

BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 25 2005

STATE OF ILLINOIS  
Pollution Control Board

GRAND PIER CENTER LLC )  
AMERICAN INTERNATIONAL )  
SPECIALTY LINES INSURANCE CO. )  
as subrogee of Grand Pier Center LLC )

Complainants )

v. )

PCB 05151  
(Enforcement)

RIVER EAST LLC )  
CHICAGO DOCK AND CANAL TRUST )  
CHICAGO DOCK AND CANAL COMPANY )  
KERR-MCGEE CHEMICAL LLC )

Respondents )

NOTICE OF FILING

To: Donald J. Moran  
PEDERSEN & HOUP  
161 North Clark Street, Suite 3100  
Chicago, IL 60601-3242

John T. Smith II  
COVINGTON & BURLING  
1201 Pennsylvania Avenue. N.W.  
Washington, D.C. 20004-2401

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board (Board) the COMPLAINT of Grand Pier Center LLC and American International Specialty Lines Insurance Co., as subrogee of Grand Pier Center LLC, a copy of which is herewith served upon you along with this notice. You may be required to attend a hearing on a date set by the Board.

  
Garrett L. Boehm, Jr.

Dated: February 25, 2005

Frederick S. Mueller  
Daniel C. Murray  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
55 East Monroe Street, Suite 4100  
Chicago, Illinois 60603-5803  
Tel. (312) 372-0770

Attorneys for Grand Pier Center LLC and  
American International Specialty Lines Insurance Co.,  
As subrogee of Grand Pier Center LLC

**RECEIVED**  
CLERK'S OFFICE

**FEB 25 2005**

**STATE OF ILLINOIS**  
**Pollution Control Board**

**BEFORE THE ILLINOIS**  
**POLLUTION CONTROL BOARD**

*GRAND PIER CENTER LLC* )  
*AMERICAN INTERNATIONAL* )  
*SPECIALTY LINES INSURANCE CO.* )  
*as subrogee of Grand Pier Center LLC* )

*Complainants* )

*v.* )

*PCB 05-157*  
*(Enforcement)*

*RIVER EAST LLC* )  
*CHICAGO DOCK AND CANAL TRUST* )  
*CHICAGO DOCK AND CANAL COMPANY* )  
*KERR-MCGEE CHEMICAL LLC* )

*Respondents* )

**COMPLAINT**

Complainants Grand Pier Center LLC and American International Specialty Lines Insurance Co., as subrogee of Grand Pier Center LLC, by their attorneys JOHNSON & BELL, LTD., for their Complaint against the Respondents River East LLC; Chicago Dock and Canal Trust; Chicago Dock and Canal Company, and Kerr-McGee Chemical LLC, aver as follows:

1. This is a citizen suit brought to enforce Sections 12(a), 12(d) and 21(e) of the Illinois Environmental Protection Act (the Act) (415 ILCS 5/1 et seq.), as amended, directing Respondents to abate and remediate certain environmental contamination, and for cost recovery with respect to any costs incurred by Grand Pier Center LLC (Grand Pier) and American International Specialty Lines Insurance Co. (AISLIC), or to be incurred by Grand Pier and AISLIC, in performing response activities at the site identified by the United States Environmental Protection Agency (USEPA) as the RV3 North Columbus Drive Site (the RV3 Site) in Chicago, Illinois.

2. For each of Complainants' claims, the Illinois Pollution Control Board has jurisdiction and authority to declare and enter judgment of the rights and responsibilities of the parties to this citizen suit pursuant to 35 IAC 103.200 and Sections 5(d), 31(d) and 33(a) of the Act.

3. Complainant Grand Pier Center LLC (Grand Pier) is an Illinois limited liability company, with its principal office in Chicago, Illinois. Grand Pier was issued a policy of insurance by American International Specialty Lines Insurance Co.

4. Complainant American International Specialty Lines Insurance Co. (AISLIC) is a corporation, with its principal office in New York, New York. AISLIC is subrogated to certain claims that Grand Pier has against Respondents for damages Respondents caused to Grand Pier.

5. Respondent River East LLC, formerly known as CityFront Center LLC, is a Delaware limited liability company authorized to do business in Illinois, with its principal office in Chicago, Illinois. River East LLC is sued as successor of and successor in interest to Respondents Chicago Dock and Canal Trust, and Chicago Dock and Canal Company.

6. Respondent Chicago Dock and Canal Trust, an Illinois business trust, is sued as the successor of and successor in interest to Chicago Dock and Canal Company. Chicago Dock and Canal Trust has also been known as CityFront Acquisition Trust, an Illinois business trust.

7. Respondent Chicago Dock and Canal Company was a corporation organized and existing under and by virtue of a special act of the legislature of the State of Illinois and authorized to do business in Illinois.

8. Respondent Kerr-McGee Chemical LLC, a Delaware limited liability company authorized to do business in Illinois, is an affiliate of Kerr-McGee Chemical Corporation, successor of and successor in interest to Lindsay Light and Chemical Company and Lindsay Light Company.

#### **The RV3 North Columbus Drive Site**

9. Through a series of administrative orders and amendments, the USEPA has identified land generally located at 316 East Illinois Street, Chicago, Cook County, Illinois as the Lindsay Light II Site. Lindsay Light II is situated in an urban area known as Streeterville, and is surrounded by commercial and residential buildings. The Chicago River is located approximately ¼ mile south, and Lake Michigan is about ½ mile east of the Lindsay Light II Site.

10. RV3 North Columbus Drive Site (the RV3 Site), the parcel of land pertinent to this citizen suit, is identified by the USEPA in an amendment to its administrative orders issued for the Lindsay Light II Site. The RV3 Site is generally located at 200 East Illinois Street in Chicago, Cook County, Illinois, and is bounded by North Columbus Drive, East Grand Avenue, North St. Clair Street, and East Illinois Street.

11. The RV3 North Columbus Drive Site is a "site" as that term is defined in Section 3.460 of the Act (415 ILCS 5/3.460).

#### **Contamination of the RV3 Site**

12. From at least 1915 to 1933, the Lindsay Light Company was headquartered at 161 East Grand Avenue, and manufactured incandescent gaslight mantles at 161 East Grand Avenue and / or at 316 East Illinois Street, at and adjacent to the Lindsay Light II and the RV3 Sites.

13. The principal ingredient in gaslight mantle manufacture is thorium. Thorium occurs principally as the parent radionuclide thorium-232 in association with its daughter products in a decay sequence known as the Thorium Decay Series. It is believed that the principal source of contamination at the RV3 Site is the Thorium Decay Series.

14. Between at least 1915 and 1933, Lindsay Light Company operated its incandescent gaslight mantle manufacturing business at the Lindsay Light II Site, and arranged for the disposal of hazardous substances at the Lindsay Light II Site, including the RV3 North Columbus Drive parcel, the parcel pertinent to this citizen suit.

15. Chicago Dock and Canal Company owned the RV3 North Columbus Drive parcel of the Lindsay Light II Site at the time hazardous substances were disposed at the RV3 Site by Lindsay Light Company.

#### **Remediation of the RV3 Site**

16. Through a series of administrative orders, the USEPA ordered Chicago Dock and Canal Trust and Kerr-McGee Chemical LLC to remove the hazardous substances contamination at the Lindsay Light II Site, and in an amendment, ordered River East LLC, Kerr-McGee Chemical LLC and Grand Pier Center LLC to remove the hazardous substances contamination at the RV3 North Columbus Drive Site.

17. The remediation work performed at the RV3 Site was conducted under the Unilateral Administrative Order Docket Number V-W-96-C-353 issued June 6, 1996 (UAO) and the First Amendment to that Order dated March 29, 2000. The work was conducted in accordance with the Work Plan for Site Radiation Survey and Excavation Soil Management dated March 20, 2000 and approved by the USEPA on March 23, 2000.

18. Thereafter, the USEPA required additional work, which was conducted in accordance with the Sidewalk Remediation Work Plan dated March 9, 2001 and approved by USEPA on April 11, 2001.

19. The First Amendment to the UAO required Grand Pier, River East LLC, and Kerr-McGee Chemical LLC to perform certain removal actions including, but not limited to, the implementation of a Site Health and Safety Plan, the implementation of an air monitoring program, the removal of contamination, and the disposal of hazardous substances.

20. Grand Pier Center LLC, as the then current owner of the RV3 Site, and AISLIC, as subrogee of Grand Pier, performed and completed work at the RV3 Site in accordance with the UAO, the UAO's First Amendment, and the Work Plans.

21. The removal activities under the Work Plan began on April 4, 2000, and Grand Pier Center LLC has been in compliance with the UAO since the UAO was issued to Grand Pier Center LLC for the RV3 Site.

22. A final Closure Report for the area bounded by North Columbus Drive, East Grand Avenue, North St. Clair Street, and East Illinois Street was prepared by the Project Coordinator, STS Consultants, Ltd., and submitted to the USEPA on July 2, 2001. Thereafter, the Final Closure Report Addendum dated August 31, 2004 was submitted to USEPA.

23. USEPA issued Letters of Completion on August 26, 2002 and on October 8, 2004 for the work performed according to the approved Work Plans.

24. Grand Pier and AISLIC incurred necessary response costs of approximately \$2,300,000 at the RV3 Site, and continue to incur additional costs of response.

25. Respondents are liable "persons" as that term is defined by Section 3.315 of the Act (415 ILCS 5/3.315) for all costs of response at the RV3 Site.

### **Count I – Waste Disposal**

26. Complainants incorporate by reference as if fully restated herein, paragraphs 1 through 25, above.

27. Respondent Kerr-McGee is a “generator” as that term is defined by Section 3.205 of the Act (415 ILCS 5/3.205).

28. Chicago Dock and Canal Company owned the parcel of land comprising the RV3 North Columbus Drive Site at the time that Lindsay Light Company disposed of “hazardous substances,” as that term is defined in Section 3.215 of the Act (415 ILCS 5/3.215), at the RV3 Site, including but not limited to thorium.

29. Releases of hazardous substances at the RV3 Site have resulted in radioactive thorium contamination requiring Grand Pier and AISLIC to incur necessary response costs to remove the contamination and remediate the RV3 Site, totaling approximately \$2,300,000 to date.

30. Grand Pier was an innocent purchaser of the RV3 Site. Grand Pier is a wholly innocent owner which had no involvement with the improper treatment, storage, disposal or discharge of thorium contamination at the RV3 Site.

31. The Act prohibits the disposal, treatment, storage or abandonment of any waste in Illinois, except at a site or facility which meets the requirements of the Act and of regulations and standards thereunder. 415 ILCS 5/21(e).

32. Respondents violated the Act when they improperly disposed, treated, stored and abandoned solid and hazardous wastes at the Site, a facility which does not meet the requirements of the Act and regulations and standards thereunder for such disposal, treatment, storage and abandonment of waste.

33. As a result of Respondents' violation of the Act, the Site was contaminated, resulting in Complainants' incurrence of costs in the investigation, removal, and reporting activities at the Site.

34. Respondents are liable under the Act for Complainants' costs incurred in the investigation, removal, and reporting to USEPA of contaminants Respondents failed to remove from the Site.

#### **Count II – Contaminant Threat to Groundwater**

35. Complainants incorporate by reference as if fully restated herein, paragraphs 1 through 34, above.

36. The Act prohibits any person from causing, threatening, or allowing the discharge of any contaminant so as to cause or tend to cause water pollution, either alone or in combination with matter from other sources. 415 ILCS 5/12(a).

37. Respondents violated the Act when they improperly handled, treated, stored and disposed of solid and hazardous wastes, thereby causing, threatening, and allowing the discharge of contaminants, so as to cause and tend to cause water pollution at the Site, either alone or in combination with matter from other sources.

38. As a result of Respondents' violation of the Act, the Site was contaminated, resulting in Complainants' incurrence of costs in the investigation, removal, and reporting activities at the Site.



39. Respondents are liable under the Act for Complainants' costs incurred in the investigation, removal, and reporting to USEPA of contaminants Respondents failed to remove from the Site.

### **Count III – Contaminants Upon Land**

40. Complainants incorporate by reference as if fully restated herein, paragraphs 1 through 39, above.

41. The Act prohibits any person from depositing any contaminants upon the land in such place and manner so as to create a water pollution hazard. 415 ILCS 5/12(d).

42. Respondents violated the Act when they improperly handled, treated, stored and disposed of solid and hazardous wastes, thereby depositing contaminants upon the land at the Site in such place and manner so as to create a water pollution hazard.

43. As a result of Respondents' violation of the Act, the Site was contaminated, resulting in Complainants' incurrence of costs in the investigation, removal, and reporting activities at the Site.

44. Respondents are liable under the Act for Complainants' costs incurred in the investigation, removal, and reporting to USEPA of contaminants Respondent failed to remove from the Site.

### **PRAYER FOR RELIEF**

WHEREFORE, Complainants demand judgment in their favor and against the Respondents, and each of them:

A. declaring each Respondent jointly and severally liable and awarding to Complainants all past costs of response incurred by Complainants, with interest as provided by law;

B. declaring each Respondent jointly and severally liable and awarding to Complainants all future costs of response, if any, to be incurred by Complainants, with interest as provided by law;

C. mandating and ordering Respondents to abate and remediate contamination should additional remediation be required by administrative order or judicial decree;

D. awarding to Complainants their costs of litigation, including reasonable attorney and expert witness fees; and

E. ordering such other relief as is appropriate and just.

Respectfully submitted this 25<sup>th</sup> day of February 2005

GRAND PIER CENTER LLC  
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE Co.

By   
One of Complainants' Attorneys

Frederick S. Mueller  
Daniel C. Murray  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
Suite 4100  
55 East Monroe Street  
Chicago, Illinois 60603-5803

Tel. (312) 372-0770

**CERTIFICATE OF SERVICE**

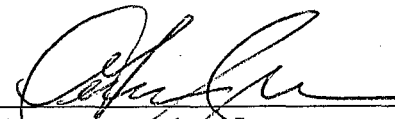
I, the undersigned, on oath, state that I have served on the date of February 25, 2005, the attached formal complaint and notice by Certified mail, upon the following persons:

Donald J. Moran  
PEDERSEN & HOUP  
161 North Clark Street, Suite 3100  
Chicago, Illinois 60601-3242

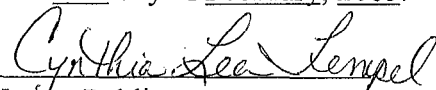
*Attorney for River East LLC and  
Chicago Dock and Canal Trust*

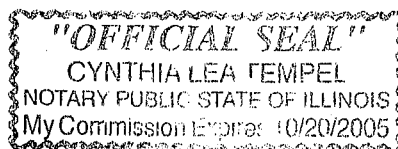
John T. Smith II  
COVINGTON & BURLING  
1201 Pennsylvania Avenue N.W.  
Washington, D.C. 20004-2401

*Attorney for Kerr-McGee Chemical LLC*

  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
55 East Monroe Street, Suite 4100  
Chicago, IL 60603  
(312) 372-0770

Subscribed to and sworn before me  
This 25<sup>th</sup> day of February, 2005.

  
Notary Public



My commission expires: Oct. 20, 2005

BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 25 2005

STATE OF ILLINOIS  
Pollution Control Board

GRAND PIER CENTER LLC )  
AMERICAN INTERNATIONAL )  
SPECIALTY LINES INSURANCE CO. )  
as subrogee of Grand Pier Center LLC )

Complainants )

v. )

PCB 05-157  
(Enforcement)

RIVER EAST LLC )  
CHICAGO DOCK AND CANAL TRUST )  
CHICAGO DOCK AND CANAL COMPANY )  
KERR-MCGEE CHEMICAL LLC )

Respondents )

NOTICE OF FILING

To: Donald J. Moran  
PEDERSEN & HOUP  
161 North Clark Street, Suite 3100  
Chicago, IL 60601-3242

John T. Smith II  
COVINGTON & BURLING  
1201 Pennsylvania Avenue. N.W.  
Washington, D.C. 20004-2401

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board (Board) the APPEARANCE of Grand Pier Center LLC and American International Specialty Lines Insurance Co., as subrogee of Grand Pier Center LLC, a copy of which is herewith served upon you along with this notice.

  
Garrett L. Boehm, Jr.

Dated: February 25, 2005

Frederick S. Mueller  
Daniel C. Murray  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
55 East Monroe Street, Suite 4100  
Chicago, Illinois 60603-5803  
Tel. (312) 372-0770

Attorneys for Grand Pier Center LLC and  
American International Specialty Lines Insurance Co.,  
As subrogee of Grand Pier Center LLC

BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 25 2005

STATE OF ILLINOIS  
Pollution Control Board

GRAND PIER CENTER LLC )  
AMERICAN INTERNATIONAL )  
SPECIALTY LINES INSURANCE CO. )  
as subrogee of Grand Pier Center LLC )

Complainants )

v. )

PCB 05157  
(Enforcement)

RIVER EAST LLC )  
CHICAGO DOCK AND CANAL TRUST )  
CHICAGO DOCK AND CANAL COMPANY )  
KERR-MCGEE CHEMICAL LLC )

Respondents )

APPEARANCE

I hereby filed my appearance in this proceeding, on behalf of Grand Pier Center LLC and  
American International Specialty Lines Insurance Co., as subrogee of Grand Pier Center LLC.

By   
One of Complainants' Attorneys

Frederick S. Mueller  
Daniel C. Murray  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
Suite 4100  
55 East Monroe Street  
Chicago, Illinois 60603-5803

Tel. (312) 372-0770

Doc. 1188174

**CERTIFICATE OF SERVICE**

I, the undersigned, on oath, state that I have served on the date of February 25, 2005, the attached APPEARANCE and notice by Certified mail, upon the following persons:

Donald J. Moran  
PEDERSEN & HOUP  
161 North Clark Street, Suite 3100  
Chicago, Illinois 60601-3242

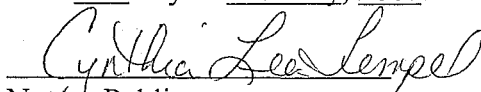
*Attorney for River East LLC and  
Chicago Dock and Canal Trust*

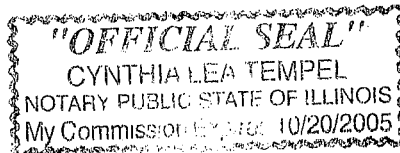
John T. Smith II  
COVINGTON & BURLING  
1201 Pennsylvania Avenue N.W.  
Washington, D.C. 20004-2401

*Attorney for Kerr-McGee Chemical LLC*

  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
55 East Monroe Street, Suite 4100  
Chicago, IL 60603  
(312) 372-0770

Subscribed to and sworn before me  
This 25<sup>th</sup> day of February, 2005.

  
Notary Public



My commission expires: Oct. 20, 2005