

BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

JUN 13 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.

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

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

NOTICE OF FILING

PLEASE TAKE NOTICE that on June 13, 2005, we caused to be filed with the Illinois Pollution Control Board in the James R. Thompson Center, Chicago, Illinois, the **ANSWER OF KERR-MCGEE CHEMICAL LLC**, copies of which are served upon you along with this notice.

Kerr-McGee Chemical LLC

By: 

One of its attorneys

Michael P. Connelly  
Garrett C. Carter  
Connelly Roberts & McGivney LLC  
One North Franklin Street  
Suite 1200  
Chicago, Illinois 60606  
Tele: (312) 251.9600

**BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD**

**RECEIVED**  
CLERK'S OFFICE

JUN 13 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. )

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

Respondents. )

PCB 05-157  
(Citizens Enforcement - Land)

**ANSWER OF KERR-McGEE CHEMICAL LLC**

Respondent Kerr-McGee Chemical LLC, in answer to Complainants' Complaint,

states as follows:

**AS TO THE ALLEGED NATURE OF THE ACTION**

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.

1. Respondent admits that the statements in paragraph 1 characterize the Complainants' action.

**AS TO JURISDICTION AND VENUE**

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.

2. Respondent denies the allegations of paragraph 2.

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.**

3. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

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.**

4. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.

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.**

5. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

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.**

6. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

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.**

7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

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.

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

#### **AS TO 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.

9. Respondent admits the allegations of paragraph 9.

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.

10. Respondent admits the allegations of paragraph 10.

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).

11. Respondent denies that the RV3 North Columbus Drive Site was used for purposes subject to regulation or control by this Act or regulations thereunder, and on that basis Respondent denies the allegations of paragraph 11.

#### **AS TO 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.

12. Respondent admits the allegations of paragraph 12, except that Respondent denies the allegation that Lindsay Light Company was headquartered at 161 East Grand Avenue "from at least 1915 to 1933."

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.**

13. Respondent denies the allegation of the first sentence of paragraph 13. Respondent admits the allegation of the second sentence of paragraph 13. Respondent denies that the Thorium Decay Series presently contaminates the RV3 Site and on that basis denies the allegation of the third sentence of paragraph 13.

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.**

14. Respondent denies the allegations of paragraph 14.

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.**

15. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

#### **AS TO 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.**

16. Respondent admits the allegations of paragraphs 16.

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.**

17. Respondent admits that an Unilateral Administrative Order Docket Number V-W-96-C-353 issued June 6, 1996 (UAO), a First Amendment to that Order dated March 29, 2000, and a Work Plan for Site Radiation Survey and Excavation Soil Management dated March 20, 2000 and approved by the USEPA on March 23, 2000 exist, but Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 17, but Respondent acknowledges that USEPA issued a Letter of Completion on August 26, 2002.

**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.**

18. Respondent admits the USEPA required additional work and that there is a Sidewalk Remediation Work Plan dated March 9, 2001, which was approved by USEPA on April 11, 2001. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 18, but Respondent acknowledges that USEPA issued a Letter of Completion on October 8, 2004.

**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.**

19. Respondent admits the allegations of paragraph 19.

**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.**

20. Respondent admits that Grand Pier Center LLC owned the RV3 Site.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the

allegation that AISLIC performed or completed work at the RV3 Site. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that Grand Pier Center LLC performed and completed work at the RV3 Site in accordance with the UAO, the UAO's First Amendment, and the Work Plans, but Respondent acknowledges that USEPA issued Letters of Completion on August 26, 2002, and on October 8, 2004.

**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.**

21. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

**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.**

22. Respondent admits the allegations of paragraph 22.

**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.**

23. Respondent admits the allegations of paragraph 23.

**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.**

24. Respondent denies that Grand Pier continues to incur additional costs of response. Respondent denies that AISLIC continues to incur additional costs of response.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 24.

**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.**

25. Respondent denies that it is a liable person for costs of response at the RV3

Site, but admits that it is a person, as that term is defined in Section 3.315 of the Act (415 ILCS 5/3.315).

**AS TO COUNT I – WASTE DISPOSAL**

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

26. Respondent repeats its answers to 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).**

27. Respondent denies that it is a generator, but admits that “generator” is a term defined in 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.**

28. Respondent denies that Lindsay Light Company disposed of hazardous substances at the RV3 Site, including but not limited to thorium, but admits that “hazardous substances” is a term defined in Section 3.215 of the Act (415 ILCS 5/3.215). Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 28.

**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.**

29. Respondent denies that any response costs to remove contamination and remediate the RV3 Site were caused by anything other than Grand Pier’s excavation of the Site as part of its development plan, which it pursued for its own business purposes, and on that basis Respondent denies the allegations of paragraph 29, except that Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that response costs incurred



by Grand Pier and AISLIC, if any, were necessary, and Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that response costs incurred by Grand Pier and AISLIC, if any, total approximately \$2,300,000.

**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.**

30. Respondent denies the allegations of paragraph 30.

**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).**

31. Paragraph 31 states a legal conclusion to which no answer is required. To the extent that an answer is deemed required, Respondent avers that 415 ILCS 5/21(e) speaks for itself.

**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.**

32. Respondent denies the allegations of paragraph 32.

**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.**

33. Respondent denies the allegations of paragraph 33.

**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.**

34. Respondent denies the allegations of paragraph 34.

#### **AS TO COUNT II – C ontaminant Threat to Groundwater**

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

35. Respondent repeats its answers to paragraphs 1 though 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).**

36. Paragraph 36 states a legal conclusion to which no answer is required. To the extent that an answer is deemed required, Respondent avers that 415 ILCS 5/12(a) speaks for itself.

**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.**

37. Respondent denies the allegations of paragraph 37.

**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.**

38. Respondent denies the allegations of paragraph 38.

**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.**

39. Respondent denies the allegations of paragraph 39.

### **AS TO COUNT III – CONTAMINANTS UPON LAND**

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

40. Respondent repeats its answers to 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).**

41. Paragraph 41 states a legal conclusion to which no answer is required. To the extent that an answer is deemed required, Respondent avers that 415 ILCS 5/12(d) speaks for itself.

**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.

42. Respondent denies the allegations of paragraph 42.

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.

43. Respondent denies the allegations of paragraph 43.

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.

44. Respondent denies the allegations of paragraph 44.

Respondent denies each and every allegation of the Complaint not heretofore specifically admitted.

#### **AS TO 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.

Respondent denies that Complainants are entitled to the relief that they request.

### **FIRST AFFIRMATIVE DEFENSE**

The Board does not have jurisdiction to award cleanup costs to a private party for violations of Sections 21(e), 12(a), and 12(d) of the Illinois Environmental Protection Act.

### **SECOND AFFIRMATIVE DEFENSE**

Count I of the Complaint fails to state a claim upon which relief can be granted.

### **THIRD AFFIRMATIVE DEFENSE**

Count II of the Complaint fails to state a claim upon which relief can be granted.

### **FOURTH AFFIRMATIVE DEFENSE**

Count III of the Complaint fails to state a claim upon which relief can be granted.

### **FIFTH AFFIRMATIVE DEFENSE**

In the event and to the extent that Respondent is found liable, Complainants' recovery, if any, should be proportionally reduced because Complainants' own fault contributed to their injuries, if any, and because they are liable under the Illinois Environmental Protection Act.

### **SIXTH AFFIRMATIVE DEFENSE**

Complainants' claims are barred, in whole or in part, because of the preceding, intervening and/or superseding acts of third parties or because of events over which Respondent had no control.

### **SEVENTH AFFIRMATIVE DEFENSE**

By their actions, Complainants knowingly and voluntarily assumed the risk of incurring any alleged damage they may have suffered and are therefore precluded from recovery.

### **EIGHTH AFFIRMATIVE DEFENSE**

Counts I, II, and III of the Complaint are preempted by federal law.

### **NINTH AFFIRMATIVE DEFENSE**

With respect to Counts I, II, and III of the Complaint, Respondent is entitled to

contribution protection under 42 U.S.C. § 9613(f)(2).

**TENTH AFFIRMATIVE DEFENSE**

In the event and to the extent that Respondent is found liable in this action, the amount of any recovery by Complainants should be reduced because Respondent is entitled to receive a credit, offset, setoff and/or recoupment for all costs that Kerr-McGee Chemical LLC has incurred, or has agreed to incur, and all services or benefits it has provided, or has agreed to provide, that have caused or will cause an increase in the value of Complainants' properties.

**PRAYER FOR RELIEF**

WHEREFORE, Respondent respectfully requests that the Board enter judgment:

- A. Dismissing Complainants' claims with prejudice; and
- B. Granting such other relief as the Board may deem just and proper.

Respectfully submitted,



Michael P. Connelly  
Garrett C. Carter  
Connelly Roberts & McGivney LLC  
One North Franklin Street  
Suite 1200  
Chicago, Illinois 60606  
(312) 251-9600

Peter J. Nickles  
J.T. Smith II  
Thomas E. Hogan  
COVINGTON & BURLING  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20044-7566  
(202) 662-6000

Attorneys for Respondent  
Kerr-McGee Chemical LLC

Dated: June 13, 2005

## CERTIFICATE OF SERVICE

I, Lynne Pudlo, a non-attorney, being first sworn on oath, depose and state that I served the attached Answer of Kerr-McGee Chemical LLC on the attorneys of record by mailing true and correct copies in a properly addressed, sealed envelope with appropriate postage affixed and depositing same in the U.S. mail located at One North Franklin Street, Chicago, Illinois, before 5:00 p.m. on June 13, 2005.

Lynne Pudlo

Subscribed and sworn to  
before me June 13, 2005.

Michelle M. Patterson  
Notary Public

