

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 05 2003

STATE OF ILLINOIS
Pollution Control Board

The CITY OF CHICAGO,)	
an Illinois municipal corporation,)	
)	
Complainant,)	
)	
v.)	PCB <u>04-29</u>
)	
PUREX INDUSTRIES, INC.,)	(Enforcement-Land, Citizens)
a Delaware corporation,)	
FEDERAL CHICAGO CORP.,)	
an Illinois corporation, and)	
FEDERAL DIE CASTING CO.,)	
an Illinois corporation,)	
RAYMOND E. CROSS, an individual,)	
)	
Respondents.)	

NOTICE OF FILING AND COMMENCEMENT OF ENFORCEMENT PROCEEDING

To: See attached service list

PLEASE TAKE NOTICE that I shall today file with the Office of the Clerk of the Pollution Control Board the Complaint of the City of Chicago, a copy of which is herewith served upon you. Service and filing of this complaint commences an enforcement proceeding against you. You may be required to attend a hearing on a date set by the Board.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

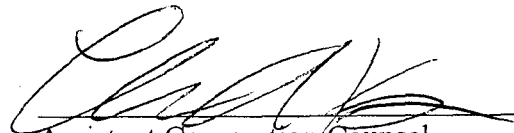
Dated: September 5, 2003

THE CITY OF CHICAGO

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Deputy Corporation Counsel
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Corporation Counsel

By:


Assistant Corporation Counsel

SERVICE LIST

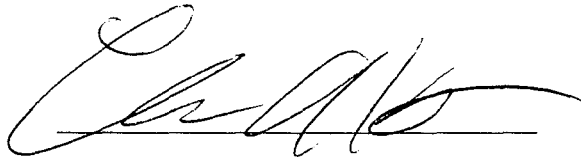
Jeffrey M. Smith
19782 MacArthur Blvd., Suite 260
Irvine, CA 92612
*Authorized agent of Purex Industries, Inc.
served via Federal Express courier service*

United States Corporation Company
2711 Centerville Rd., Suite 400
Wilmington, DE 19808
*Registered agent of Purex Industries, Inc.
served via Federal Express courier service*

Cary R. Perlman
Latham & Watkins
5800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
*Attorney and agent for all other respondents
served via messenger*

CERTIFICATE OF SERVICE

I, Charles A. King, an attorney, certify that I have served the attached **Notice of Filing and Commencement of Enforcement Proceeding and Complaint** upon the persons listed above in the method indicated on September 5, 2003.

A handwritten signature in black ink, appearing to read 'Charles A. King', written over a horizontal line.

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RAYMOND E. CROSS, an individual,)	
)	
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COMPLAINT

The City of Chicago ("City"), by its attorney, Mara S. Georges, Corporation Counsel, for its Complaint against the above-named respondents (collectively, "Respondents") states as follows:

STATUTORY BASIS FOR ACTION

1. This action is brought before the Board pursuant to Sections 22.2(i) and 31(d) of the Environmental Protection Act ("Act"), 415 ILCS 5/22.2(i) and 31(d).

PARTIES

2. The City is an Illinois municipal corporation located in Cook County, Illinois.
3. Purex Industries, Inc. ("Purex") is a Delaware corporation with its principal place of business located at 535 E. Alondra Boulevard, Gardena, California 90248.
4. Federal Chicago Corp. ("Federal Chicago") is an Illinois corporation with its principal place of business located at 925 Martin Luther King Jr. Drive, North Chicago, Illinois

60064.

5. Federal Die Casting, Inc. ("Federal Die") is an Illinois corporation with its principal place of business located at 925 Martin Luther King Jr. Drive, North Chicago, Illinois 60064. Federal Die is a wholly-owned subsidiary of Federal Chicago.

6. Raymond E. Cross ("Cross") is a natural person, and a citizen and resident of the State of Illinois. Cross resides at 910 N. Green Bay Road, Lake Forest, Illinois 60045.

THE SITE

7. This case involves the parcel of property located at 2228 N. Elston Avenue in Chicago, Illinois ("Site"), legally described as follows:

LOTS 1 TO 4, INCLUSIVE, IN BLOCK 4 IN FULLERTON'S ADDITION TO CHICAGO BEING A SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF THE NORTH BEND OF THE CHICAGO RIVER AND THAT PART OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

OWNERSHIP OF AND OPERATIONS AT THE SITE

Purex

8. On information and belief, a firm known as T. F. Washburn ("Washburn") acquired lots 2, 3 and 4 of the Site in 1913, and lot 1 of the Site in 1935.

9. Purex is the successor through a series of corporate mergers to Washburn and other entities that conducted varnish operations at the Site during the period from 1913 through 1978, including operations involving underground storage tanks ("USTs") located under Lots 1 through 4.

10. On information and belief, Washburn installed and operated 17 USTs at the Site including, but not limited to, the following: a 2,000 gallon naphtha UST (Oct. 5, 1948); a 5,000 gallon fuel oil UST (Feb. 15, 1949); a 10,000 gallon naphtha UST (June 16, 1953); and three 5,000 gallon solvent USTs (May 16, 1960).

11. On information and belief, in connection with its varnish operations, Washburn and/or Purex stored, disposed of or abandoned oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products in each of the 17 USTs at the Site.

Federal Chicago and Federal Die

12. On information and belief, prior to 1978, Federal Chicago or Federal Die conducted die casting operations at a facility adjacent to the Site.

13. On information and belief, on or about December 14, 1978, Federal Chicago acquired the Site, and Federal Chicago or Federal Die extended its die casting operations onto the Site.

14. On information and belief, in connection with their die casting operations, Federal Chicago or Federal Die stored, disposed of, or abandoned oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products in each of the 17 USTs at the Site.

Cross

15. On information and belief, during the period 1978 through January 2000, Cross was a shareholder, officer and director of both Federal Die and Federal Chicago.

16. On information and belief, from October 19, 1983, until January 1, 2000, Cross

was the beneficial owner of the Site.

17. On information and belief, during the period 1983 through January 2000, Cross, or land trustees for Cross' benefit, leased the Site to Federal Die for use in conducting its die casting operations.

18. On information and belief, during the period 1978 through January 2000, Cross beneficially owned, operated, possessed, controlled or had authority over the Site, and the die casting and UST operations conducted there, including Federal Die's or Federal Chicago's storage, disposal or abandonment of oils, solvents, varnish-related products and by-products, PCB-containing materials, petroleum related products and by-products, waste tires, bricks and other discarded materials.

POLLUTION

19. On information and belief, between 1970 and 2000, during the Respondents' ownership of the Site, the USTs under the Site leaked oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products into the soil under and around the Site.

20. Under Section 3.535 of the Act, 415 ILCS 5/3.535, "waste" includes "any . . . discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial . . . operations[.]"

21. Under the foregoing definition, the material leaked from the USTs on the Site is waste.

22. On information and belief, some of the materials that leaked from the USTs on the Site were hazardous substances.

COUNT I: COST RECOVERY UNDER SECTION 22.2(f) OF THE ACT

23. Paragraphs 1 through 22, inclusive, are hereby realleged and incorporated by reference as paragraph 23 of Count I.

24. Under Section 3.33 of the Act, 415 ILCS 5/3.33, “‘Release’ means any spilling [or] leaking . . . into the environment[.]”

25. On information and belief, at some point prior to 2000, releases of hazardous substances occurred at the Site.

26. On information and belief, each of the Respondents owned or operated the Site when the releases of hazardous substances occurred, and/or owned or operated the Site at the time of disposal of hazardous substances, of which there was a subsequent release.

27. Section 22.2(f) of the Act, 415 ILCS 5/22.2(f), provides in relevant part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (j) of this Section, the following persons shall be liable for all costs of removal or remedial action incurred by . . . any unit of local government as a result of a release . . . of a hazardous substance . . . :

- (1) the owner and operator of a facility . . . from which there is a release . . . of a hazardous substance . . . ;
- (2) any person who at the time of disposal . . . of a hazardous substance . . . owned or operated the facility . . . used for such disposal . . . from which there was a release . . . of any such hazardous substance[.]

* * *

In accordance with the other provisions of this Section, costs of removal or remedial action incurred by a unit of local government may be recovered in an action before the Board brought by the unit of local government under subsection (i) of this Section. Any monies so recovered shall be paid to the unit of local government.

28. The City, a municipality, is a unit of local government.

29. Under Section 22(f), the Respondents are liable for all costs of removal or remedial action incurred by the City.

30. As of the date of filing of this Complaint, the City has incurred costs of over \$200,000 through remedial action in connection with the releases of hazardous substances at the Site, and will incur additional costs in the future.

WHEREFORE, the City requests that the Board adopt an order:

A. Finding that each of the Respondents is liable for the City's costs incurred in undertaking remedial action at the Site;

B. Ordering the Respondents jointly and severally to pay to the City the amount of response costs incurred by the City through the close of evidence in this case;

C. Ordering the Respondents to reimburse the City for future costs incurred in undertaking remedial action at the Site; and

D. Granting such other and further relief as is appropriate.

COUNT II: VIOLATION OF SECTION 21(a) OF THE ACT

31. Paragraphs 1 through 22, inclusive, are hereby realleged and incorporated by reference as paragraph 31 of Count II.

32. Section 21(a) of the Act (415 ILCS 5/21(a)) provides that "No person shall . . . [c]ause or allow the open dumping of any waste."

33. Under Section 3.305 of the Act (415 ILCS 5/3.305), "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."

34. Under Section 3.385 of the Act, 415 ILCS 5/3.385, "refuse" means "waste".

35. Under Section 3.185 of the Act, 415 ILCS 5/3.185, "disposal" includes "the discharge [or] leaking of any waste or hazardous waste into or on any land . . . 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."

36. Based on the foregoing statutory provisions, the Site is a disposal site.

37. The Site does not meet the requirements of a sanitary landfill.

38. Based on the foregoing statutory provisions, open dumping occurred at the Site.

39. Respondents caused or allowed the open dumping that occurred at the Site, in violation of Section 21(a) of the Act.

40. As a result of Respondents' violation, soil at and around the Site has been contaminated.

41. As of the date of filing of this complaint, the City has spent over \$200,000 remediating contamination at and around the site, and will incur additional costs in the future.

42. Under these circumstances, an appropriate response to a finding of violation by the Respondents would be an order directing the Respondents to reimburse the City for funds expended, past and future, to remediate contamination at and around the Site.

WHEREFORE, the City requests that the Board adopt an order:

A. Finding that each of the Respondents is liable for violation of Section 21(a) of the Act;

B. Directing the Respondents jointly and severally to reimburse the City for funds expended remediating contamination resulting from leaking USTs at the Site;

C. Holding that Respondents are responsible for all future costs of remediation of contamination at and around the Site from leaking USTs; and

D. Granting such other and further relief as is appropriate.

COUNT III: VIOLATION OF SECTION 21(b) OF THE ACT

43. Paragraphs 1 through 22, inclusive, are hereby realleged and incorporated by reference as paragraph 43 of Count III.

44. Section 21(b) of the Act, 415 ILCS 5/21(b), provides that no person shall:

Abandon, dump, or deposit any waste upon the public highways or other public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.

45. During the time Respondents owned or controlled the Site, waste disposed of on the Site migrated onto public property adjacent to the Site.

46. The public property adjacent to the Site, onto which the waste migrated, is not an approved sanitary landfill.

47. Respondents abandoned waste upon public property, in violation of Section 21(b) of the Act.

48. As a result of Respondents' violation, soil on public property adjacent to the Site has been contaminated.

49. As of the date of filing of this complaint, the City has spent over \$200,000 remediating contamination at and around the Site, including on public property adjacent to the Site, and will incur additional costs in the future.

50. Under these circumstances, an appropriate response to a finding of violation by the Respondents would be an order directing the Respondents to reimburse the City for funds

expended, past and future, to remediate contamination at and around the Site.

WHEREFORE, the City requests that the Board adopt an order:

- A. Finding that each of the Respondents is liable for violation of Section 21(b) of the Act;
- B. Directing the Respondents jointly and severally to reimburse the City for funds expended remediating contamination resulting from leaking USTs at the Site;
- C. Holding that Respondents are responsible for all future costs of remediation of contamination at and around the Site from leaking USTs; and
- D. Granting such other and further relief as is appropriate.

COUNT IV: VIOLATION OF SECTION 21(e) OF THE ACT

51. Paragraphs 1 through 22, inclusive, are hereby realleged and incorporated by reference as paragraph 51 of Count IV.

52. Section 21(e) of the Act, 415 ILCS 5/21(e), provides that no person shall “[d]ispose . . . or abandon any waste . . . except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.”

53. The Site does not meet the requirements of the Act or regulations adopted thereunder for disposal of waste.

54. By disposing of and/or abandoning waste at the Site, the Respondents have violated Section 21(e).

55. As a result of Respondents’ violation, soil at and around the Site has been contaminated.

56. As of the date of filing of this complaint, the City has spent over \$200,000

remediating contamination at and around the site, and will incur additional costs in the future.

57. Under these circumstances, an appropriate response to a finding of violation by the Respondents would be an order directing the Respondents to reimburse the City for funds expended, past and future, to remediate contamination at and around the Site.

WHEREFORE, the City requests that the Board adopt an order:

- A. Finding that each of the Respondents is liable for violation of Section 21(e) of the Act;
- B. Directing the Respondents jointly and severally to reimburse the City for funds expended remediating contamination resulting from leaking USTs at the Site;
- C. Holding that Respondents are responsible for all future costs of remediation of contamination at and around the Site from leaking USTs; and
- D. Granting such other and further relief as is appropriate.

COUNT V: VIOLATION OF SECTION 21(f) OF THE ACT

58. Paragraphs 1 through 22, inclusive, are hereby realleged and incorporated by reference as paragraph 58 of Count V.

59. Section 21(f) of the Act provides in relevant part that no person shall:

- (f) Conduct any . . . hazardous waste-disposal operation:
 - (1) without a RCRA permit for the site issued by the [Illinois Environmental Protection] Agency under subsection (d) of Section 39 of this Act . . . ; or
 - (2) in violation of any regulations or standards adopted by the Board under this Act[.]

60. On information and belief, Respondents disposed of hazardous waste at the site.

61. By disposing of hazardous waste at the Site, the Respondents conducted a

hazardous-waste disposal operation at the Site.

62. Respondents never had a RCRA permit for the Site issued by the Illinois Environmental Protection Agency.

63. By conducting a hazardous waste-disposal operation without a RCRA permit, Respondents violated Section 21(f) of the Act.

64. As a result of Respondents' unpermitted disposal of hazardous waste at the Site, soil at and around the Site has been contaminated.

65. As of the date of filing of this complaint, the City has spent over \$200,000 remediating contamination at and around the site, and will incur additional costs in the future.

66. Under these circumstances, an appropriate response to a finding of violation by the Respondents would be an order directing the Respondents to reimburse the City for funds expended, past and future, to remediate contamination at and around the Site.

WHEREFORE, the City requests that the Board adopt an order:

A. Finding that each of the Respondents is liable for violation of Section 21(f) of the Act;

B. Directing the Respondents jointly and severally to reimburse the City for funds expended remediating contamination resulting from leaking USTs at the Site;

C. Holding that Respondents are responsible for all future costs of remediation of contamination at and around the Site from leaking USTs; and

D. Granting such other and further relief as is appropriate.

COUNT VI: SECTION 21(m) OF THE ACT

67. Paragraphs 1 through 22, inclusive, are hereby realleged and incorporated by reference as paragraph 67 of Count VI.

68. Section 21(m) of the Act provides in relevant part that no person shall “[t]ransfer interest in any land which has been used as a hazardous waste disposal site without written notification to the [Illinois Environmental Protection] Agency of the transfer and to the transferee of the conditions imposed by the Agency upon its use under [415 ILCS 5/39(g)].”

69. On information and belief, the Site was used as a hazardous waste disposal site while owned by Purex’s predecessors.

70. On information and belief, Purex’s predecessors transferred interests in the Site without written notification to the Illinois Environmental Protection Agency.

71. On information and belief, the Site was used as a hazardous waste disposal site while owned by Federal Chicago.

72. On information and belief, Federal Chicago transferred its interest in the Site without written notification to the Illinois Environmental Protection Agency.

73. On information and belief, the Site was used as a hazardous waste disposal site while beneficially owned by Cross.

74. On information and belief, Cross caused an interest in the Site to be transferred without written notification to the Illinois Environmental Protection Agency.

WHEREFORE, the City requests that the Board adopt an order:

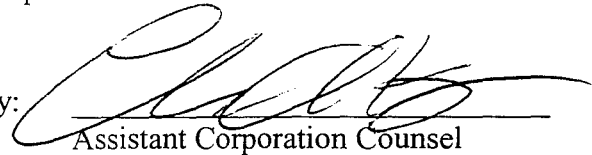
- A. Finding that Purex, Federal Chicago, and Cross are liable for violations of Section 21(m) of the Act;
- B. Imposing an appropriate penalty or other appropriate remedy; and
- C. Granting such other relief as is appropriate.

Respectfully submitted,

THE CITY OF CHICAGO

Mara S. Georges
Corporation Counsel

By:



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