

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
RIVERDALE RECYCLING, INC., an )  
Illinois corporation, and TRI-STATE )  
DISPOSAL, INC., an Illinois corporation, )  
)  
Respondents. )

No. PCB 03-73

**RECEIVED**  
CLERK'S OFFICE  
OCT 17 2003  
STATE OF ILLINOIS  
Pollution Control Board

**NOTICE OF FILING**

TO: Ms. Dorothy Gunn, Clerk, Pollution Control Board, 100 W. Randolph, Suite 11-500, Chicago, IL 60601

Ms. Paula Becker Wheeler, Assistant Attorney General, Environmental Bureau, 188 W. Randolph, Suite 2001, Chicago, Illinois 60601

Mr. Christopher Grant, Assistant Attorney General, Environmental Bureau, 188 W. Randolph, Suite 2001, Chicago, Illinois 60601

Mr. Brad Halloran, Hearing Officer, Pollution Control Board, 100 W. Randolph, Suite 11-500, Chicago, IL 60601

PLEASE TAKE NOTICE that on OCTOBER 17, 2003 the undersigned filed an original and nine copies of RESPONDENTS' SUPPLEMENTAL ANSWER AND AFFIRMATIVE DEFENSES with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, a copy of which is attached and hereby served upon you.

  
One of the Attorneys for Respondents

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**THIS FILING IS SUBMITTED ON RECYCLED PAPER**



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PEOPLE OF THE STATE OF ILLINOIS, )  
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 RIVERDALE RECYCLING, INC., )  
 an Illinois corporation, and )  
 TRI-STATE DISPOSAL, INC., )  
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 Respondents. )

No. PCB 03-73  
(Enforcement)

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STATE OF ILLINOIS  
*Pollution Control Board*

**RESPONDENTS' RIVERDALE RECYCLING, INC. AND TRI-STATE DISPOSAL, INC.'S SUPPLEMENTAL ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

Respondents, Riverdale Recycling, Inc. and Tri-State Disposal, Inc. by their attorney, LaRose & Bosco, Ltd. hereby answers Complainant's complaint and state as follows:

**COUNT I  
OPEN DUMPING OF WASTE**

1. This complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at his 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 (2002).

**ANSWER:** Respondents Riverdale Recycling, Inc. and Tri-State Disposal, Inc. are without knowledge as to this complaint being brought by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency. Further answering, Respondents deny any liability under Section 31 of the Act.

**ANSWER:** Respondents make no answer to paragraph 9 as it states a legal conclusion.

To the extent that this paragraph requires an answer, Respondents deny any liability under Section 21 of the Act.

10. Section 3.26 of the Act, 415 ILCS 5/3.26 (2002), provides the following definition:

“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:** Respondents make no answer to paragraph 10 as it states a legal conclusion.

To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.26 of the Act.

11. The Respondents, Illinois corporations, are both “persons” as the term is defined in the Act.

**ANSWER:** Respondents make no answer to paragraph 11 as it states a legal conclusion.

To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.26 of the Act.

12. Section 3.53 of the Act, 415 ILCS 5/3.53 (2002), 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:** Respondents make no answer to paragraph 12 as it states a legal conclusion.

To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.53 of the Act.

13. Sections 3.31 of the Act, 415 ILCS 5/3.31 (2002), provides, as follows:

“REFUSE” means waste.

**ANSWER:** Respondents make no answer to paragraph 13 as it states a legal conclusion.

To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.31 of the Act.

14. The construction and demolition debris, and the landscape waste, dumped outside of the Permitted Area is “waste” as that term is defined by Section 3.53 of the Act and therefore “refuse” as defined by Section 3.31 of the Act, 415 ILCS 5/3.53 and 5/3.31 (2002).

**ANSWER:** Respondents make no answer to paragraph 14 as it states a legal conclusion.

To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.31 of the Act.

15. Section 3.08 of the Act, 415 ILCS 5/3.08 (2002), 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 constitute thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

**ANSWER:** Respondents make no answer to paragraph 15 as it states a legal conclusion.

To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.08 of the Act.

16. Section 3.43 of the Act, 415 ILCS 5/3.43 (2002), provides, as follows:

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

**ANSWER:** Respondents make no answer to paragraph 16 as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.43 of the Act.

17. Respondents deposited waste outside of the Permitted Area in a manner that exposed it to the air and to the environment. The properties of the East and Northeast of the transfer station where construction and demolition debris, and landscape waste, were deposited, are therefore “disposal site[s]” as those terms are defined in the Act.

**ANSWER:** Respondents deny the allegations contained in paragraph 17.

18. Section 3.24 of the Act, 415 ILCS 5/3.24 (2002) provides, as follows:

“OPEN DUMPING” means the consolidation of refuse from one or more sources at the disposal site that does not fulfill the requirements of a sanitary landfill.

**ANSWER:** Respondents make no answer to paragraph 18 as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.24 of the Act.

19. Section 3.41 of the Act, 415 ILCS 5/3.41 (2002), 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:** Respondents make no answer to paragraph 19 as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.41 of the Act.

20. The railroad property to the Northeast of the transfer station, and the area to the East of the transfer station where landscape waste was accumulated, were not permitted by the EPA for the

disposal of waste, and thus did not fulfill the requirements of a "sanitary landfill" as defined in the Act.

**ANSWER:** Respondents deny the allegations contained in paragraph 20.

21. By consolidating waste from one or more sources at disposal site that did not fulfill the requirements of a sanitary landfill, Respondents, on or about December 2, 1999, caused and allowed the open dumping of waste, and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2002).

**ANSWER:** Respondents deny the allegations contained in paragraph 21.

WHEREFORE, Respondents respectfully request that the Board enter an order denying the relief requested by Complainant in Count I.

**COUNT II**  
**CONDUCTING A WASTE STORAGE OPERATION WITHOUT A PERMIT**

1-10. Complainant realleges and incorporates by reference paragraphs 1 through 7, and paragraphs 10 through 12, of Count I as paragraphs 1 through 10 of this Count II.

**ANSWER:** Respondents reallege and incorporate by reference its answers to paragraphs 1 through 7, and paragraphs 10 through 12 of Count I as its paragraphs 1 through 10 of this Count II.

11. On March 12, 2001 Illinois EPA inspectors visited the Site, and noted that two large accumulations of construction and demolition debris had been placed outside of, and to the southeast of, the Permitted Area. On information and belief, the Respondents placed the waste accumulations at this location for the purpose of separating saleable metal debris, consisting of less than seventy five per cent (75%) of the accumulated waste, prior to disposing of the residual waste in a permitted landfill.

**ANSWER:** Respondents admit that on March 12, 2001, an inspection was conducted.

Respondents deny the remaining allegations contained in paragraph 11 of Count II.

12. Section 21 of the Act, 415 ILCS 5/21 (2002) 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 or in violation of any conditions imposed by such permit . . . .

**ANSWER:** Respondents make no answer to paragraph 12 of Count II as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 21 of the Act.

13. The construction and demolition debris deposited by Respondents outside of the Permitted Area on or about March 21, 2001, is “waste” as that term is defined by Section 3.53 of the Act, 415 ILCS 5/3.53 (2002).

**ANSWER:** Respondents make no answer to paragraph 13 of Count II as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.53 of the Act.

14. Section 3.46 of the Act, 415 ILCS 5/3.46 (2002), provides, as follows:

“Storage” means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.

**ANSWER:** Respondents make no answer to paragraph 14 of Count II as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.46 of the Act.



15. The Respondents, on or about March 12, 2001, placed the two waste accumulations outside of the Permitted Area for the purpose of removing saleable recyclable material, prior to the waste's ultimate disposal in a landfill. Respondents' activities constituted waste "storage" as that term is defined by Section 3.46 of the Act, 415 ILCS 5/3.46 (2002).

**ANSWER:** Respondents deny that on or about March 12, 2001 they placed the two waste accumulations outside of the permitted area for the purpose of removing saleable recyclable material prior to the waste's ultimate disposal in a landfill. Respondents make no answer to that portion of paragraph 15 as to their alleged activities constituting waste "storage" as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 3.46 of the Act.

16. Respondents, on or about March 12, 2001, conducted a waste storage operation outside of the Permitted Area, and therefore in violation of their permit. The Respondents thereby violated Section 21(d) of the Act, 415 ILCS 5/21(d) (2002).

**ANSWER:** Respondents deny that on or about March 12, 2001 they conducted a waste storage operation outside of the Permitted Area, and therefore in violation of their permit. Respondents make no answer to that portion of paragraph 16 as to their alleged activities thereby violating Section 21 of the Act as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondents deny any liability under Section 21 of the Act.

### **First Affirmative Defense**

The waste observed on December 2, 1999 and March 12, 2001 outside of the permitted area was general construction and demolition debris (415 ILCS 5/3.78) which is authorized for storage

without a permit pursuant to Section 22.38 of the Act (415 ILCS 5/22.38). Additionally, the debris is sorted within 48 hours of receipt; all non-recyclable general construction and demolition debris is transported off site in accordance with all applicable federal, State and local requirements within 72 hours of its receipt; the percentage of incoming non-recyclable general construction and demolition debris is less than 25% of the total incoming material, as calculated on a daily basis; all non-putrescible recyclable general construction or demolition debris is transported for recycling or disposal within 6 months of its receipt; the facility does not accept putrescible or combustible material; the facility keeps adequate record keeping procedures that demonstrate compliance with Section 22.38 of the Act and identify the source and transporter of material accepted at the facility; the facility controls odor, noise, combustion of materials, disease vectors, dust and litter; the facility is fenced, and it does not accept asbestos.

Respondents are therefore in compliance with the Act pursuant to Section 22.38 of the Act (415 ILCS 5/22.38).

### **Second Affirmative Defense**

At a pre-enforcement conference held on September 15, 1999 in Maywood, Illinois, Respondents were advised by Cliff Gould and James Haennicke of the IEPA that it was acceptable for Respondents to store general construction and demolition debris in any unpermitted area of the Site pursuant to Section 22.38 of the Act as long as proper notice was given to the IEPA and proper procedures were followed. Additionally, the facility shows information to Agency personnel when requested regarding the acceptance of general construction or demolition debris. When requested, it provides the Agency with the name, address and telephone number of the facility, the street address and location of the facility, the date, ticket number, truck number (if applicable), the name of the

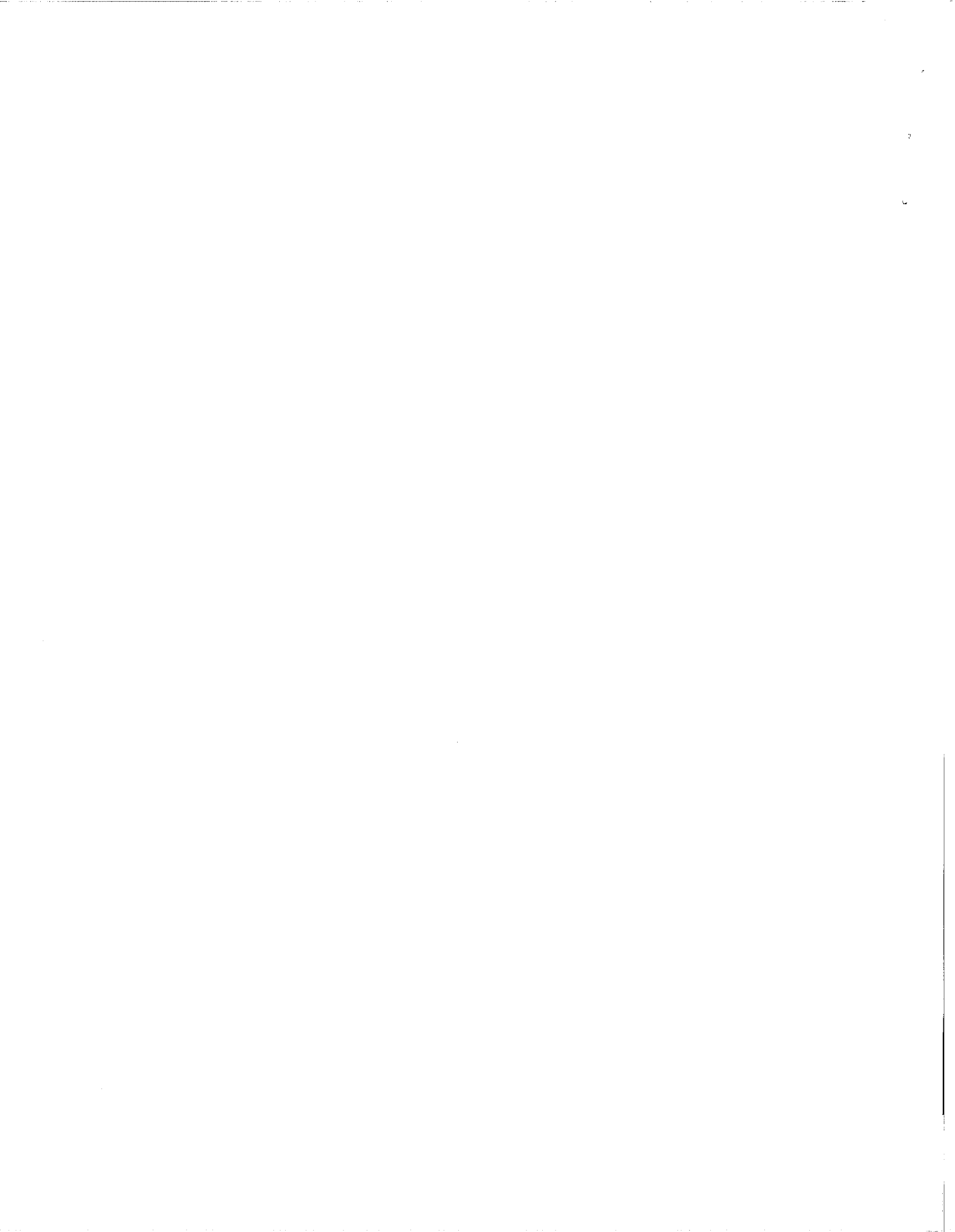
hauler, and the quantity of debris. These procedures were approved by Agency personnel Cliff Gould and James Haennicke. Therefore, the activities undertaken by the Respondents were both in compliance with Section 22.38 of the Act and undertaken in a manner specifically suggested and approved by personnel in the Agency's enforcement division.

WHEREFORE, Respondents respectfully request that the Board enter an order denying the relief requested by Complainant in Count II.

Respectfully submitted,

By:   
One of Plaintiff's Attorneys

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Clarissa C. Grayson  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a copy of the foregoing REpondents' SUPPLEMENTAL ANSWER AND AFFIRMATIVE DEFENSES was served upon the following persons by placing same in U.S. Mail, postage prepaid, this 17th Day of October, 2003.

Ms. Paula Becker Wheeler  
Assistant Attorney General  
Environmental Bureau  
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