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FEB 25 2004

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

v. )

THOMAS GRAY, STEVE WHYTE )

GLADYS WHITE, LEONA CHILDRESS, )

And WILLIAM MCCOY, )

Respondents. )

PCB 04-106

(Enforcement – Cost Recovery)

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that on February 25, 2004, I filed with the Clerk of the Illinois Pollution Control Board, Respondent LEONA CHILDRESS' Appearance, Answer and Affirmative Defense, copies of which are attached and served upon you.

Respectfully submitted,

RESPONDENT LEONA CHILDRESS

BY: Keith Harley  
Keith Harley, Attorney for LEONA CHILDRESS

Keith Harley  
Chicago Legal Clinic, Inc.  
205 W. Monroe, 4<sup>th</sup> Floor  
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## SERVICE LIST

Gerald T. Karr, Assistant Attorney General  
Office of the Attorney General  
Environmental Bureau  
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Chicago, IL 60601

Steve Whyte  
242 W. 150<sup>th</sup> Street  
Harvey, IL 60426-2058

Gladys Whyte  
242 W. 150<sup>th</sup> Street  
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Thomas Gray  
13163 E. 2500 South Road  
Mokena, IL 60454

Carol Sudman, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

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APPEARANCE

I, KEITH HARLEY, an attorney, hereby enter the Appearance of LEONA CHILDRESS,  
and my Appearance as Counsel for LEONA CHILDRESS, in the above matter.

  
\_\_\_\_\_  
Attorney's Signature

Date: February 25, 2005

Keith Harley  
Chicago Legal Clinic, Inc.  
205 W. Monroe, 4<sup>th</sup> Floor  
Chicago, IL 60606  
(312) 726-2938  
(312) 726-5206 (fax)

# CERTIFICATE OF SERVICE

I, KEITH HARLEY, an attorney, hereby certify that true copies of the foregoing Appearance were mailed by First Class Mail, by depositing the same in the U.S. Mail depository located at 220 West Monroe, Chicago, Illinois in an envelope with sufficient postage prepaid, on February 25, 2004, to the following:


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ANSWER and AFFIRMATIVE DEFENSE

Now comes LEONA CHILDRESS by and through her attorney, KEITH HARLEY, and for her Answer and Affirmative Defense to the Complaint in the above-captioned case, states as follows:

I. ANSWER

1. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
2. The Respondent admits the allegations contained in Paragraph 2.
3. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
4. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
5. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
6. The Respondent admits the allegations contained in Paragraph 6.
7. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
8. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
9. The Respondent admits the allegations contained in Paragraph 9.

10. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
11. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
12. The Respondent admits the allegations contained in Paragraph 12.
13. The Respondent admits the allegations contained in Paragraph 13.
14. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
15. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
16. The Respondent admits the allegations contained in Paragraph 16.
17. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
18. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
19. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
20. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
21. The Respondent admits the allegations contained in Paragraph 21.
22. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
23. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
24. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
25. The Respondent denies the allegations contained in Paragraph 25.
26. The Respondent denies the allegations contained in Paragraph 26.

27. The Respondent denies responsibility for reimbursing the State. As to the other allegations in Paragraph 27, the Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.

28. The Respondent admits the allegations contained in Paragraph 28.

29. The Respondent admits the allegations contained in Paragraph 29.

30. The Respondent admits the allegations contained in Paragraph 30.

31. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.

32. The Respondent denies the allegations contained in Paragraph 32.

## II. AFFIRMATIVE DEFENSE

1. 415 ILCS 5/55.3(i) states in pertinent part:

There shall be no liability under subsection (g) of this Section for a person otherwise liable who can establish by a preponderance of the evidence that the hazard created by the tires was caused solely by... (3) an act or omission of a third party other than an employee or agent, and other than a person whose act or omission occurs in connection with a contractual relationship with the person otherwise liable.

2. The Respondent and her now deceased husband purchased parcel 10-19-16-101-035 (hereinafter "Respondent's parcel") in Momence, Kankakee County, Illinois on or about 1979.

3. The Respondent never resided on this parcel, which is located a several minute drive from her home, but instead used it for several years for gardening.

4. At the time of purchase, there were no tires on the Respondent's parcel.

5. The Respondent's parcel is adjacent to a parcel owned by Respondent Thomas Gray (hereinafter the "Gray parcel").

6. Thomas Gray was never an employee or agent of Respondent Childress.

7. During all times relevant to this Complaint, Respondent Childress had no contractual relationship with Thomas Gray.

8. At no time did Respondent Childress authorize any person to have access or use of her parcel for any activities related to tire storage and/or disposal, nor did she employ or contract with any person for tire storage and/or disposal on her property.

9. Respondent Childress never engaged in any tire storage or disposal activities on her parcel or on any other property.
10. Respondent Childress believed all tire storage and/or disposal activities were confined to the adjacent Gray parcel.
11. At no time did Respondent Childress, who is now 77 years old and visited her parcel less-and-less frequently as she grew older, observe any storage and/or disposal of tires on her parcel.
12. Any tires that came to be stored and/or disposed of on Respondent Childress' property were placed there without her knowledge and consent.
13. That any hazard created by the tires on the Respondent's parcel was caused solely by an act or omission of a third party other than an employee or agent of Respondent Childress, and other than a person whose act or omission occurred in connection with a contractual relationship with Respondent Childress.
14. Following the death of her husband, Respondent Childress transferred an interest in the property to her son, Respondent William McCoy, as part of planning her estate. Respondent McCoy had no other connection to the Respondent's parcel.
15. Respondent Childress consistently communicated to the IL EPA that she had this defense, and that it created sufficient cause for her not to take preventive or corrective action. Respondent Childress further communicated to IL EPA that requiring her to remove tires was impractical because of her age, physical frailty and very limited financial means.
16. The Respondent sold her parcel on or about December 9, 2002 for a purchase price virtually identical to the price she paid for the property in 1979.
17. The Respondent, whose income is approximately \$700.00 per month, has never derived any benefit from the disposal or removal of tires made necessary by the activities of Thomas Gray.

WHEREFORE, the Respondent LEONA CHILDRESS, respectfully requests the Board to enter an order that:

1. she is not the owner and/or operator of waste and used tires;
2. she is not liable to reimburse the State for costs it incurred in funding the cleanup of the site;
3. in light of her defense, she had sufficient cause not to take corrective or preventive action;



4. she is not liable for punitive damages;
5. she is not liable for any costs relating to this proceeding;
6. she is entitled to such other relief as the Board deems equitable and just.

RESPONDENT LEONA CHILDRESS

BY: Keith Harley  
Keith Harley, Attorney for Leona Childress

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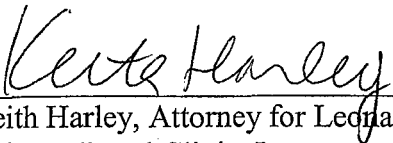
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