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Complainant,

PEOPLE OF THE STATE OF LLINOI

v.

ILLINOIS

STATE OF ILLINOIS Pollution Control Board

PCB 96-143 (Enforcement-Water)

L BOARD

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

Respondents.

## MOTION TO DISMISS

Now comes Ronnie Todd and Ronnie Todd Land Trust, Respondent in the above entitled cause by F. William Bonan, his Attorney and for his Motion to Dismiss the Second Amended Complaint filed herein says:

1. The Complainant added Ronnie Todd and Ronnie Todd Land Trust as parties to this action years after its inception.

2. The Complainant's discovery answers to date indicate the Complaintaint has no knowledge of any substance releases on the subject property by Ronnie Todd or Ronnie Todd Land Trust which would be harmful to the environment.

3. Ronnie Todd and Ronnie Todd Land Trust are therefore parties because they had or have title to the premises in question.

4. Since title to the property, if contaminated, is (in the Complaintant's opinion, which opinion is not agreed by these Respondents), is enough to cause liability to the title holder, all parties in ownership from the date of release are necessary parties. Complainant therefore does not have before the court the necessary parties to render a decision.

5. Ronnie Todd and Ronnie Todd Land Trust are entitled to seek contribution; cross-claim or counter-claim relief against any party who had title to the property previously, and / or those who were in control of the premises at the time of the release of contaminants.

6. All parties must be before the court in order for any order to be valid. (Zurich Insurance Company V. Baxter International Company 655 N.E. 2nd 1173, 275 ILL. App. 3rd 30; 735/ILCS 5/2-406(a).) The bringing in by the court of all necessary parties is not discretionary but is mandatory.

Wherefore, Ronnie Todd and Ronnie Todd Land Trust pray that they be dismissed from this suit as parties and owners, or in the alternative that all previous owners be determined and be joined as parties respondent.

Ronnie Todd, Ronnie Todd Land Trust

William Bonan, their Attorney

Bonan,Bonan & Rowland, LLC Attorneys at Law P.O. Box 309 McLeansboro, IL 62859 ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINGIS

## Complainant,

STATE OF ILLINOIS Pollution Control Board

PCB 96-143 (Enforcement-Water)

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

## Respondents.

## PROOF OF SERVICE

The undersigned certifies that a copy of the MOTION TO DISMISS for Ronnie Todd was mailed to each of the following at their address as disclosed by the pleadings of record herein, with postage prepaid, and by depositing said envelope in a U.S. Post Office Mailbox in McLeansboro, Illinois, on July 15, 2003.

Douglas A. Antonik Antonik Law offices 1921 Broadway P.O. Box 594 Mt. Vernon, IL 62864

v.

Steve Langhoff Hearing Officer Pollution Control Board 600 South Second Street Ste.402 Springfield, IL 62704 Angela Eaton Hamilton Assistant Attorney General Office of the Attorney General Environmental Bureau 500 South Second Street Springfield, IL 62706

Dorothy M. Gunn Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph St. Ste. 11-500 Chicago, Illinois 60601

F. William Bonan, Attorney

F. William Bonan Bonan, Bonan & Rowland,LLC Attorneys at Law McLeansboro, IL 62859