

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                                  |   |                      |
|----------------------------------|---|----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, | ) |                      |
| Complainant,                     | ) |                      |
|                                  | ) |                      |
| v.                               | ) | PCB No. 17 – 45      |
|                                  | ) | (Enforcement – Land) |
| MAGNA TAX SERVICE CO., INC.,     | ) |                      |
| Respondent.                      | ) |                      |
|                                  | ) |                      |

**RESPONSE TO COMPLAINANT’S MOTION TO STRIKE  
RESPONDENT’S AFFIRMATIVE DEFENSES**

Respondent, MAGNA TAX SERVICE CO., INC., by its attorneys Brown, Hay & Stephens, LLP, consistent with the Hearing Officer Order of May 2, 2017, hereby files its Response to the People of the State of Illinois’ (State’s) Motion to Strike Respondent’s Affirmative Defenses in this matter as follows:

**I. INTRODUCTION**

1. The State’s motion argues two points: first, that Section 58.9 of the Illinois Environmental Protection Act (“Act”) is inapplicable to the Underground Storage Tank (“UST”) release which is purported to be the subject matter of this action; and, second, that the 2008 No Further Remediation Letter (“NFR”) was issued on a focused basis and was therefore not applicable to the UST release which is the subject matter of this action.

**II. THE 2008 NFR APPLIED TO THE ENTIRE SITE  
AS IT EXISTED AT THE TIME OF THE INITIAL 2011 STATE  
OBSERVATIONS ALLEGED IN THE COMPLAINT**

2. The State’s Complaint omits the background relevant to this Site and first asserts involvement by the Illinois Environmental Protection Agency (“Illinois EPA”) in 2011, for its discovery of a release for which it issued a Violation Notice (“VN”) on May 2,

2012. *See* Complaint, at ¶¶ 6 and 9. At the time it issued the VN, the State assumed the Site should be entered into the Site Remediation Program (“SRP”) pursuant to Title XVII of the Illinois Environmental Protection Act (“Act”). *See* the VN, attached as Exhibit A, at pages 5 – 6. However, not until Respondent conducted and concluded its investigation did it become evident that the release was from a UST that was eligible for coverage and reimbursement under Title XVI of the Act (Leaking Underground Storage Tank or “LUST” Program).

3. Respondent recognizes the difference between the SRP Program and the LUST Program; indeed, Respondent proceeded pursuant to both programs. The case cited by the State at p. 5 of its Motion, *State Oil Co. v. People*, 352 Ill. App. 3d 813, 817 (2d Dist. 2004), is easily distinguishable from the instant case as *State Oil* did not involve a property that had been remediated first pursuant to the SRP program and *then* pursuant to the UST program. Thus, there was no NFR letter issued pursuant to the SRP program applicable to the site in *State Oil*, as there is here. Rather, State Oil sought to apply Section 58.9 – in isolation – to a UST release, which Respondent agrees it cannot do.

4. Here, the State’s Motion ignores the following important point made in Respondent’s Affirmative Defense: that Respondent received an NFR letter pursuant to the SRP Program. That letter entitles Respondent to a release from further responsibilities as it relates to the remediation that was conducted at the site and, moreover, it constitutes *prima facie* evidence that the site does not constitute a threat to human health and the environment. *See* 415 ILCS 5/58.10. (Again, there was no such letter, with such legal consequence, in *State Oil*.) Respondent is not attempting to assert the proportionate share provision contained in 58.9 to the isolated release from the UST, but from the activities of prior owners which

gave rise to that release, for which the State authorized a remediation as protective of human health and the environment.

5. A copy of the 2008 NFR was attached to the Respondent's Amended Affirmative Defenses as its Exhibit A. Pages 5 – 8 of that document lists all the chemical constituents at the site to which the NFR applied. The State does not allege that this NFR is in any way invalid, voided, or otherwise not applicable to this Site. To the extent any of the chemicals complained of in the Complaint (at ¶¶ 8 and 12) overlap, those chemicals were already investigated and resolved in the extensive process leading to the NFR. Since it is uncontested that the 2008 NFR was and is valid, it remains applicable to the Site within the terms of that NFR.

6. Importantly, as evident from the Respondent's asserted Affirmative Defenses, the State's Complaint does not allege, demonstrate or establish a time period during Respondent's ownership in which either (a) the Site was either not covered by an NFR letter or (b) the Respondent refused to act to address the release.

**III. THE PEOPLE'S MOTION MISCONSTRUES  
THE NATURE OF THE 2008 NFR LETTER.**

7. The State includes the IEPA project manager notes (State's Motion, Exhibit E) to support its claim that the 2008 NFR applied only to a very limited group of chemicals – *i.e.*, “chlorinated solvents (TCE/PCE) and their degradation products.” While those chemicals may have been the main “driver” of the investigation and remediation, it is clear that many other chemicals were evaluated. The NFR covers an extensive list of chemicals and states: “(r)egulated substances of concern that have been successfully addressed are detailed in the attached Table A.” *See* the NFR, which is Exhibit A to the Amended Affirmative Defenses,

page 12; and Table A is at pages 5 – 8. So, despite the State’s argument, the actual language in the NFR clearly demonstrates an intent to cover a vast number and variety of chemical constituents.

8. The State’s Motion appears to confuse the relationship of LUST Program and the SRP Program in the context of this case. The exclusion set forth in Section 58.1(a)(2)(iii) of the Act, 415 ILCS 5/58.1(a)(2)(iii), did not apply when the State first asserted a violation by virtue of its issuance of the VN. (In fact, the VN sought to require that Respondent enter the SRP Program.) This is because the Site at that time and previously was *not* subject to federal or State underground storage tank laws. The tank at the site was not registered and was never subject to LUST Program requirements. Only because Magna Tax elected to proceed pursuant to the LUST Program is the State now able to assert an exclusion based upon Section 58.1(a)(2)(iii). The State’s arguments, as well as its Complaint, demonstrate a desire to punish Magna Tax for electing to proceed under the LUST Program for removal and remediation. That Section 58.1(a)(2)(iii) might have been triggered by such entry, however, does not obviate the fact that this Site was and is also subject to Title XVII.

WHEREFORE, Respondent Magna Tax respectfully requests that the Board deny the State’s Motion to Strike Respondent’s Amended Affirmative Defenses.

Dated: June 22, 2017

Respectfully submitted,  
**MAGNA TAX SERVICE CO., INC.**

By:           /s/ William D. Ingersoll            
One of Its Attorneys

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May 2, 2012

*Certified mail #7004 2510 0000 9187 3836*  
*Return receipt requested*

Magna Tax Service Co, Inc.  
Dennis Ballinger, Agent  
119 W. William St. Suite 300  
Decatur, IL 62523

Re: **Violation Notice, L-2012-01027**  
LPC# 0290255010—Coles County  
Mattoon/Young Radiator  
Compliance File

Dear Mr. Ballinger:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on inspections conducted on October 5 and November 15, 2011 by representatives of the Illinois Environmental Protection Agency ("Illinois EPA") and laboratory sample results received on January 20, 2012.

The Illinois EPA hereby provides notice of alleged violations of environmental laws, regulations, or permits as set forth in **Attachment A** to this notice. **Attachment A** includes an explanation of the activities that the Illinois EPA believes may resolve the specified alleged violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the alleged violations, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties. **Attachments B** and **C** contain information on conducting and documenting site investigations.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this notice. If a meeting is requested, it shall be held within 60 days of receipt of this notice. The response must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The proposed terms of the CCA should contain sufficient detail and must include steps to be taken to achieve compliance and the necessary dates by which compliance will be achieved.

The Illinois EPA will review the proposed terms for a CCA provided by you and, within 30 days of receipt, will respond with either a proposed CCA or a notice that no CCA will be issued by the Illinois EPA. If the Illinois EPA sends a proposed CCA, you must respond in writing by either agreeing to and signing the proposed CCA or by notifying the Illinois EPA that you reject the terms of the proposed CCA.

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with referral to a prosecutorial authority.

Written communications should be directed to:

Illinois EPA—Bureau of Land  
Attn: Deanna Carlock  
2125 South First Street  
Champaign, Illinois 61820-7401

Please include the Violation Notice Number **L-2012-01027** and the Site Identification Number **0290255010** on all written communications.

The complete requirements of the Illinois Environmental Protection Act and any Illinois Pollution Control Board regulations cited herein or in the inspection report can be viewed at:

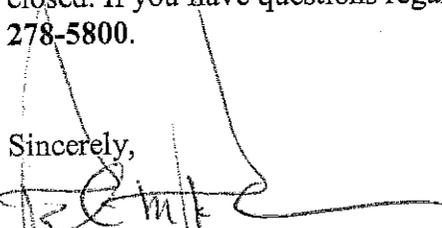
<http://www.ipcb.state.il.us/SLR/TheEnvironmentalProtectionAct.asp>

and

<http://www.ipcb.state.il.us/SLR/IPCBandIEPAEnvironmentalRegulations-Title35.asp>

For your convenience, copies of the relevant inspection reports and laboratory results are enclosed. If you have questions regarding these matters, please contact **Deanna Carlock** at **217-278-5800**.

Sincerely,



Paul M. Purselove, Manager  
Field Operations Section  
Bureau of Land

PMP:DJC  
Attachments  
Enclosures

## Attachment A: Apparent Violations and Suggested Resolutions

### Apparent Violations

#### *Environmental Protection Act*

*(415 Illinois Compiled Statutes, 5/1 et seq.; hereafter "the Act")*

1. Pursuant to Section 12(a) of the Act, no person shall 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. A violation of Section 12(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/12(a)) is alleged because **contaminants exist on this site which may cause or may have caused water pollution (see Attachment B for laboratory results of a soil sample collected from the site on November 15, 2011).**
2. Pursuant to Section 12(d) of the Act, no person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard. A violation of Section 12(d) of the [Illinois] Environmental Protection Act (415 ILCS 5/12(d)) is alleged because **contaminants exist on this site that are creating a water pollution hazard.**
3. Pursuant to Section 21(a) of the Act, no person shall cause or allow the open dumping of any waste. A violation of this section is alleged because **evidence of open dumping of waste was observed during the inspection.**
4. Pursuant to Section 21(d)(1) of the Act, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency or in violation of any condition imposed by such permit. A violation of this section is alleged because **waste was disposed without a permit granted by the Illinois EPA.**
5. Pursuant to Section 21(d)(2) of the Act, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Board under this Act. A violation of this section is alleged because **a waste disposal operation was conducted in violation of regulations adopted by the Illinois Pollution Control Board.**
6. Pursuant to Section 21(e) of the Act, no person shall 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. A violation of this section is alleged because **waste was disposed at this site that does not meet the requirements of the Act and regulations.**

*Illinois Administrative Code*

*(Title 35: Environmental Protection, Subtitle G: Land Pollution; hereafter "the Regulations")*

7. Pursuant to Section 722.111, a person who generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, shall determine if that waste is a hazardous waste using the following method:
- a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
  - b) The person should then determine if the waste is listed as a hazardous waste in 35 Ill. Adm. Code 721.Subpart D. (Board Note: Even if a waste is listed, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 and 40 CFR 260.22 (1986) to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.
  - c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in 35 Ill. Adm. Code 721.Subpart D, the generator shall then determine whether the waste is identified in 35 Ill. Adm. Code 721.Subpart C by either:
    - 1) Testing the waste according to the methods set forth in 35 Ill. Adm. Code 721.Subpart C, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
    - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
  - d) If the generator determines that the waste is hazardous, the generator shall refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

A violation of 35 Ill. Adm. Code 722.111 is alleged because a **hazardous waste determination has not been conducted for waste disposed at this site.**

8. Pursuant to 35 Ill. Adm. Code 812.101(a), all persons, except those specifically exempted by Section 21(d) of the Illinois Environmental Protection Act, shall submit to the Agency an application for a permit to develop and operate a landfill. This section was marked because a **waste disposal site was operated without submitting to the Illinois EPA an application for a permit to develop and operate a landfill.**

### **Suggested Resolutions to the Apparent Violations Identified in Attachment A**

**You must conduct a site characterization to determine the vertical and horizontal extent of contamination, both on-site and off-site. The site characterization must include a groundwater assessment to determine the extent of groundwater contamination if it is determined that groundwater has been impacted. The results of the site characterization must be used to develop and complete corrective actions to remediate the contamination discovered during the Illinois EPA's October and November 2011 inspections.**

The Illinois EPA's Site Remediation Program ("SRP") provides Remediation Applicants (i.e., any persons seeking to perform investigative or remedial activities) the opportunity to receive Illinois EPA review, technical assistance, and no further remediation determinations from the Illinois EPA. This program is designed to be flexible and responsive to the needs of the Remediation Applicants. The goals and scope of actions at these sites are normally defined by the Remediation Applicants.

The Illinois EPA is authorized to issue No Further Remediation (NFR) letters to Remedial Applicants who have successfully demonstrated, through proper investigation and, when warranted, remedial action, that environmental conditions at their remediation site do not present a significant risk to human health or the environment. The NFR letter signifies a release from further responsibilities under the Illinois Environmental Protection Act. This program's activities are paid by the parties requesting the Illinois EPA's oversight.

**To accomplish the suggested resolution, take the following actions.**

1. **By July 1, 2012**, enroll this site into the Illinois EPA's Site Remediation Program ("SRP") for Illinois EPA review and approval of measures necessary to properly remediate the site and document the remediation. You may download the application form from the Internet at <http://www.epa.state.il.us/land/forms/index.html#site-remediation-program-forms>. You may also contact the program's manager, Greg Dunn, for more information. He may be reached by phone at 217/782-6762 or by email at [Greg.Dunn@illinois.gov](mailto:Greg.Dunn@illinois.gov).
2. **Within 45 days of Illinois EPA approval of the program application**, submit the Site Investigation Report. The Site Investigation Report (comprehensive or focused) must document, to the Illinois EPA's satisfaction, that the nature and extent has been fully characterized for all contamination for which an NFR letter is sought. In addition, data collected must meet minimum data quality objectives. Data quality objectives are qualitative and quantitative statements specified to ensure that data of known and appropriate quality are obtained. **Attachment B** provides guidance on conducting a Site Investigation. **Attachment C** provides guidance on preparing a Site Investigation Report.
3. **Within 45 days of Illinois EPA approval of the Site Remediation Report**, submit the Remediation Objectives Report. The Remediation Objectives Report must contain supporting

documents and explanations for the selection of remediation objectives. If, in addition to remediation objectives, other types of remediation measures are required, the report must describe these measures and demonstrate their effectiveness for remediating the recognized environmental conditions. **Attachment C** contains information on preparing a Remediation Objectives Report.

4. **Within 30 days of Illinois EPA approval of the Remediation Objectives Report**, submit a Remedial Action Plan if concentrations of contaminants of concern exceed the remediation objectives established for the remediation site. The Remedial Action Plan must be designed to meet remediation goals (i.e., remediation objectives and site-specific response actions). The Remedial Action Plan must describe the proposed remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the remediation site. **Attachment C** contains information on preparing a Remedial Action Plan.
5. **Within 30 days of Illinois EPA approval of the Remedial Action Plan**, conduct the remedial activities outlined in the approved Remedial Action Plan.
6. **Within 60 days of completing remedial activities**, submit a Remedial Action Completion Report attesting that all remediation objectives, site-specific response actions, and program data quality objectives have been successfully attained. **Attachment C** contains information on preparing a Remedial Action Completion Report.

**The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement (“CCA”) pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The written response must be submitted to the Illinois EPA by certified mail within 45 days of receipt of this Violation Notice**

## Attachment B: Requirements for a Site Investigation

### General

1. A site investigation shall be performed to identify all recognized environmental conditions existing at the remediation site, the related contaminants of concern, and associated factors that will aid in the identification of risks to human health, safety and the environment, the determination of remediation objectives, and the design and implementation of a Remedial Action Plan.
2. Site investigations shall satisfy the following data quality objectives for field and laboratory operations to ensure that all data is scientifically valid and of known precision and accuracy:
  - a) All field sampling activities relative to sample collection, documentation, preparation, labeling, storage, shipment and security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control) and Vol. Two (Field Manual). If approved by the Agency, such activities also may be conducted in accordance with ASTM standards, methods identified in "A Compendium of Superfund Field Operations Methods" (EPA/540/0-87-001, OSWER Directive 9355.0-14, December 1987), "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume I: Solids and Ground Water, Appendices A and B" (EPA/625/R-93/003a, May 1993), "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume II: The Vadose Zone, Field Screening and Analytical Methods, Appendices C and D" (EPA/625/R-93/003b, May 1993), or other procedures.
  - b) All field measurement activities relative to equipment and instrument operation, calibration and maintenance, corrective action, and data handling shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control), or with an equipment or instrument manufacturer's or vendor's published standard operating procedures.
  - c) All laboratory quantitative analysis of samples to determine concentrations of regulated substances or pesticides shall be conducted fully in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), relative to all facilities, equipment and instrumentation, operating procedures, sample management, test methods, equipment calibration and maintenance, quality assurance and quality control, corrective action, data reduction and validation, reporting, and records management. The practical quantitation limit (PQL) of the test methods selected must be less than or equal to the most protective Tier 1 soil remediation objectives in 35 Ill. Adm. Code 742, Appendix B, applicable groundwater remediation objectives under 35 Ill. Adm. Code 742, Appendix B, or, if already determined, the remediation objective concentrations for the site. If a contaminant of concern is not identified in 35 Ill. Adm. Code Part 742 or the remediation objectives for the site have not been determined, the PQL shall equal the lowest concentration that reliably can be achieved within specified limits of precision and accuracy dur-

- ing routine laboratory operating conditions but shall not be greater than ten times the method detection limit.
- d) All field or laboratory measurements of samples to determine physical or geophysical characteristics shall be conducted in accordance with ASTM standards or other procedures as approved by the Agency.
  - e) All laboratory quantitative analyses of samples to determine concentrations of any regulated substances or pesticides that require more exacting detection limits or cannot be analyzed by standard methods identified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), shall be conducted in accordance with analytical protocols developed in consultation with and approved by the Agency.
  - f) Effective January 1, 2003, all quantitative analyses of samples collected on or after that date and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180 shall be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 shall be deemed invalid.

### **Comprehensive Site Investigation**

The comprehensive site investigation is designed to identify all recognized environmental conditions and all related contaminants of concern that may be expected to exist at a remediation site. The comprehensive site investigation shall be performed in two phases.

1. Unless an alternative is approved by the Agency, the phase I environmental site assessment shall be designed and implemented in accordance with the procedures for such assessments set forth in "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00).
2. The phase II environmental site assessment shall determine the nature, concentration, direction and rate of movement, and extent of the contaminants of concern at the remediation site and the significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and risk to human health, safety and the environment. At a minimum, the phase II environmental site assessment shall include:
  - a) Sampling, analyses, and field screening measurements indicating the concentrations of contaminants, if any, from the Target Compound List at Appendix A of 35 Ill. Adm. Code 740 and any other contaminants whose presence has been indicated by the phase I environmental site assessment. Based on the phase I environmental site assessment, the Agency may add or delete contaminants from the Target Compound List for sampling, analyses, and field screening measurements;
  - b) Characterization of sources and potential sources of recognized environmental conditions and the related contaminants of concern, identifying:
    - i. The sources or potential sources of contamination;

- ii. The contaminants of concern;
- iii. Statutory or regulatory classification of the contaminants of concern and contaminated materials (e.g., hazardous waste, hazardous substance, special waste);
- c) Characterization of the extent of contaminants of concern, identifying:
  - i. The actual contaminated medium or media;
  - ii. The three-dimensional configuration of contaminants of concern with concentrations delineated;  
and
  - iii. The nature, direction, and rate of movement of the contaminants of concern;
- d) Characterization of present and post-remediation exposure routes, identifying:
  - i. All natural and man-made pathways that are on the remediation site, in rights-of-way attached to the remediation site, or in any areas surrounding the remediation site that may be adversely affected as a result of a release (from the recognized environmental conditions) and whether there is evidence of migration of contaminants of concern, in either solution or vapors, along such pathways that may potentially threaten human or environmental receptors or that may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other spaces;
  - ii. The locations of any human and environmental receptors and receptor exposure routes;  
and
  - iii. Current and post-remediation uses of affected or potentially affected land, groundwater, surface water, and sensitive habitats;  
and
- e) Characterization of significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and risk to human health, safety and the environment.



## **Attachment C: Requirements for preparing a Comprehensive Site Investigation Report, determining Remediation Objectives, preparing a Remediation Objectives Report, preparing a Remedial Action Plan, and preparing a Remedial Action Completion Report**

### **General**

1. All plans and reports prepared shall be submitted to the Agency with attachments and accompanying documentation as necessary. Plans and reports shall be mailed or delivered to the address designated by the Agency. Plans and reports that are hand-delivered to the Agency shall be delivered during the Agency's normal business hours.
2. All plans and reports submitted to the Agency shall include:
  - i. The full legal name, address and telephone number of the Responsible Party (RP) or any authorized agent acting on behalf of the RP, and any contact persons to whom inquiries and correspondence must be addressed;
  - ii. The original signature of the RP or of any authorized agent acting on behalf of the RP;
  - iii. The name of the Licensed Professional Engineer (LPE) responsible for site activities and preparation of the plan or report, the date of preparation, registration number, license expiration date, and professional seal; and
  - iv. The LPE responsible for the site investigations, remedial activities, and preparation of the plans or reports shall affirm by original signature as follows:

"I attest that all site investigations or remedial activities, including review of laboratory data, that are the subject of this plan or report were performed under my direction and this document and all attachments were prepared under my direction or reviewed by me, and, to the best of my knowledge and belief, the work described in the plan or report has been designed or completed in accordance with the Act, the requirements and standards of 35 Ill. Adm. Code 742, and generally accepted engineering practices, and the information presented, including any qualified laboratory data, is accurate and complete."

### **Comprehensive Site Investigation Report**

1. Site investigation results for both phase I and phase II of the comprehensive site investigation shall be combined into one Site Investigation Report.
2. The Site Investigation Report for a comprehensive site investigation shall include, but not be limited to, the following chapters:
  - a. Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state whether recognized environmental conditions were identified and the data limitations in the assessment;

- b. Site characterization. This chapter shall include the compilation of all sources reviewed and information obtained as a result of the site investigation, including but not limited to:
- i. Sources consulted or reviewed. This subchapter shall contain a list of reference documents used in completing the site investigation;
  - ii. Site history. This subchapter shall present a chronological summary of the historic uses of the remediation site as prescribed by "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00),
  - iii. Site description. This subchapter shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, existing and potential migration pathways and exposure routes, and current and post-remediation uses of the remediation site and surrounding areas that are immediately adjacent to the remediation site;
  - iv. Site base map(s) including the following:
    - A. A distance of at least 1,000 feet around the remediation site at a scale no smaller than one inch equal to 200 feet;
    - B. Map scale, north arrow orientation, date, and location of the site with respect to township, range and section;
    - C. Remediation site boundary lines, with the owners of property adjacent to the remediation site clearly indicated, if reasonably identifiable;
    - D. Surrounding land uses (e.g., residential property, industrial/commercial property, agricultural property, and conservation property);
    - E. The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for any or all contaminants of concern;
    - F. On-site and off-site injection and withdrawal wells;  
and
    - G. All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features, including all known past and current product and waste underground tanks or piping;  
and
  - v. A legal description or reference to a plat showing the boundaries of the remediation site, or, for a Federal Landholding Entity, a common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;
- c. Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment inves-

- tigations, hydrogeological investigations, surface water investigations, and potential receptor investigations;
- d. Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
- i. Narrative description of the field activities conducted during the investigation;
  - ii. The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analyses) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
  - iii. Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- e. Endangerment assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern and compare the remediation site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
- i. Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;
  - ii. Describe all conditions the LPE has determined to be de minimis along with the rationale for each such de minimis determination;
  - iii. Describe the nature, concentration and extent of contaminants of concern within all environmental media at the remediation site and assess the observed and potential contaminant fate and transport;
  - iv. Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
  - v. Compare the concentrations of the contaminants of concern with the corresponding Tier 1 remediation objectives under 35 Ill. Adm. Code 742;
- f. Conclusion. This chapter shall assess the sufficiency of the data in the report and recommend future steps;
- g. Appendices. References and data sources, including but not limited to field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices with reports containing laboratory analyses of samples collected on or after January 1, 2003, including the following:
- i. Accreditation status of the laboratory performing the quantitative analyses;
  - ii. Certification by an authorized agent of the laboratory that all analyses have been per-

formed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation;

and

- iii. LPE affirmation in accordance with paragraph 2(d) of this Attachment.

### **Determination of Remediation Objectives**

1. If the site investigation reveals evidence of the existence of one or more contaminants of concern, the Responsible Party (RP) shall develop remediation objectives in accordance with 35 Ill. Adm. Code 742 or other remediation measures as appropriate (e.g., removal of drums threatening a release).
2. Where there will be no reliance on an institutional control to achieve compliance, or where an institutional control will be relied upon to limit site use to industrial/commercial use, compliance with remediation objectives shall be demonstrated as follows:
  - a. For groundwater remediation objectives:
    - i. Sampling points shall be located on the remediation site in areas where, following site investigation, concentrations of contaminants of concern exceeded remediation objectives.
    - ii. Compliance with the groundwater remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
  - b. For soil remediation objectives:
    - i. Sampling points shall be located on the remediation site in areas where, following site investigation, concentrations of concern exceeded remediation objectives.
    - ii. Compliance with soil remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
  - c. Where an institutional control or remediation measure will be relied upon to achieve compliance, compliance shall be determined based on approval by the Agency of the institutional control or remediation measure and the timely implementation of the institutional control or remediation measure (e.g., if an institutional control prohibiting the use of groundwater within the boundaries of the remediation site as a potable water supply is obtained under 35 Ill. Adm. Code 742, Subpart J, sampling points shall be located at the boundary of the remediation site).
  - d. Upon completing the determination of remediation objectives, the RP shall compile the information into a Remediation Objectives Report for submittal to the Agency.

## **Remediation Objectives Report**

The Remediation Objectives Report shall address the recognized environmental condition(s) and related contaminants of concern that were identified in the site investigation conducted.

1. If an exposure route is to be excluded, the RP shall prepare a Remediation Objectives Report demonstrating that the requirements for excluding an exposure route under 35 Ill. Adm. Code 742 have been satisfied.
2. If the RP elects to use the Tier 1 remediation objectives under 35 Ill. Adm. Code 742, the RP shall prepare a Remediation Objectives Report stating the applicable remediation objectives for the contaminants of concern.
3. If the RP elects to develop remediation objectives appropriate for the remediation site using Tier 2 or Tier 3 procedures under 35 Ill. Adm. Code 742, the RP shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
4. If the RP elects to develop remediation objectives appropriate for the remediation site using the area background procedures under 35 Ill. Adm. Code 742, the RP shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
5. If the recognized environmental condition requires remediation measures other than, or in addition to, remediation objectives determined under 35 Ill. Adm. Code 742 (e.g., removal of drums threatening a release), the Remediation Objectives Report shall describe those measures and demonstrate that the measures selected:
  - a. Will prevent or eliminate the identified threat to human health and the environment;
  - b. Are technically feasible and can be implemented without creating additional threats to human health and the environment;and
  - c. Are not inconsistent with the Act and applicable regulations.
6. In the event that the Agency has determined in writing that the background level for a regulated substance or pesticide poses an acute threat to human health or the environment at the site when considering the post-remedial action land use, the RP shall develop appropriate risk-based remediation objectives in accordance with subsections (a), (b) and/or (c) above.
7. The Remediation Objectives Report shall contain the affirmation of a LPE in accordance with paragraph 2(d) of this Attachment.

## **Remedial Action Plan**

If the approved remediation objectives for any regulated substance of concern established are less than the levels at the remediation site prior to any remedial action, the RP shall prepare a Remedial Action Plan. The plan shall describe the proposed remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the remediation site, including but not limited to:

1. Executive summary. This chapter shall identify the objectives of the Remedial Action Plan and the technical approach utilized to meet such objectives. At a minimum, this chapter shall include the following elements:
  - a. The major components (e.g., treatment, containment, removal actions) of the Remedial Action Plan;
  - b. The scope of the problems to be addressed by the proposed remedial action(s) including the specific contaminants of concern and the physical area to be addressed by the Remedial Action Plan;  
and
  - c. Schedule of activities, with estimated dates of completion through the recording of an ELUC if an ELUC is to be imposed.
2. Statement of remediation objectives or reference to Remediation Objectives Report;
3. Remedial technologies selected. This chapter shall describe how each major remedial technology identified in the Remedial Action Plan fits into the overall strategy for addressing the recognized environmental conditions at the remediation site, including but not limited to:
  - a. Feasibility of implementation;
  - b. Whether the technologies will perform satisfactorily and reliably until the remediation objectives are achieved;  
and
  - c. Whether remediation objectives will be achieved within a reasonable period of time.
4. Confirmation sampling plan. This chapter shall describe how the effectiveness of the remedial action will be measured. At a minimum, a site-specific sampling plan and quality assurance project plan must be prepared in accordance with the provisions set forth in the Site Investigation requirements in Attachment C;
5. Current and post-remediation use of the property;
6. Applicable engineered barriers, institutional controls, and groundwater monitoring. This chapter shall describe any such controls selected or relied upon in determining or achieving remediation objectives, including long-term reliability, operating and maintenance plans, and monitoring procedures;
7. Appendices. References and other informational sources should be incorporated into the appendices;  
and
8. LPE affirmation in accordance with paragraph 2(d) of this Attachment.

## **Remedial Action Completion Report**

1. Except as provided in subsection (b) below, upon completion of the Remedial Action Plan, the RP shall prepare a Remedial Action Completion Report. The report shall demonstrate whether the remedial action was completed in accordance with the approved Remedial Action Plan and whether the remediation objectives, as well as any other requirements of the plan, have been attained. The report shall include, but not be limited to:
  - a. Executive summary. This chapter shall identify the overall objectives of the remedial action and the technical approach utilized to meet those objectives, including:
    - i. A brief description of the remediation site, including the recognized environmental conditions, the contaminants of concern, the contaminated media, and the extent of contamination;
    - ii. The major components of the Remedial Action Completion Report;
    - iii. The scope of the problems corrected or mitigated by the proposed remedial action(s);  
and
    - iv. The anticipated post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
  - b. Field activities. This chapter shall provide a narrative description of the:
    - i. Field activities conducted during the investigation;
    - ii. Remedial actions implemented at the remediation site and the performance of each remedial technology utilized
  - c. Special conditions. This chapter shall provide a description of any:
    - i. Engineered barriers utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives;
    - ii. Institutional controls accompanying engineered barriers or industrial/commercial property uses in accordance with 35 Ill. Adm. Code 742, including a legible copy of any such controls, as appropriate;
    - iii. Post-remedial monitoring, including:
      - A. Conditions to be monitored;
      - B. Purpose;
      - C. Locations;
      - D. Frequency;  
and
      - E. Contingencies in the event of an exceedence;  
and

- iv. Other conditions, if any, necessary for protection of human health and the environment;
  - d. Results. This chapter shall analyze the effectiveness of the remedial actions by comparing the results of the confirmation sampling with the remediation objectives prescribed in the Agency-approved Remedial Action Plan. The data shall state the remediation objectives or reference the Remediation Objectives Report and be presented in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent.
  - e. Conclusion. This chapter shall identify the success of the remedial action in meeting objectives. This chapter shall assess the accuracy and completeness of the data in the report and, if applicable, future work;
  - f. Appendices. References, data sources, and a completed environmental notice form as provided by the Agency shall be incorporated into the appendices. Field logs, well logs and reports of laboratory analyses shall be organized and presented logically with reports of laboratory analyses of samples collected on or after January 1, 2003, including the following:
    - i. Accreditation status of the laboratory performing the quantitative analyses;
    - ii. Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of the accreditation;and
  - g. LPE affirmation in accordance with paragraph 2(d) of this Attachment.
2. If the approved remediation objectives for the established regulated substances of concern are equal to or above the levels existing at the site prior to any remedial action, notification and documentation of such, including a description of any engineered barriers, institutional controls, and post-remedial monitoring, shall constitute the entire Remedial Action Completion Report.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                                  |   |                      |
|----------------------------------|---|----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, | ) |                      |
| Complainant,                     | ) |                      |
|                                  | ) |                      |
| v.                               | ) |                      |
|                                  | ) | PCB No. 17 – 45      |
| MAGNA TAX SERVICE CO., INC.,     | ) | (Enforcement – Land) |
| Respondent.                      | ) |                      |
|                                  | ) |                      |

**NOTICE OF FILING**

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Respondent’s Response to Motion to Strike Affirmative Defenses. Copies of these documents are hereby served upon you.

To: Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218  
(via electronic filing)

Rachel Medina  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(Via Email: rmedina@atg.state.il.us)

Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
(Via Email: carol.webb@illinois.gov)

Respectfully submitted,  
**MAGNA TAX SERVICE CO., INC.**

Dated: June 22, 2017

By:  /s/William D. Ingersoll  
One of its Attorneys

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CERTIFICATE OF E-MAIL SERVICE

I, William D. Ingersoll, certify that I have this date served the attached Notice of Filing and Respondent's Response to Motion to Strike Affirmative Defenses by e-mail as described below and from my e-mail address as indicated below, upon the following persons:

To: Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
carol.webb@illinois.gov

Rachel Medina  
Assistant Attorney General  
Environmental Bureau  
rmedina@atg.state.il.us

Dated: June 22, 2017

**BROWN, HAY & STEPHENS, LLP**

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By:  /s/William D. Ingersoll  
William D. Ingersoll