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CLERK'S OFFICE

MAY 29 2003

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

vs. )

MICHEL GRAIN COMPANY, INC., a/k/a )  
MICHEL FERTILIZER, an Illinois )  
corporation, CARYLE MICHEL, and )  
RONNIE TODD, )

Respondents. )

PCB 96-143  
(Environment-Water)

STATE OF ILLINOIS  
Pollution Control Board

**NOTICE OF FILING**

To: Doug Antonik  
Antonik Law Offices  
1921 Broadway  
P.O. Box 594  
Mt. Vernon, IL 62864

F. William Bonan  
Bonan and Bonan and Rowland  
P.O. Box 309  
McLeansboro, IL 62859

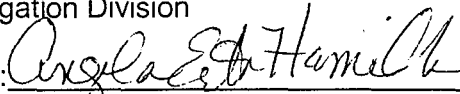
PLEASE TAKE NOTICE that on this date, I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois COMPLAINANT'S RESPONSE TO RESPONDENT CARYLE MICHEL'S MOTION TO STRIKE REQUEST PURSUANT TO THE INA FACILITY and AFFIDAVIT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the  
State of Illinois

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

BY: 

ANGELA EATON HAMILTON  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: May 23, 2003

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STATE OF ILLINOIS  
Pollution Control Board

**CERTIFICATE OF SERVICE**

I hereby certify that I did on May 23, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box true and correct copies of the following instruments entitled COMPLAINANT'S RESPONSE TO RESPONDENT CARYLE MICHEL'S MOTION TO STRIKE REQUEST PURSUANT TO THE INA FACILITY and AFFIDAVIT

To: Doug Antonik  
Antonik Law Offices  
1921 Broadway  
P.O. Box 594  
Mt. Vernon, IL 62864

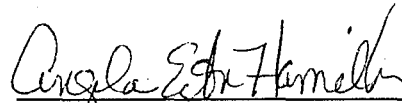
F. William Bonan  
Bonan and Bonan and Rowland  
P.O. Box 309  
McLeansboro, IL 62859

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Sudman  
Hearing Officer  
Pollution Control Board  
600 South Second Street, Ste. 402  
Springfield, Illinois 62704



Angela Eaton Hamilton  
Assistant Attorney General

This filing is submitted on recycled paper.

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PEOPLE OF THE STATE OF ILLINOIS, )  
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Complainant, )  
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vs. )  
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MICHEL GRAIN COMPANY, INC., a/k/a )  
MICHEL FERTILIZER, an Illinois )  
corporation, CARYLE MICHEL, and )  
RONNIE TODD, )  
)  
Respondents, )

STATE OF ILLINOIS  
*Pollution Control Board*

PCB No. 96-143  
(Enforcement-Water)

**COMPLAINANT'S RESPONSE TO RESPONDENT CARYLE MICHEL'S  
MOTION TO STRIKE DISCOVERY REQUEST PURSUANT TO THE INA FACILITY**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and states the following in support of this Response.

1. On April 29, 2003, Complainant mailed to Douglas A. Antonik, attorney for Caryle Michel, d/b/a Michel Fertilizer, a Second Request for Production of Documents and a third set of Interrogatories.

2. In the year 2000, the Complainant and Respondent Michel agreed to postpone litigation to allow Respondent Michel the opportunity to pursue sampling events at the facilities to determine if compliance still needed to be done.

3. Moreover, Complainant agreed to the sampling event at Ina prior to any compliance work or tests being done at Broughton. Complainant made this agreement in good faith with the knowledge that the parties were trying to resolve this matter without further litigation. The issue of penalty or the bifurcation of the penalty was never discussed between the parties.

4. In the summer of 2001, Respondent decided not to proceed with any compliance activity at the Broughton facility and only just informed Complainant that the Broughton facility had been sold in 1997 to Ronnie Todd.

5. Any agreement between the parties was a verbal discussion to settle this case and nothing was committed to writing. See, attached affidavit. Any agreement to terminate the action in relation to the Ina facility would have resulted in an amendment of the Complaint to remove those Counts.

6. Although the Respondent's testing of the Ina facility revealed no contamination in 2001, the testing does not resolve the past violations, nor does it address future concerns regarding a penalty and address the question of preventive measures to prevent future contamination.

7. Since the factors to determine penalty must still be proven up at the hearing, the discovery requested by the Complainant regarding the Ina facility is timely and essential to this matter.

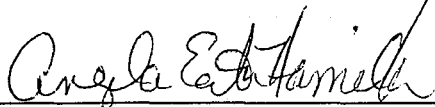
WHEREFORE, the Complainant requests the Board deny Respondent Michel's Motion to Strike Discovery Request Pursuant to the Ina Facility.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

BY:   
ANGELA EATON HAMILTON  
Environmental Bureau  
Assistant Attorney General

Of counsel:  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: May 23, 2003

STATE OF ILLINOIS        )  
                                      ) ss  
COUNTY OF SANGAMON    )

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STATE OF ILLINOIS  
*Pollution Control Board*

**AFFIDAVIT**

I, THOMAS DAVIS, being first duly sworn upon oath, depose and state as follows:

1. I am employed by the Illinois Attorney General's Office, as an Assistant Attorney General. Since September 1, 1991, I have served as the Bureau Chief of the Environmental Bureau/Springfield.

2. The Attorney General's Office has a litigation policy that requires actions to be taken by Assistant Attorneys General affecting pending litigation to be subject to prior review and authorization by their supervisors. In particular, any agreement to resolve or relinquish a pending claim must be made in writing.

3. As the Bureau Chief of the Environmental Bureau/Springfield, I am the supervisor of the Assistant Attorneys General and am responsible for the litigation matters brought by or assigned to the Environmental Bureau/Springfield. Any written agreement to resolve or relinquish a pending claim brought by or assigned to the Environmental Bureau/Springfield must be reviewed and executed by the Bureau Chief.

4. One of the matters brought by the Environmental Bureau/Springfield is *People v. Michel et al.*, PCB 96-143; the assigned Assistant Attorney General is Angela Eaton Hamilton.

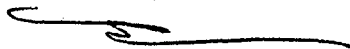
5. I have reviewed the Motion to Strike Discovery Request recently filed by the Respondent. This pleading alludes to a purported "agreement" by the Attorney General's Office to relinquish pending claims regarding the Ina facility. I have personal knowledge that no such agreement was reviewed, authorized and executed by me in *People v. Michel et al.*, PCB 96-143.

6. Moreover, Assistant Attorney General Angela Eaton Hamilton has kept me fully informed of any settlement negotiations in *People v. Michel et al.*, PCB 96-143. Any proposal to

relinquish pending claims regarding the Ina facility would necessarily be contingent upon a comprehensive agreement to resolve the other pending claims in *People v. Michel et al.*, PCB 96-143. It is my understanding that any settlement negotiations have not even progressed to the stage of a draft written agreement.

7. My attestations of fact herein do not reveal the substance of any attorney-client privileged communications that I have made or received and I do not waive any claim of such privilege.

FURTHER AFFIANT SAYETH NOT.

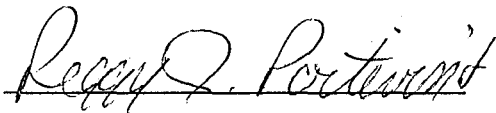


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THOMAS DAVIS

Subscribed and Sworn to before me

this 23rd day of May, 2003.



NOTARY PUBLIC

