

ONE NORTH FRANKLIN STREET, SUITE 1200, CHICAGO, ILLINOIS 60606
TELEPHONE: 312-251-9600
FACSIMILE: 312-251-9601
EMAIL: GCARTER@CRMLAW.COM

GARRETT C. CARTER

CONNELLY ROBERTS & McGIVNEY LLC

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STATE OF ILLINOIS
Pollution Control Board

April 5, 2005

VIA U.S. MAIL

Mr. John Therriault
Illinois Pollution Control Board, Clerk's Office
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

PCB 05-157

**Re: Grand Pier Center LLC et al. v. Kerr-McGee Chemical
LLC, et al.
PCB 05-157**

Dear John:

Pursuant to our telephone conversation from this afternoon, enclosed please find nine copies of Exhibits "A" and "B". Please accept these exhibits as addendums to Kerr-McGee Chemical LLC's Motion to Dismiss the Complaint. If you have any questions or concerns, please feel free to contact me.

Very truly yours,



Garrett C. Carter

Enclosures

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

FEB 28 2005 WH

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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

Plaintiffs

v.

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

Defendants

No. 03 C 7767
Judge Filip

SECOND AMENDED COMPLAINT

Plaintiffs 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 Second Amended Complaint against the Defendants 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 civil action brought pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9607(a), 9613(f)(1)), as amended, for cost recovery and contribution 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. Plaintiffs

EXHIBIT

A

Blumberg No. 5203

also assert their state law claims of strict liability for abnormally dangerous activity, negligence, and contribution.

2. For each of Plaintiffs' CERCLA claims, this court has exclusive, original jurisdiction, pursuant to 42 U.S.C. 9613(b), and original jurisdiction under 28 U.S.C. 1331. For each of Plaintiffs' state law claims, this court has supplemental jurisdiction, pursuant to 28 U.S.C. 1367.

3. This court has authority to declare and enter judgment on the rights and liabilities of the parties, pursuant to 42 U.S.C. 9613(g) and 28 U.S.C. 2201, 2202.

4. Venue is proper in this district, pursuant to 42 U.S.C. 9613(b) (the district where the release or damages occurred) and 28 U.S.C. 1391(b) (where the events or omissions occurred, and the property is situated).

5. Plaintiff 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.

6. Plaintiff American International Specialty Lines Insurance Co. (AISLIC) is an Alaska corporation, with its principal office in New York, New York. AISLIC is subrogated to certain claims that Grand Pier has against Defendants for damages Defendants caused to Grand Pier.

7. Defendant 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 Chicago Dock and Canal Trust, and Chicago Dock and Canal Company.

8. Defendant 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.

9. Defendant 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.

10. 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

11. 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.

12. RV3 North Columbus Drive Site (the RV3 Site), the parcel of land pertinent to this lawsuit, 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.

Contamination of the RV3 Site

13. From at least 1915 to 1933, the Lindsay Light Company manufactured incandescent gaslights and gaslight mantles. The Lindsay Light Company was headquartered at 161 East Grand Avenue, designated by USEPA as the Lindsay Light I Site.

14. Gaslight mantle manufacturing involved dipping gauze mantle bags into solutions containing thorium nitrate. The principal ingredient in thorium nitrate is radioactive thorium, specifically thorium-232, which is a CERCLA hazardous substance. 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, with a half-life of 14 billion years.

15. As part of the gaslight mantle manufacturing business, Lindsay Light Company refined radioactive monazite ore at or near the Lindsay Light II site. In extracting thorium from monazite ore, the processed tailings contained radionuclides, specifically thorium, radium and uranium. Lindsay Light Company's refining process generated radioactive mill tailings which were disposed of as fill material throughout Streeterville.

16. The RV3 Site which is the subject of this lawsuit is situated between the Lindsay Light I gaslight mantle manufacturing facility at 161 E. Grand Ave. and the Lindsay Light II monazite ore processing facility at 316 E. Illinois St.

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

18. 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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

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

27. 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.

COUNT I – RECOVERY OF COSTS UNDER 42 U.S.C. 9607(a)

28. Plaintiffs incorporate by reference as if fully restated herein, paragraphs 1 through 27, above.

29. Defendants River East LLC and Chicago Dock and Canal Trust are successors of and successors in interest to the liabilities of Chicago Dock and Canal Company.

30. Kerr-McGee Chemical LLC, as an affiliate of Kerr-McGee Chemical Corporation, is successor of and successor in interest to the liabilities of Lindsay Light and Chemical Company and Lindsay Light Company.

31. The RV3 North Columbus Drive Site is a "facility," as that term is defined in Section 101(9) of CERCLA (42 U.S.C. 9601(9)).

32. Upon information and belief, Chicago Dock and Canal Company owned the parcel of land comprising the RV3 North Columbus Drive Site at the time that Lindsay Light and Chemical Company made disposals at the RV3 Site of "hazardous substances," as that term is defined in Section 101(14) of CERCLA (42 U.S.C. §9601(14)), including but not limited to thorium.

33. 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.

34. The necessary response costs Grand Pier and AISLIC have incurred under the UAO, the UAO's First Amendment, and the Work Plans are consistent with the CERCLA's National Oil and Hazardous Substances Pollution Contingency Plan (promulgated under 42 U.S.C. 9605(a), at 40 C.F.R. Part 300).

35. Grand Pier was an innocent purchaser of the RV3 Site, within the meaning of 42 U.S.C. 9601(35) and 9607(b)(3). 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.

36. Defendants are liable "persons" under CERCLA (42 U.S.C. § 9601(21)) for all costs of response at the RV3 Site.

COUNT II – CONTRIBUTION UNDER 42 U.S.C. 9607(a)(4)(B)

37. Plaintiffs incorporate by reference as if fully restated herein, paragraphs 1 through 36, above.

38. Grand Pier Center LLC and American International Specialty Lines Insurance Co., although denying liability, have incurred response costs associated with the release of thorium at the RV3 Site.

39. Grand Pier has denied liability, but if Grand Pier is liable, then Grand Pier, and AISLIC as subrogee of Grand Pier, are entitled to contribution from Defendants, and each of them, pursuant to 42 U.S.C. 9607(a)(4)(B).

40. Plaintiffs are entitled to a declaration that Defendants, and each of them, are liable to Plaintiffs for all or a proportionate share of any damages and costs of response incurred by Plaintiffs in connection with Plaintiffs' response action at the RV3 Site.

COUNT III – CONTRIBUTION UNDER 42 U.S.C. 9613(f)(1)

41. Plaintiffs incorporate by reference as if fully restated herein, paragraphs 1 through 40, above.

42. Grand Pier Center LLC and American International Specialty Lines Insurance Co., although denying liability, have incurred response costs associated with the release of thorium at the RV3 Site.

43. Grand Pier has denied liability, but if Grand Pier is liable, then Grand Pier, and AISLIC as subrogee of Grand Pier, are entitled to contribution from Defendants, and each of them, pursuant to 42 U.S.C. 9613(f)(1).

44. Plaintiffs are entitled to a declaration that Defendants, and each of them, are liable to Plaintiffs for all or a proportionate share of any damages and costs of response incurred by Plaintiffs in connection with Plaintiffs' response action at the RV3 Site.

COUNT IV – STRICT LIABILITY

45. Plaintiffs incorporate by reference as if fully restated herein, paragraphs 1 through 44, above.

46. Lindsay Light Company's manufacturing processes utilized radioactive thorium, and generated radionuclides, including thorium, which were disposed as waste at the RV3 Site.

47. Thorium emits gamma radiation. Emission of and exposure to elevated levels of gamma radiation presents a substantial threat to human health and the environment.

48. Defendant Kerr-McGee, as successor to Lindsay Light Company, owed a duty to prevent injury and damage to the land owned by Grand Pier, specifically the RV3 Site.

49. Kerr-McGee breached its duty to prevent injury and damage to the RV3 Site parcel, by disposing thereon radioactive waste in quantities and concentrations that are dangerous to human health and the environment.

50. By reason of Kerr-McGee's disposal of radioactive wastes at the RV3 Site, Plaintiffs have suffered injury and damages calculable in both site remediation costs as well as economic loss to Grand Pier due to the consequent failure of Grand Pier's multi-purpose, mixed use development of the RV3 Site.

51. Because elevated levels of radioactive waste cannot be safely disposed by open dumping into the urban location known as Streeterville, Kerr-McGee introduced a high degree of risk of harm to property and persons.

52. Because Kerr-McGee's deposition of radioactive waste was pervasive and in quantities and concentrations dangerous to human health and the environment, the likelihood of harm is great.

53. Because emission levels of gamma radiation from Kerr McGee's thorium contaminated waste exceed applicable government regulations, reasonable care does not eliminate the risk of harm created by Kerr-McGee's waste disposal practice.

54. Kerr-McGee's open dumping of thorium contaminated waste as described herein is not a matter of common practice.

55. Kerr-McGee's open dumping of radioactive waste in Streeterville is inappropriate in a populated urban area, in the immediate proximity of Lake Michigan and the Chicago River, and into soil that is itself fill material.

56. Kerr-McGee's open dumping of thorium contaminated waste introduced an unusual and persistent danger into the Streeterville community.

57. Kerr-McGee's waste disposal practices as alleged herein is an abnormally dangerous activity, for which Kerr-McGee is strictly liable to Plaintiffs.

COUNT V - NEGLIGENCE

58. Plaintiffs incorporate by reference as if fully restated herein paragraphs 1 through 57, above.

59. In undertaking to dispose of its hazardous waste, Defendant Kerr-McGee, as successor to Lindsay Light Company, owed neighboring landowners and their successor owners and their insurers, including the Plaintiffs herein, a duty to exercise reasonable care, so as not to pollute and contaminate Streeterville properties with radionuclides, including thorium which emits dangerous gamma radiation.

60. Kerr-McGee breached its duty to prevent injury and damage to the RV3 Site parcel, by disposing thereon radioactive waste in quantities and concentrations that are dangerous to human health and the environment.

61. By reason of Kerr-McGee's disposal of radioactive wastes at the RV3 Site, Plaintiffs have suffered injury and damages calculable in both site remediation costs as well as economic loss to Grand Pier due to the consequent failure of Grand Pier's multi-purpose, mixed use development of the RV3 Site.

COUNT VI – CONTRIBUTION UNDER 740 ILCS 100/2

62. Plaintiffs incorporate by reference as if fully restated herein, paragraphs 1 through 61, above.

63. Grand Pier Center LLC and American International Specialty Lines Insurance Co., although denying liability, have incurred costs and expenses associated with the release of thorium at the RV3 Site.

64. Grand Pier has denied liability, but if Grand Pier is liable, then Grand Pier, and AISLIC as subrogee of Grand Pier, are entitled to contribution from Defendants, and each of them, pursuant to the Illinois Joint Tortfeasors Contribution Act, 740 ILCS 100/2.

65. Defendants, and each of them, are potentially liable under CERCLA, as set forth in Counts I, II and III of this Second Amended Complaint.

66. Defendants, and each of them, are potentially liable under the Illinois Environmental Protection Act (415 ILCS 5/1) for improper disposal, treatment, storage and abandonment of waste (415 ILCS 5/21(e)); open dumping of waste, and discharge of contaminants so as to cause or tend to cause water pollution (415 ILCS 5/12(a)), and disposal of contaminants upon land so as to create a water pollution hazard. 415 ILCS 5/12(d).

67. Defendant Kerr-McGee, as successor to Lindsay Light Company, is potentially strictly liable under Illinois common law for its abnormally dangerous hazardous waste disposal activities, as set forth in Count IV of this Second Amended Complaint.

68. Kerr-McGee is potentially liable under Illinois common law for its predecessor Lindsay Light Company's negligent hazardous waste disposal activities, as set forth in Count V of this Second Amended Complaint.

69. Plaintiffs are entitled to a declaration that Defendants, and each of them, are liable to Plaintiffs for all or a proportionate share of any damages incurred by Plaintiffs in connection with the injuries Plaintiffs have suffered at the hands of the Defendants at the RV3 Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor and against the Defendants, and each of them:

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

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

C. awarding to Plaintiffs compensatory damages, with interest as provided by law;

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

E. ordering such other relief as may be appropriate and just.

JURY DEMAND

Plaintiffs demand a jury trial of all issues triable by jury.

Respectfully submitted this 28th day of February 2005

GRAND PIER CENTER LLC
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE Co.

By *Daniel Murray*
One of Plaintiffs' 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. 312 984 0226

Certificate of Service

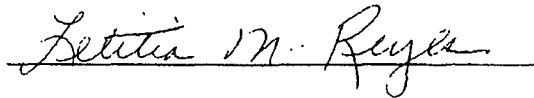
I hereby certify that on February 28, 2005, the foregoing Second Amended Complaint was mailed by United States Postal Service to the following:

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

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

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

Attorney for Kerr-McGee Chemical LLC

A handwritten signature in cursive script, reading "Letitia M. Reyes", is written over a horizontal line.

1187566

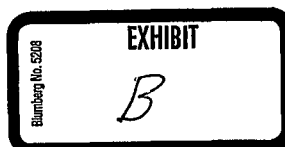
**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**

<i>GRAND PIER CENTER LLC</i>)	
<i>AMERICAN INTERNATIONAL</i>)	
<i>SPECIALTY LINES INSURANCE CO.</i>)	
<i>as subrogee of Grand Pier Center LLC</i>)	
)	
<i>Complainants</i>)	
)	
<i>v.</i>)	<i>PCB _____</i>
)	<i>(Enforcement)</i>
<i>RIVER EAST LLC</i>)	
<i>CHICAGO DOCK AND CANAL TRUST</i>)	
<i>CHICAGO DOCK AND CANAL COMPANY</i>)	
<i>KERR-MCGEE CHEMICAL LLC</i>)	
)	
<i>Respondents</i>)	

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, uccessor 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 Respondents 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 ____ 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

1181048

**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.

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

Respondents.

PCB 05-157
(Enforcement)

KERR-McGEE CHEMICAL LLC'S MOTION TO DISMISS THE COMPLAINT

Respondent, Kerr-McGee Chemical LLC ("Kerr-McGee"), respectfully asks the Illinois Pollution Control Board ("the Board") to dismiss the Complaint brought by Grand Pier Center LLC and American International Specialty Lines Insurance Co. as subrogee of Grand Pier Center LLC (collectively, "Grand Pier"). Grand Pier's Complaint is duplicitous and frivolous and thus should be dismissed pursuant to Ill. Admin. Code tit. 35, § 104.414.¹ Grand Pier's Complaint is duplicitous because it is substantially similar to a civil action that Grand Pier filed in the United States District Court for the Northern District of Illinois. Grand Pier's Complaint is frivolous because it seeks relief that the Board does not have the authority to grant and it fails to state a cause of action upon which the Board can grant relief.

¹ Section 103.212(b) of Title 35 of the Illinois Administrative Code provides that a respondent may, within 30 days after service, move to dismiss a complaint as duplicitous or frivolous. Kerr-McGee received service of the Complaint on March 3, 2005.

I. Grand Pier's Complaint is duplicitous

“‘Duplicitous’ or ‘Duplicative’ means the matter is identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202; see also Brandle v. Ropp, PCB 85-68, 1985 WL 21380, *1 (Ill. Pol. Control Bd., June 13, 1985) (Ex. ‘C’) (noting that a complaint is duplicitous if it is identical or substantially similar to one brought in another forum). Grand Pier’s Complaint is duplicitous because it is substantially similar to Grand Pier’s Second Amended Complaint in an identically captioned action that is before the United States District Court for the Northern District of Illinois.² A copy of Grand Pier’s Second Amended Complaint in that action is attached as Exhibit ‘A.’ A copy of Grand Pier’s Complaint with the Board is attached as Exhibit ‘B.’ The two actions are against the same parties, are based on the same contaminant, are premised on the same site, and demand the same relief. In both actions, Grand Pier seeks recovery of “any costs incurred by [Grand Pier], or to be incurred by [Grand Pier], in performing response activities at the site identified by [EPA] as the RV3 North Columbus Drive Site (the RV3 Site) in Chicago, Illinois.” (Ex. A at ¶ 1; Ex. B at ¶ 1.) Because Grand Pier pursues a substantially similar action before the United States District Court for the Northern District of Illinois, the Board should dismiss Grand Pier’s Complaint as duplicitous.

II. Grand Pier's Complaint is frivolous

“‘Frivolous’ means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.” 35 Ill.

² On March 1, 2005, counsel for Grand Pier informally notified Counsel for Kerr-McGee that Grand Pier was filing (1) a Second Amended Complaint in federal district court to add state law claims for negligence, strict liability, and contribution and (2) a Complaint before the Illinois Pollution Control Board. Those papers were filed on February 25, 2005 and February 28, 2005, respectively. Grand Pier filed its First Amended Complaint in the federal district court on February 4, 2005.

Adm. Code 101.202. Grand Pier's Complaint is frivolous because it seeks relief that the Board does not have the authority to grant and it fails to state a cause of action upon which the Board can grant relief.

A. The Board is not authorized to award the relief that Grand Pier demands

Grand Pier alleges in its Complaint that its action is to enforce Sections 12(a), 12(d) and 21(e) of the Illinois Environmental Protection Act ("the Act").³ (Ex. 'B' at ¶ 1.) The penalties for violations of Sections 12(a), 12(d) or 21(e) of the Act are set forth and limited by 415 ILCS 5/42(a). That Section of the Act provides, in pertinent part, as follows:

Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues

Grand Pier does not seek the imposition of the penalties referred to in the Act. Instead, Grand Pier seeks to recover its own attorney fees, expert witness fees, and past and future response costs with interest. (Ex. 'B' at 8-9.)⁴ None of the relief sought by Grand Pier is authorized by the

³ Section 12(a) provides that no person shall "[c]ause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act." 415 ILCS 5/12(a).

Section 12(d) provides that no person shall "[d]eposit any contaminants upon the land in such place and manner so as to create a water pollution hazard." 415 ILCS 5/12(d).

Section 21(e) provides that no person shall "[d]ispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder." 415 ILCS 5/21(e).

⁴ Grand Pier also asks the Board to rule that Respondents are responsible for any future remediation. Grand Pier's request is pointless in light of Grand Pier's own allegation that Letters of Completion were issued by the United States Environmental Protection Agency with respect to the site at issue. (Ex. 'B' at ¶¶ 22-23.)