL 61554

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



Kristen Laughridge
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
vs.)
)
ECOLAB, INC., a Delaware corporation,)
and CHARLES A. WINSLETT,)
)
Respondent.)

RECEIVED
CLERK'S OFFICE
SEP 21 2005
STATE OF ILLINOIS
Pollution Control Board

PCB No. 06-45
(Enforcement)

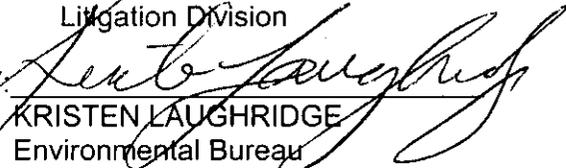
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, KRISTEN LAUGHRIDGE, 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: 
KRISTEN LAUGHRIDGE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 19, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 21 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
ECOLAB, INC., a Delaware corporation,)
and CHARLES A. WINSLETT,)
)
Respondents.)

PCB No. 06-45

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondents, ECOLAB, INC., a Delaware corporation and CHARLES A. WINSLETT, as follows:

COUNT I

OPEN DUMPING

1. This Complaint is brought by the Attorney General on her own motion and at 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 agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. The Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31

(2002), after providing the Respondent with notice and opportunity for a meeting with the Illinois EPA.

4. The Respondent, Ecolab, Inc. ("Ecolab") is a Delaware corporation registered to do business in Illinois. CT Corporation Systems is the registered agent for Ecolab and may be reached at 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604-1101.

5. The Respondent, Charles A. Winslett, is a pesticide technician for Ecolab and can be reached at 1929 Saint Claire Street, Pekin, Illinois, 61554. Mr. Winslett is licensed to use pesticides through the Illinois Department of Agriculture, licence #1525744.

6. On October 13, 2003, the Tazewell County Sheriff's Office responded to a complaint of a white vehicle with "Ecolab" on its side dumping a white powder along the side of Hurt Road, approximately 1/4 mile west of Apple Road, South Pekin, Tazewell County, Illinois ("site").

7. Tazewell County Sheriff's Officers found the Ecolab vehicle on October 13, 2003 and spoke with Respondent, Charles A. Winslett. Mr. Winslett told the officers that he had dumped spent Phostoxin ® powder waste along the side of Hurt Road in several different locations.

8. Tazewell County Sheriff's Officers went to the site on October 13, 2003. A white powder was at the site along Hurt Road, approximately 1/4 mile west of Apple Road.

9. Illinois EPA met Tazewell County Sheriff's Officers on October 14, 2003 and inspected the site for the spent Phostoxin ® powder waste.

10. On October 14, 2003, the Peoria Greater Regional Airport precipitation gauge showed that approximately 1 inch of rain had fallen around the area the night of October 13, 2003.

11. No white powder was present at the site on October 14, 2003.

12. Illinois EPA interviewed Mr. Winslett on October 14, 2003. Mr. Winslett stated that he finished fumigating the Mycogen Seed Company in Pontiac, Illinois on October 13, 2003.

13. The Phostoxin ® pellets were allowed to fumigate for approximately 72 hours inside closed areas at the Mycogen Seed Company. Afterwards, Ecolab personnel strapped on a self-contained breathing apparatus and entered the fumigated area to open it up and aerate it. The spent Phostoxin ® pellets, which had turned into white powder, were placed into glass flasks.

14. On October 13, 2003, Mr. Winslett spread the spent Phostoxin ® powder waste along Hurt Road.

15. Phostoxin ® is aluminum phosphate and is highly toxic. Once completely spent, the Phostoxin ® powder waste has a low oral and dermal toxicity and consists of aluminum hydroxide, inert ingredients, and about 2%-3% of unreacted aluminum phosphide.

16. Section 21 of the Act, 415 ILCS 5/21 (2002), provides, in pertinent part, as follows:

No person shall:

a. Cause or allow the open dumping of any waste.

* * *

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 there under.

* * *

17. Section 3.305 of the Act, 415 ILCS 5/3.305 (2002), provides the following definition:

"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.

18. Section 3.385 of the Act, 415 ILCS 5/3.385 (2002), provides the following definition:

“Refuse” means waste.

19. Section 3.535 of the Act, 415 ILCS 5/3.385 (2002), provides the following definition, in pertinent part:

“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...

* * *

20. On October 13, 2003, Respondents caused or allowed the open dumping of spent Phostoxin ® powder waste.

21. By causing or allowing the open dumping of waste, Respondents have violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2002).

22. On October 13, 2003, Respondents disposed of waste at a site and transported waste for disposal to a site that does not meet the requirements of the Act and of the standards and regulations promulgated thereunder.

23. By disposing of and transporting waste at and to a site which does not meet the requirements of the Act and of the standards and regulations promulgated thereunder, Respondents have violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondents:

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

- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II

WATER POLLUTION HAZARD VIOLATION

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count II.

16. A water ditch runs along the side of Hurt Road. The rain on the evening of October 13, 2003 caused the spent Phostoxin® powder waste to wash into and along the ditch.

17. Section 12(d) of the Act, 415 ILCS 5/12(d) (2002), provides:

No person shall:

* * *

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

* * *

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002) provides:

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

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

20. By depositing the spent Phostoxin ® powder waste upon the land within the drainage way, and by subsequently failing to remove the spent Phostoxin ® powder waste, Respondents have created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondents:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), awarding to Complainant its costs and reasonable attorney fees; and

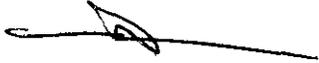
F. Granting such other relief as the Board may deem appropriate.

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 Division

BY: _____


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel

KRISTEN LAUGHRIDGE
Assistant Attorney General
Environmental Bureau/Springfield
500 South Second Street
Springfield, Illinois 62706
Date: 9/16/05