

**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**

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SEP 02 2005

STATE OF ILLINOIS
Pollution Control Board

GRAND PIER CENTER LLC and)
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: Frederick S. Mueller
Johnson & Bell, Ltd.
55 East Monroe Street
Suite 4100
Chicago, Illinois 60603

Michael P. Connelly
Garret C. Carter
Connelly Roberts & McGivney LLC
One North Franklin Street, Suite 1200
Chicago, IL 60606

PLEASE TAKE NOTICE that on September 2, 2005, we filed with the Illinois Pollution Control Board, the attached **DEFENDANTS' ANSWER TO COMPLAINT**.

Respectfully submitted,

RIVER EAST L.L.C. AND CHICAGO
DOCK AND CANAL TRUST

By: 

One of Their Attorneys


Donald J. Moran
Abad Lopez
Pedersen & Houpt
161 North Clark Street, Suite 3100
Chicago, IL 60601
Telephone: (312) 641-6888
419179.1

PROOF OF SERVICE

Marisa Perez-Ravelo, a non-attorney, on oath states that she served the foregoing **DEFENDANTS' ANSWER TO COMPLAINT** by enclosing same in an envelope addressed to the following parties as stated below, and by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, on or before 5:00 p.m. on this 2nd of September, 2005:

Frederick S. Mueller
Johnson & Bell, Ltd.
55 East Monroe Street, Suite 4100
Chicago, Illinois 60603

Michael P. Connelly
Garret C. Carter
Connelly Roberts & McGivney LLC
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Marisa Perez-Ravelo

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ANSWER TO COMPLAINT

NOW COMES Defendants, RIVER EAST L.L.C., CHICAGO DOCK and CANAL TRUST (collectively "River East"), by and through their attorneys, PEDERSEN & HOUP, and hereby submit their Answer to GRAND PIER CENTER LLC and AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE CO., as subrogee of Grand Pier Center, LLC's Complaint, and in support thereof state 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.

ANSWER: River East admits that this is a citizen suit brought under the Illinois Environmantal Protection Act. River East is without knowledge or information sufficient to form a belief as to the

truth of the remaining allegations contained in paragraph 1.

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), 3 1(d) and 33(a) of the Act.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East denies that River East LLC is a successor or successor in interest to Chicago Dock and Canal Trust and Chicago Dock and Canal Company. River East admits the remaining allegations in 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.

ANSWER: River East denies that Chicago Dock and Canal Trust is the successor and successor in interest to the Chicago Dock and Canal Company. River East states that Chicago Dock and Canal Trust merged into CityFront Acquisition Trust, an Illinois business trust, and that the merged company is known as the Chicago Dock and Canal Trust. River East further states that Chicago Dock and Canal Trust acquired the assets of the Chicago Dock and Canal Company in 1962.

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.

ANSWER: On information and belief, River East believes that a special act of the Illinois legislature established the Chicago Dock and Canal Company in 1857 ("CDCC I"). CDCC I was dissolved in 1962. River East further states that a separate Chicago Dock and Canal Company was organized in 1962, was organized under the business corporation act and authorized to do business in Illinois ("CDCC II"). River East further states the CDCC II was dissolved in 2001.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

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 1 mile east of the Lindsay Light II Site.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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).

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24.

25. Respondents are liable “persons” as that term is defined by Section 3.3 15 of the Act (415 ILCS 5/3.3 15) for all costs of response at the RV3 Site.

ANSWER: River East denies that they are liable persons as defined by the Act.

Count I — Waste Disposal

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

ANSWER: River East repeats their answers to paragraphs 1 through 25 as their answers to paragraph 26.

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

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.

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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in 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.

ANSWER: River East is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

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.

ANSWER: River East denies the allegations contained in 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).

ANSWER: Paragraph 31 states a legal conclusion to which no response is required. River East denies that it was in violation of the Act at any time.

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.

ANSWER: River East denies the allegations contained in 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.

ANSWER: River East denies that it was in violation of the Act at any time. River East is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in 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.

ANSWER: River East denies the allegations contained in paragraph 34.

Count II — Contaminant Threat to Groundwater

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

ANSWER: River East restates its answers to paragraphs 1 through 34 as its answer to paragraph 35.

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).

ANSWER: Paragraph 36 states a legal conclusion to which no response is required. River East denies that it was in violation of the Act at any time.

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.

ANSWER: River East denies that it was in violation of the Act at any time.

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.

ANSWER: River East denies that it was in violation of the Act at any time.

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.

ANSWER: River East denies the allegations contained in paragraph 39.

Count III — Contaminants Upon Land

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

ANSWER: River East restates its answers to paragraphs 1 through 39 as its answer to paragraph 40.

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).

ANSWER: Paragraph 41 states a legal conclusion to which no response is

required. River East denies that it was in violation of the Act at any time.

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.

ANSWER: River East denies the allegations contained in 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.

ANSWER: River East denies the allegations contained in paragraph 43.

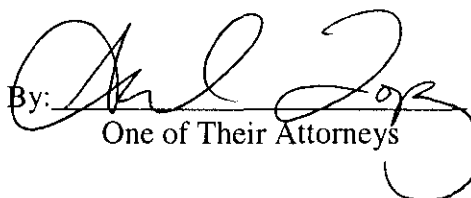
44. Respondents are liable under the Act for Complainants' costs incurred in the investigation, removal, and reporting to USEPA of contaminants Respondents failed to remove from the Site.

ANSWER: River East denies the allegations contained in paragraph 44.

Dated: September 2, 2005.

Respectfully submitted,

RIVER EAST L.L.C. AND CHICAGO
DOCK AND CANAL TRUST

By: 
One of Their Attorneys

Donald J. Moran
Abad Lopez
Pedersen & Houpt
161 North Clark Street
Suite 3100
Chicago, IL 60601
Telephone: (312) 641-6888