

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
DURRE BROS. WELDING AND MACHINE)
SHOP, INC., an Illinois Corporation,)
)
Respondent.)

PCB NO. 07-81
Enforcement

ORIGINAL

ANSWER

Respondent, Durre Bros. Welding and Machine Shop, Inc., by its attorney J. Reed Roesler of Davis & Campbell L.L.C., answers the Complaint as follows:

COUNT I
WATER POLLUTION

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 (2004).

ANSWER: Admitted.

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 (2004), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

ANSWER: Admitted.

3. Durre Bros. Welding and Machine Shop, Inc. ("Durre"), is an Illinois corporation in good standing.

ANSWER: Admitted.

4. Durre is the operator of an industrial site ("site"), a welding and machine shop facility located at 405 S. Chestnut Street, Minonk, Woodford County, Illinois.

ANSWER: Admitted.

5. Since 1998, Dune has conducted the following industrial activities at the site: metal sawing, flame and laser cutting, press break welding, shot blasting, drilling, spray washing and powder coat painting.

ANSWER: Admitted.

6. A one-third acre, seventeen foot deep pond on site is stocked with fish and is a water of the State.

ANSWER: Admitted, except that the allegation that the referenced pond is a "water of the state" is a legal conclusion to which no answer is required.

7. A smaller, approximately 400 square foot pond is also on site, discharges to the pond referenced in paragraph 6, and is also a water of the State.

ANSWER: Admitted, except that the allegation that the referenced pond is a "water of the state" is a legal conclusion to which no answer is required.

8. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations.

ANSWER: Admitted.

9. Section 12 of the Act, 415 ILCS 5/12 (2004), provides the following prohibitions:

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;

* * *

- (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.

* * *

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

10. Section 309.102(a) of the Board's Water Pollution Regulations, 35111. Adm.

Code 309.102(a), provides:

- a) Except as in compliance with the provision 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.

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

11. The Respondent is a "person" as that term is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), as follows:

"Person" is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

12. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides 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 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.

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

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

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

14. On April 19, 2005, the Illinois EPA inspected the site. On that date, an active industrial storm water discharge was present on site. Wastewater from the shot blaster equipment was discharged to the stocked pond.

ANSWER: Denied, except that the IEPA’s inspection on April 19, 2005, is admitted.

15. Unpermitted effluent from a private sewage system on site enters the small pond. A sample from the small pond taken on April 19, 2005, was later analyzed and results demonstrated high levels of organic wastes, comparable to that of raw sewage.

ANSWER: Denied, except the allegation that effluent from a private sewage system on site enters the small pond is admitted. Further, Respondent affirmatively states that effluent from the private sewage system is regulated by the Illinois Department of Public Health.

16. On or before April 19, 2005, Respondent caused, allowed or threatened the discharge of wastewater from the site into waters of the State so as to cause or tend to cause water pollution by creating a nuisance or rendering such waters harmful or detrimental or injurious to fish or other aquatic life.

ANSWER: Denied.

17. On or before April 19, 2005, Respondent caused, allowed or threatened the discharge of effluent containing high levels of organic wastes from the site into waters of the State so as to cause or tend to cause water pollution by likely rendering such waters harmful or detrimental or injurious to aquatic life.

ANSWER: Denied.

18. By so causing, allowing or threatening to cause water pollution, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

COUNT II

OPERATION WITHOUT AN NPDES PERMIT

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 to 14 of Count I as paragraphs 1 to 14 of this Count II.

ANSWER: See prior answers to the referenced paragraphs.

15. The following industrial activities conducted at the site fall under Standard Industrial Classification ("SIC") code 35, industrial machinery and equipment: metal sawing, flame and laser cutting, press break welding, shot blasting, drilling, spray washing and powder coat painting.

ANSWER: Admitted.

16. Pursuant to 40 C.F.R. 122.26(b)(14), such activities trigger the NPDES industrial storm water permit requirement.

ANSWER: This is a legal conclusion to which no answer is required.

17. On April 19, 2005, the site was not covered by an NPDES industrial storm water permit.

ANSWER: Admitted.

18. By conducting SIC code 35 industrial activities at the site, and discharging wastewater associated from these activities without an NPDES permit, the Respondent caused, threatened or allowed the discharge of any contaminant into the waters of the State in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

COUNT III

WATER POLLUTION HAZARD

1-14. Complainant realleges and incorporates herein by reference paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count III.

ANSWER: See prior answers to the referenced paragraphs.

15. On or before April 19, 2005, the site discharged wastewater from its wash line onto the land surface on the north side of the facility.

ANSWER: Admitted.

16. The Respondent therefore caused or allowed wastewater, a contaminant, to remain on land surfaces on site in close proximity to the ponds on site.

ANSWER: Denied.

17. The Respondent caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to waters of the State, thereby violating Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

COUNT IV

LAND POLLUTION VIOLATIONS

1-7. Complainant realleges and incorporates by reference herein paragraphs 1 through 5 and 14 of Count I, and paragraph 15 of Count III, as paragraphs 1 through 7 of this Count IV.

ANSWER: See prior answers to the referenced paragraphs.

8. 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:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit;

* * *

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

* * *

(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.

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

9. 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.

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

10. Section 3.535 of the Act, 415 ILCS 5/3.535 (2004), provides as follows:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility 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.

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

11. On or before April 19, 2005, and continuing through a date better known to Respondent, Durre caused or allowed the open dumping of waste at the site through the consolidation and land application of industrial liquid waste. The site is not permitted by the Illinois EPA as a sanitary landfill nor does the site meet the requirements of the Act and of the regulations and the standards promulgated thereunder.

ANSWER: Denied.

12. By causing or allowing the open dumping of waste, Durre violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

13. By disposing of waste at a site that is not permitted by the Illinois EPA as a sanitary landfill, Durre violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2004).

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

14. By disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, Durre violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

COUNT V

USED OIL MANAGEMENT STANDARD VIOLATIONS

1-6. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 5 and 14 of Count I as paragraphs 1 through 6 of this Count V.

ANSWER: See prior answers to the referenced paragraphs.

7. Section 739.122 of the Pollution Control Board's Standards for the Management of Used Oil, 35 Ill. Adm. Code 739.122, provides as follows:

Used Oil Storage

* * *

c) Labels.

1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

8. On April 19, 2005, containers that stored used oil were not labeled with the words "used oil."

ANSWER: Admitted.

9. By storing containers filled with used oil without clearly labeling them as to the containers' contents, the Respondent violated Section 739.122 of the Pollution Control Board's Standards for the Management of Used Oil, 35 Ill. Adm. Code 739.122.

ANSWER: The whole of this allegation is a legal conclusion to which no answer is required.

DAVIS & CAMPBELL L.L.C.

BY:

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PEOPLE OF THE STATE OF ILLINOIS,)	
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v.)	PCB NO. 07-81
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CERTIFICATE OF SERVICE

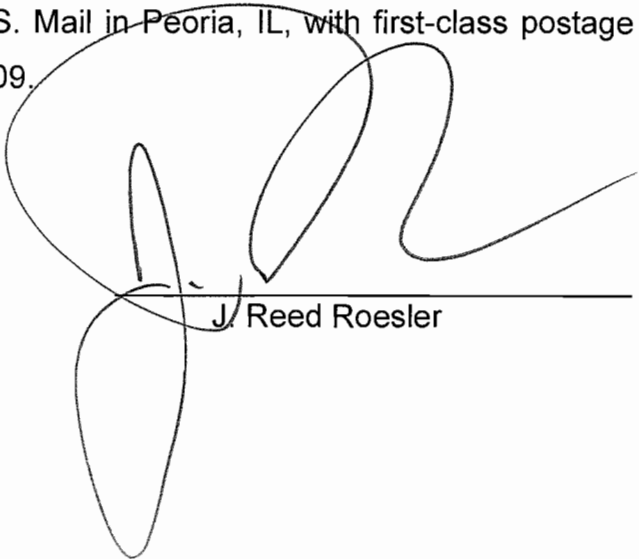
I certify that I filed and served the Respondent's Answer by by depositing a copy of the same in envelopes addressed to:

Carol Webb	Christine Zeivel
Hearing Officer	Office of the Attorney General
Illinois Pollution Control Board	Environmental Bureau
1021 North Grand Avenue East	500 South Second Street
PO Box 19724	Springfield, IL 62706
Springfield, IL 62794-9274	

and by depositing the original in an envelope addressed to:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

and by depositing those envelopes in the U.S. Mail in Peoria, IL, with first-class postage fully prepaid, this 24th day of September 2009.



J. Reed Roesler

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September 24, 2009

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STATE OF ILLINOIS
Pollution Control Board

Mr. John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

Re: People v. Durre Bros. Welding and Machine Shop, Inc.
PCB No. 07-81

ORIGINAL

Dear Mr. Therriault:

Enclosed is the original and one (1) copy of Respondent's Answer in the matter referred to above. Please file the original and return a conformed copy of the same to me in the enclosed self-addressed stamped envelope provided for your convenience.

Davis & Campbell L.L.C.

By: _____

J. Reed Roesler

JRR/sra

Enclosures

cc: Carol Webb
Hearing Officer
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1021 North Grand Avenue East
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