

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
By KWAME RAOUL, Attorney)
General of the State of Illinois,)
 Complainant,)
) PCB No.23-112
 - vs-)
))
INLAND-FRYCEK, INC.,)
an Illinois Corporation, and)
969 NORTHWEST HWY LLC,)
an Illinois Limited Liability Company,)
 Respondents.)

NOTICE OF FILING

To: Christopher Grant
Senior Assistant Attorney General
Environmental Bureau Inc.
69 W. Washington St., Suite 1800
Chicago, IL 60602
Christopher.grant@ilag.gov

PLEASE TAKE NOTICE that on this date I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled RESPONDENT’S ANSWER TO COMPLAINANT’S COMPLAINT.

Respectfully Submitted,

/s/ David E. Schroeder
David E. Schroeder

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Dated: August 10, 2023

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PEOPLE OF THE STATE OF ILLINOIS,)
By KWAME RAOUL, Attorney)
General of the State of Illinois,)
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Complainant,) PCB No.23-112
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-vs-)
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INLAND-FRYCEK, INC.,)
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969 NORTHWEST HWY LLC,)
an Illinois Limited Liability Company,)
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Respondents.)

**RESPONDENT'S ANSWER TO
COMPLAINANT'S COMPLAINT**

Respondent, 969 NORTHWEST HWY LLC ("969" or "Respondent"), responds to Complainant, PEOPLE OF THE STATE OF ILLINOIS, by and through its attorneys, Tribler Orpett & Meyer, P.C. as follows:

**COUNT I
OPEN DUMPING OF WASTE**

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, on his 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 (2020).

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and,

therefore, neither admits nor denies them but demands strict proof thereof.

2. The Illinois EPA is an administrative agency of the State of Illinois, established by Section 4 of the Act, 415 ILCS 5/4 (2020), and is charged, *inter alia*, with the duty of enforcing the Act and regulations promulgated by the Illinois Pollution Control Board ("Board").

ANSWER: 969 admits the allegations in this paragraph.

3. Respondent INLAND-FRYCEK, INC. ("IFI"), is an Illinois corporation, duly authorized to transact business in the State of Illinois. IFI is an environmental remediation consultant and contractor.

ANSWER: 969 admits the allegations in this paragraph.

4. Respondent 969 NORTHWEST HWY LLC ("969 LLC"), is an Illinois limited liability company, in good standing with the Illinois Secretary of State.

ANSWER: 969 admits the allegations in this paragraph.

5. At all times relevant to the Complaint, Respondent 969 LLC was the owner of property located at 969 North Northwest Highway, Park Ridge, Cook County, Illinois ("Site"). The Site has never been permitted by the Illinois EPA for the storage, treatment, or disposal of waste.

ANSWER: 969 admits the allegations in this paragraph.

6. The Site is the location of a former gasoline station known as Harvey's Marathon. On April 7, 2010, the Site owner at the time, an Illinois Land Trust ("Land

Trust"), reported a release of gasoline to the Illinois Emergency Management Agency ("IEMA"). IEMA assigned the release Incident Number 20100336. The Site was enrolled in Illinois EPA's Leaking Underground Storage Tank ("LUST") program to remediate the petroleum release.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

7. In 2011, the Land Trust was foreclosed on by its lender. Respondent 969 LLC acquired the Site in December 2015. From the date it acquired the Site in 2015 to the present, Respondent 969 LLC has been the sole owner and operator of the Site and has been in control of all access and activities at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in the first sentence of this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof. 969 admits the remaining allegations in this paragraph.

8. On April 17, 2015, Illinois EPA's LUST Section approved a proposed Corrective Action Plan for the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

9. In August 2018, the underground petroleum storage tanks were removed from the Site, and 969 LLC commenced remediation of residual petroleum contamination.

ANSWER: 969 admits the allegations in this paragraph.

10. On a date better known to Respondents, 969 LLC retained IFI to assist in

remediation of the Site.

ANSWER: 969 admits that it contracted with IFI to assist in remediation of the Site.

11. Under certain conditions, calcium peroxide, a powerful oxidizer, can be used to assist in remediation of petroleum-contaminated soil. However, the use of calcium peroxide was not authorized under the approved LUST Corrective Action Plan, and IFI did not obtain approval from Illinois EPA's LUST section for the use of calcium peroxide at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

12. Calcium peroxide is a white, powdery substance. Exposure to calcium peroxide in solution may cause eye damage and skin irritation. Calcium peroxide decomposes under fire conditions to release oxygen that intensifies the fire.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

13. On or about July 16, 2019, IFI brought approximately 100,000 pounds of calcium peroxide powder to the Site. IFI stored approximately 85,000 pounds inside a garage building at the Site, and the remaining 15,000 pounds inside of a metal trailer at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and,

therefore, neither admits nor denies them but demands strict proof thereof.

14. On July 17, 2019, the day after the calcium peroxide was brought to the Site, a fire erupted inside the garage building containing the calcium peroxide. The Park Ridge Fire Department responded and used firefighting water to attempt to extinguish the fire. Firefighting water soaked the bags of calcium peroxide within the garage building causing powdered calcium peroxide to be deposited in the garage building. The firefighting activities also spread large quantities of calcium peroxide throughout the property and comingled the calcium peroxide with dirt and debris at the Site.

ANSWER: 969 admits that a fire occurred at the Site on July 17, 2019, and that the Park Ridge Fire Department responded and fought the fire. 969 lacks knowledge as to the truth of the remaining allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

15. On July 18, 2019, Respondent IFI reported the release of calcium peroxide to IEMA, which assigned the event Incident Number H-2019-0740. In its report, IFI claimed that 20,000 pounds of calcium peroxide had been released as runoff from firefighting operations. IFI also reported that 2 firefighters had been injured due to suspected calcium peroxide exposure and had been taken to the hospital.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

16. On July 22, 2019, an Illinois EPA inspector visited the Site to perform an inspection. The inspector observed piles of calcium peroxide powder mixed in with

debris from the fire inside the burned garage building. The ground outside the building at the Site was covered with calcium peroxide which had been washed from the building with the firefighting water. None of the calcium peroxide and residual material had been collected and containerized.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

17. On September 9, 2019, Respondent IFI advised Illinois EPA that it would not remove the spent and mixed calcium peroxide for disposal, but had gathered 35 cubic yards of calcium peroxide from the burned garage and had put the material in roll-off boxes at the Site. IFI also advised that it had gathered 43 cubic yards of calcium peroxide that was spread throughout the Site and had placed it in a pile on the ground at the Site. IFI further advised that approximately 3.5 cubic yards of calcium peroxide, which had been dissolved in fire water and collected into containers, were stored at the Site. Finally, IFI advised that it could not account for at least 2 cubic yards of calcium peroxide and stated that it may have washed into the Metropolitan Water Reclamation District ("MWRD") combined sewer system at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

18. On September 12, 2019, the Illinois EPA inspector performed a follow up inspection of the Site. The inspector observed two open roll-off boxes which contained the calcium peroxide taken from the garage building. A pile of

wood and miscellaneous debris remained inside the garage building. The inspector also observed a large pile of mixed soil, calcium peroxide and debris on the ground at the Site, covered with a tarp. A frac tank containing firefighting water was still at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

19. On December 23, 2019, the Illinois EPA inspector performed another inspection of the Site. The gas station building had been demolished and removed from the Site, but the two open roll-off boxes containing calcium peroxide were still at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

20. On December 23, 2019, the pile of mixed soil and calcium peroxide residue remained in a large pile on the ground at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

21. On September 1, 2020, the Illinois EPA inspector again visited the Site to perform an inspection. The two roll-off boxes had been removed from the Site, but the large tarp-covered pile of mixed calcium peroxide residue and soil remained on the ground at the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and,

therefore, neither admits nor denies them but demands strict proof thereof.

22. As a result of the City of Park Ridge's ordinance enforcement activities, Respondent 969 LLC finally removed the mixed calcium peroxide residue and soil from the Site. On December 4, 2020, the waste was disposed of at the Zion landfill. The manifest accompanying the waste, identified 969 LLC as the "generator" of the waste.

ANSWER: 969 admits that the mixed calcium peroxide residue and soil was removed from the Site. 969 lacks knowledge as to the truth of the remaining allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

23. Section 21(a) of the Act, 415 ILCS 5/21(a) (2020), provides, in pertinent part, as follows:

No person shall:

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

* * *

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

24. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), provides, as follows:

"PERSON" is an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for

itself.

25. Respondent IFI, a corporation, and Respondent 969 LLC, a limited liability company, are each a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

ANSWER: This paragraph contains conclusions of law, so no answer from 969 is required. To the extent an answer from 969 is required, 969 denies the alleges in this paragraph directed to it and further answers that it lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

26. Section 3.535 of the Act, 415 ILCS 5/3.535 (2020), provides, in pertinent part, as follows:

"WASTE" means any garbage...or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities....

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

27. Sections 3.385 of the Act, 415 ILCS 5/3.385 (2020), provides, as follows: "REFUSE" means waste.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

28. The Respondents caused and allowed mixed calcium peroxide residue and soil to be dumped and discarded inside the garage building at the Site. The Respondents also allowed the mixed calcium peroxide residue and soil to be dumped and distributed onto the ground throughout the Site. Mixed calcium peroxide residue and debris was also accumulated in roll-off boxes at the Site.

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

29. The discarded calcium peroxide powder at the Site is " waste" as that term is defined by Section 3.353 of the Act, and therefore also "refuse" as defined by Section 3.385 of the Act, 415 ILCS 5/3.353 and 5/3.385 (2020).

ANSWER: This paragraph contains conclusions of law, so no answer from 969 is required. To the extent an answer from 969 is required, 969 denies the alleges in this paragraph directed to it and further answers that it lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

30. Section 3.185 of the Act, 415 ILCS 5/3.185 (2020), provides, as follows:

" Disposal" means the discharge, deposit, injection , dumping, spilling , leaking or placing of any waste or hazardous waste into or on any land or water *or* into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from

969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

31. Section 3.460 of the Act, 415 ILCS 5/3.460 (2020), provides, as follows:

"Site" means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

32. The Respondents each caused or allowed the deposit of waste at the Site in a manner that exposed the waste to the environment and threatened discharge into groundwater at the Site. The Site is therefore a "disposal site" as those terms are defined in Sections 3.185 and 3.460 of the Act, 415 ILCS 5/3.185 and 3.460 (2020).

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

33. Section 3.305 of the Act, 415 ILCS 5/3.305 (2020), 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: To the extent this paragraph contains conclusions of law, no answer from 969 is

required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

34. Section 3.445 of the Act, 415 ILCS 5/3.445 (2020), provides, in pertinent part, as follows:

"SANITARY LANDFILL" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580,

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

35. The Site has never been permitted by the Illinois EPA for the disposal of waste, and thus did not fulfill the requirements of a sanitary landfill, as defined in the Act.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

36. By causing or allowing the dumping and discarding of calcium peroxide at the Site, and by failing to remove the waste until compelled to by the Village of Park Ridge's ordinance enforcement, the Respondents each caused or allowed the open dumping of waste, and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2020).

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks

knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

WHEREFORE, Respondent, 969 NORTHWEST HWY LLC., prays for judgment in its favor and against Petitioner on Count I, and that the Board award it such further relief as it deems just and appropriate.

COUNT II
WASTE STORAGE AND DISPOSAL AT AN IMPROPER SITE

1-31. Complainant realleges and incorporates by reference herein, paragraphs 1 through 22, and paragraphs 24 through 32 of Count I, as paragraphs 1 through 31 of this Count II.

ANSWER: 969 repeats its answers to paragraphs 1-22 and paragraphs 24-32 of Count I above as its answers to paragraphs 1-31 of Count II as though fully set forth herein.

32 From at least July 17, 2019 to at least December 4, 2020, the Respondents each caused or allowed waste, in the form of calcium peroxide powder intermingled with dirt and debris, to be disposed and abandoned on the ground and in roll-off boxes at the Site.

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

33 The Site has never been permitted by the Illinois EPA for the disposal of waste.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and,

therefore, neither admits nor denies them but demands strict proof thereof.

34 Section 21(e) of the Act, 415 ILCS 5/21(e) (2020), provides, as follows:

No person shall

* * *

- 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: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

35 The Site has never been permitted for waste storage or waste disposal, and therefore does not meet the requirements of the Act.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

36 By disposing of and abandoning waste at the Site, a site not permitted for the disposal of waste, the Respondents each violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2020).

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies

same but demands strict proof thereof.

WHEREFORE, Respondent, 969 NORTHWEST HWY LLC., prays for judgment in its favor and against Petitioner on Count II, and that the Board award it such further relief as it deems just and appropriate.

COUNT III
FAILURE TO PERFORM A SPECIAL WASTE DETERMINATION

1-28. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 22, and paragraphs 24 through 29, of Count I, as paragraphs 1 through 28 of this Count III.

ANSWER: 969 repeats its answers to paragraphs 1-22 and paragraphs 24-29 of Count I above as its answers to paragraphs 1-28 of Count III as though fully set forth herein.

29. Beginning on July 17, 2019, the Respondents' activities resulted in the generation of waste in the form of spilled calcium peroxide, intermingled with debris and soil. The Respondents accumulated the waste on the ground at the Site and in roll-off boxes without evaluating or testing the waste to determine whether it was a special waste or a hazardous waste.

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

30. Section 21(d) of the Act, 415 ILCS 5/21(d) (2020), provides, in pertinent part, as follows:

No person shall:

* * *

- d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 1. without a permit granted by the Agency....
 2. in violation of any regulations or standards adopted by the Board under this Act;

* * *

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

31. Section 3.205 of the Act, 415 ILCS 5/3.205 (2020), provides the following definition:

" Generator" means any person whose act or process produces waste.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

32. Following the fire at the Site on July 17, 2019, the Respondents each caused or allowed the spilled calcium peroxide, intermixed with dirt and debris, to be discarded and accumulated in piles on the ground at the Site from at least July 17, 2019 until at least December 4, 2020. The Respondents also allowed spilled calcium peroxide, intermingled with debris resulting from the fire at the Site, to be discarded in roll off boxes at the Site from at least September 9, 2019 until a date better known to Respondents, but prior to September 1, 2020. Each Respondent, thereby caused or

allowed material to be discarded on the ground at the Site and in roll off boxes at the Site, thereby causing or allowing the intermingled calcium peroxide material to become "waste", as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2020). Each Respondent is a "generator" as that term is defined in Section 3.205 of the Act, 415 ILCS 5/3.205 (2020).

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

33. Section 808.121(a) of the Board regulations, 35 Ill. Adm. Code 808.121(a), provides as follows:

Section 808.121 Generator Obligations

- a) Each person who generates waste shall determine whether the waste is a special waste.

BOARD NOTE: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Board Regulations speak for themselves.

34. Beginning on or about July 17, 2019, the Respondents generated waste in the form of spilled calcium peroxide mixed with debris and soil, but failed to test or otherwise evaluate the waste stream to determine whether it was a special waste.

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies

same but demands strict proof thereof.

35. From at least July 17, 2019 until December 4, 2020, the Respondents each disposed of waste, and therefore conducted a waste disposal operation at the Site.

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

36. By failing to evaluate or characterize the waste generated on or about July 17, 2019, to determine whether it was a special waste, the Respondents each violated Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a), and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2020).

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

WHEREFORE, Respondent, 969 NORTHWEST HWY LLC., prays for judgment in its favor and against Petitioner on Count III, and that the Board award it such further relief as it deems just and appropriate.

COUNTIV
CREATING A WATER POLLUTION HAZARD

1-24. Complainant re-alleges and incorporates by reference herein paragraphs

1 through 22 and paragraphs 24 through 25, of Count I, as paragraphs 1 through 24 of this Count IV.

ANSWER: 969 repeats its answers to paragraphs 1-22 and paragraphs 24-25 of Count I above as its answers to paragraphs 1-24 of Count IV as though fully set forth herein.

25. The July 17, 2019 fire at the Site, and the firefighting activities to contain the fire, spread powdered calcium peroxide throughout soil at the Site. Respondent IFI reported to IEMA that 20,000 pounds of calcium peroxide, a strong oxidizer and skin irritant, had been released as runoff from firefighting operations, threatening groundwater contamination at, and in the vicinity of, the Site.

ANSWER: 969 lacks knowledge as to the truth of the allegations in this paragraph and, therefore, neither admits nor denies them but demands strict proof thereof.

26. The Respondents each allowed a large pile of calcium peroxide to remain on the ground, exposed to storm events, from at least July 17, 2019 through at least September 1, 2020. On information and belief, the Respondents took no action to remove the pile of calcium peroxide until on or about December 4, 2020, when the material was taken to the Zion landfill for disposal.

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

27. Section 12(d) of the Act, 415 ILCS 5/12(d) (2020), provides as follows:

No person shall:

* * *

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

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

28. Section 3.545 of the Act, 415 ILCS 5/3.545 (2020), 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 domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock , wild animals, birds, fish, or other aquatic life.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

29. Section 3.555 of the Act, 415 ILCS 5/3.555 (2020), provides the following definition:

"WATERS" means all accumulations 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 the State.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from

969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

30. Groundwater underneath the Site, and in the vicinity of the Site, are "waters" as that term is defined in Section 3.555 of the Act, 415 ILCS 5/3.555 (2020).

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

31. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides, as follows:

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

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

32. The powdered calcium peroxide spread throughout the Site and dumped in piles at the Site, is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

ANSWER: 969 denies the allegations in this paragraph.

33. Calcium peroxide migrating into groundwater would alter, or threaten to alter, the physical, thermal, or chemical properties of the groundwater, and create a nuisance. Calcium peroxide contamination of groundwater would therefore constitute

" water pollution" as that term is defined in Section 3.545 of the Act, 415 ILCS 3.545 (2020).

ANSWER: 969 denies the allegations in this paragraph.

34. By depositing up to 20,000 pounds of powdered calcium peroxide upon the land throughout the Site, by failing to immediately remove the calcium peroxide from ground at the Site, and by maintaining a pile of calcium peroxide on the ground at the Site from at least July 17, 2019 to December 4, 2020, the Respondents each created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d)(2020).

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

WHEREFORE, Respondent, 969 NORTHWEST HWY LLC., prays for judgment in its favor and against Petitioner on Count IV, and that the Board award it such further relief as it deems just and appropriate.

COUNTV
CAUSING AND ALLOWING LITTER

1-36. Complainant realleges and incorporates by reference herein, paragraphs 1 through 36 of Count I, as paragraphs 1 through 36 of this Count V.

ANSWER: 969 repeats its answers to paragraphs 1-36 of Count I above as its

answers to paragraphs 1-36 of Count V as though fully set forth herein.

37. Section 21(p) of the Act, 415 ILCS 5/21(p) (2020), provides, in pertinent part, as follows:

No person shall:

* * *

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

* * *

1. Litter

* * *

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

38. Section 3 of the Litter Control Act, 415 ILCS 105/3, provides, as follows :

(a) " Litter" means any discarded, used or unconsumed substance or waste." Litter" may include, but is not limited to, any garbage, trash, refuse . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

ANSWER: To the extent this paragraph contains conclusions of law, no answer from 969 is required. To the extent an answer from 969 is required, 969 answers that the Act speaks for itself.

39. The waste calcium peroxide powder is "litter" as that term is defined in Section 3 of the Litter Control Act, 415 ILCS 105/3, and as used in Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2020).

ANSWER: 969 denies the allegations in this paragraph.

40. By causing or allowing the disposal of waste calcium peroxide powder on the ground at the Site, and by failing to remove the waste until compelled to by the Village of Park Ridge's ordinance enforcement, the Respondents each caused or allowed the open dumping of waste at the Site, resulting in litter. The Respondents thereby violated Section 21(p)(1) of the Act, 415 ILCS 21(p)(1) (2020).

ANSWER: 969 denies the allegations in this paragraph directed to it. 969 lacks knowledge as to the allegations directed to IFI and, therefore, neither admits nor denies same but demands strict proof thereof.

WHEREFORE, Respondent, 969 NORTHWEST HWY LLC., prays for judgment in its favor and against Petitioner on Count V, and that the Board award it such further relief as it deems just and appropriate.

Respectfully submitted,
TRIBLER ORPETT & MEYER, P.C.

s/ David E. Schroeder

One of the attorneys for Respondent 969
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