

BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD

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SEP 22 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
(Enforcement)

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

Bradley Halloran
Hearing Officer
Illinois Pollution
Control Board
James R. Thompson
Center – Suite 11-500
Chicago, IL 60601

NOTICE OF FILING

PLEASE TAKE NOTICE that on September 22, 2005, we caused to be filed with the Illinois Pollution Control Board in the James R. Thompson Center, Chicago, Illinois, **TRONOX LLC's, FORMERLY KERR-MCGEE CHEMICAL LLC, COMBINED MOTION TO WITHDRAW CERTAIN AFFIRMATIVE DEFENSE AND FOR LEAVE TO FILE AMENDMENTS TO AFFIRMATIVE DEFENSES TO COMPLAINANTS' COMPLAINT, INSTANTER**, copies of which are served upon you along with this notice.

Tronox LLC

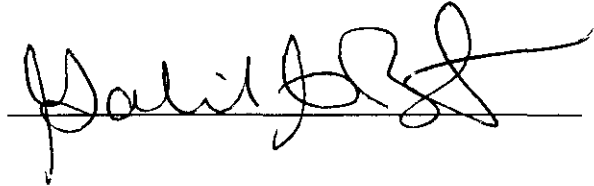
By: 

One of its attorneys

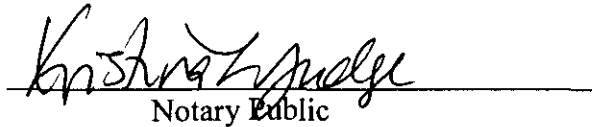
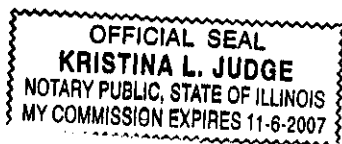
Michael P. Connelly
Garrett C. Carter
Connelly Roberts & McGivney LLC
One North Franklin Street
Suite 1200
Chicago, Illinois 60606
Tele: (312) 251.9600

CERTIFICATE OF SERVICE

I, Gabi Banat, a non-attorney, being first sworn on oath, depose and state that I served the attached documents 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 September 22, 2005.

A handwritten signature in black ink, appearing to read 'Gabi Banat', written over a horizontal line.

Subscribed and sworn to
before me September 22, 2005.

A handwritten signature in black ink, appearing to read 'Kristina L. Judge', written over a horizontal line.
Notary Public

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CLERK'S OFFICE

SEP 22 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/)
Counter-Complaint Respondents,)**

v.)

**PCB 2005-157
(Enforcement)**

**RIVER EAST LLC,)
CHICAGO DOCK AND CANAL TRUST,)
CHICAGO DOCK AND CANAL COMPANY,)**

Respondents,)

KERR-McGEE CHEMICAL LLC,)

**Respondent/)
Counter-Complaint Complainant)**

**TRONOX LLC'S COMBINED MOTION TO WITHDRAW CERTAIN
AFFIRMATIVE DEFENSE AND FOR LEAVE TO FILE AMENDMENTS TO
AFFIRMATIVE DEFENSES TO COMPLAINANTS' COMPLAINT, *INSTANTER***

Respondent, Tronox LLC, formerly Kerr-McGee Chemical LLC ("Tronox"), for its Combined Motion to Withdraw Certain Affirmative Defenses and for Leave to File Amendments to its Affirmative Defenses to Complainants', Grand Pier Center LLC and American International Specialty Lines Insurance Co. as subrogee of Grand Pier Center LLC (collectively, "Grand Pier") Complaint states as follows:

Grand Pier filed its Complaint on February 25, 2005. Tronox, after its motion to dismiss was denied, filed its Answer and Affirmative Defenses to Grand Pier's Complaint on June 13, 2005. On July 5, 2005, Grand Pier filed its motion to dismiss Tronox's Affirmative Defenses. On September 12, 2005, the hearing officer entered an

order requiring Tronox to respond to Grand Pier's motion to dismiss by September 22, 2005. (A copy of the September 12, 2005, Order is attached as Exhibit A.)

Tronox now seeks to withdraw the first, second, third, fourth, and tenth of its affirmative defenses, and to file, pursuant to 735 ILCS 5/2-616, Amendments to Affirmative Defenses to Grand Pier's Complaint pursuant to 735 ILCS 5/2-616, a copy of which is attached as Exhibit B.

WHEREFORE, Tronox LLC, formerly Kerr-McGee Chemical LLC, respectfully requests that the Illinois Pollution Control Board grant its motion to withdraw the first, second, third, fourth, and tenth of its affirmative defenses and grant Tronox leave to file Amendments to Affirmative Defenses to Grand Pier's Complaint, *instantly*.

Respectfully submitted,

Tronox 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
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
Tronox LLC

ILLINOIS POLLUTION CONTROL BOARD
September 12, 2005

GRAND PIER CENTER LLC, and)	
AMERICAN INTERNATIONAL)	
SPECIALTY LINES INSURANCE CO., as)	
subrogee of Grand Pier Center LLC,)	
)	
Complainants,)	
)	
v.)	PCB 05-157
)	(Citizens Enforcement – Land)
RIVER EAST LLC, CHICAGO DOCK AND)	
CANAL TRUST, CHICAGO DOCK AND)	
CANAL COMPANY, and KERR-MCGEE)	
CHEMICAL, LLC,)	
)	
Respondents.)	

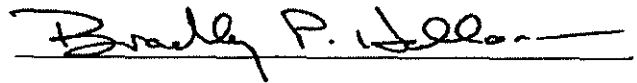
HEARING OFFICER ORDER

On September 8, 2005, all parties participated in a telephonic status conference with the hearing officer. Respondent Kerr-McGee Chemical, LLC. (Kerr-McGee), was directed to file its response to complainants affirmative defenses on or before September 14, 2005. Complainants' motion to dismiss Kerr-McGee affirmative defenses, filed July 5, 2005, was also discussed. Over complainants' objection, Kerr-McGee was given until September 22, 2005, to file its response to complainants' motion to dismiss affirmative defenses.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on October 13, 2005, at 11:45 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.



A handwritten signature in black ink, reading "Bradley P. Halloran", is positioned above a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**

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

Complainants/)
Counter-Complaint Respondents,)

v.)

PCB 2005-157
(Enforcement)

RIVER EAST LLC,)
CHICAGO DOCK AND CANAL TRUST,)
CHICAGO DOCK AND CANAL COMPANY,)

Respondents,)

KERR-McGEE CHEMICAL LLC,)

Respondent/)
Counter-Complaint Complainant)

AMENDMENT TO CERTAIN AFFIRMATIVE DEFENSES

Respondent Tronox LLC, formerly Kerr-McGee Chemical LLC, ("Tronox"), by way of amendment to and in support of its fifth, sixth, seventh, eighth and ninth Affirmative Defenses,¹ respectfully incorporates by reference and adopts herein the specific factual averments contained in its Counter-Complaint² and further amends those Affirmative Defenses as follows:

FIFTH, SIXTH, AND SEVENTH AFFIRMATIVE DEFENSES

With respect to Affirmative Defenses Five, Six, and Seven, Tronox, in addition to incorporating by reference and adopting herein the factual averments contained in the Counter-

¹ Tronox's Answer and Affirmative Defenses is attached hereto as Exhibit 1.

² Tronox's Counter-Complaint is attached hereto as Exhibit 2.



Complaint, specifically avers as follows:

1. Before acquiring the property generally denoted by the address 200 East Illinois Street, Grand Pier retained one or more environmental consultants to conduct environmental reviews that included the 200 East Illinois Street site.

2. This environmental review process indicated that a site immediately to the east of 200 East Illinois Street and on the other side of North Columbus Drive at 316 East Illinois Street was undergoing cleanup pursuant to a 1996 unilateral administrative order (UAO) issued by the U.S. Environmental Protection Agency, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et. seq.*, to address contamination by thorium resulting from the historical operations of the Lindsay Light Co. in this area of Chicago.

3. In April 1999, Grand Pier's environmental consultant offered to conduct a file review to investigate the nature of the environmental concern for an additional cost. Neither Grand Pier nor any consultant to Grand Pier conducted a file search at the EPA to learn the particulars of the then-ongoing cleanup activities.

4. Grand Pier knew or should have known that, until construction of North Columbus Drive in the mid-1980s, the properties at 316 East Illinois Street and 200 East Illinois Street were contiguous. Moreover, a file search at the EPA of the then-ongoing cleanup would have revealed that characterization of the contamination pertaining to the 316 East Illinois Street site indicated that pockets of thorium residues extended beyond the Western property boundary beneath sidewalks and North Columbus Drive.

5. Although Grand Pier and/or its consultants and contractors, conducted subsurface borings at the 200 East Illinois Street site, none was addressed to the possibility of

thorium residues despite the fact that Grand Pier knew or should have know of the presence of thorium residues and/or the possibility of the presence of thorium residues.

6. The pavement covering the 200 East Illinois Street site acted as a shield to prevent human exposure to the “gamma radiation” associated with thorium residues.

7. In a September 1999 Enforcement Confidential Addendum regarding paved areas adjacent to the Lindsay Light II Site, EPA determined that the radioactive material in the soils was not water soluble and thus did not present a water contamination risk and that the shielding effects of the asphalt, concrete, and overburden prevent the release of the radiation to humans or the environment.

8. EPA also determined in the September 1999 Enforcement Confidential Addendum that the radioactive materials would be released to the environment if the shielding materials were disturbed or if a person tunneled into the radioactive materials. The September 1999 Enforcement Confidential Addendum pertains to the Action Memorandum accompanying an Administrative Order on Consent regarding the Lindsay Light II Site.

9. In January 2000, Grand Pier began to remove the pavement on the surface of the 200 East Illinois Street site, to excavate the site, and to dispose of that material at the Beverly Gravel Site, a quarry in Elgin, Illinois. Grand Pier undertook these actions to prepare for construction of a commercial building despite the fact that Grand Pier knew or should have known that its actions would cause a risk to human health and the environment from exposure to gamma radiation.

10. Only by Grand Pier’s removal of the pavement and excavation of the site for construction of a commercial development, was the public and the environment exposed to the risks of thorium.

11. Grand Pier undertook the removal of the pavement and excavation of the site for its own economic benefit. Tronox did not stand to benefit economically from Grand Pier's commercial development activities.

12. In February 2000, EPA directed cessation of these excavation activities pending a survey to determine whether the excavation would expose thorium residues.

13. After a survey by EPA personnel indicated the presence of thorium residues, EPA amended a 1996 unilateral administrative order with respect to the 316 East Illinois Street site to direct thorium removal activities at the 200 East Illinois Street site by Grand Pier.

14. EPA also directed the removal of the thorium residues that Grand Pier had disposed of at the Beverly Gravel Site.

EIGHTH AFFIRMATIVE DEFENSE

Counts I, II, and III of the Complaint are preempted by Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f)(2), because, with respect to the 200 East Illinois Street site, Tronox is a person who has resolved its liability to the United States for some or all of a response action or for some or all of the costs of such action in a judicially approved settlement referred to in 42 U.S.C. § 9613(f)(2). See In the Matter of Reading Co., 115 F.3d 1111, 1117 (3d Cir. 1997) (holding that common law remedies are preempted where the defendant has settled liability pursuant to Section 113(f)(2)); see also Crown Cork and Seal Co., Inc. v. Clark Equip. Co., 907 F. Supp. 147, 151 (M.D. N.C. 1995) (dismissing state law claims in light of contribution protection afforded by Section 113(f)(2)); Drevo Corp. v. Zuber, 804 F. Supp. 1182, 1185 (D. Neb. 1992) ("The courts have consistently enforced CERCLA by providing settling parties with immunity from any claim regarding matters addressed in the settlement with the government provided the non-settling party's

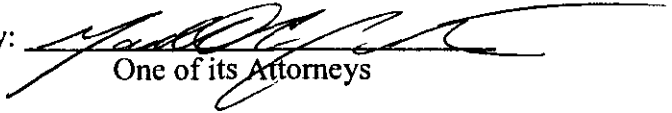
claim is in substance a claim for contribution, even though the claim may be called something else.”); United States v. Pretty Products, Inc., 780 F. Supp. 1488 (S.D. Ohio 1991) (holding that the contribution protection afforded by a settlement agreement referred to in Section 113(f)(2) preempted state law claims based on indemnity, breach of contract, and various equitable theories).

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) because, with respect to the 200 East Illinois Street site, Tronox is a party to an agreement specified in 42 U.S.C. § 9613(f)(2) and the costs sought in the Complaint are matters addressed in the agreement.

Respectfully submitted,

Tronox 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
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
Tronox LLC

**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**

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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 contaminant 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 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).

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



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)

COUNTER-COMPLAINT

Kerr-McGee Chemical LLC (Kerr-McGee) counterclaims against Grand Pier Center LLC (Grand Pier) and American International Specialty Lines Insurance Co. (AISLI), as subrogee of Grand Pier (Counter-Complaint Respondents), averring as follows:

1. To the extent that the Board has jurisdiction over the Complaint, the Board has jurisdiction over this Counter-Complaint pursuant to 35 IAC 103.200 and Sections 5(d), 31(d) and 33(a) of the Act.

2. In 1997, Grand Pier acquired property in Chicago, Cook County, Illinois bounded by North Columbus Drive, East Grand Avenue, North St. Clair Street and East Illinois Street, which property, at time of acquisition by Grand Pier, was paved and in use as a parking lot. This site is generally denoted by the address 200 East Illinois Street.

3. Before acquiring this property, Grand Pier retained one or more environmental consultants to conduct environmental reviews that included the 200 East Illinois Street site.



4. This environmental review process indicated that a site immediately to the east of 200 East Illinois Street and on the other side of North Columbus Drive at 316 East Illinois Street was undergoing cleanup pursuant to a 1996 unilateral administrative order (UAO) issued by the U.S. Environmental Protection Agency, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et. seq.*, to address contamination by thorium resulting from the historical operations of the Lindsay Light Co. in this area of Chicago.

5. In April 1999, Grand Pier's environmental consultant offered to conduct a file review to investigate the nature of the environmental concern for an additional cost. Neither Grand Pier nor any consultant to Grand Pier conducted a file search at the EPA to learn the particulars of the then-ongoing cleanup activities.

6. Grand Pier knew or should have known that, until construction of North Columbus Drive in the mid-1980s, the properties at 316 East Illinois Street and 200 East Illinois Street were contiguous. Moreover, a file search at the EPA of the then-ongoing cleanup would have revealed that characterization of the contamination pertaining to the 316 East Illinois Street site indicated that pockets of thorium residues extended beyond the Western property boundary beneath sidewalks and North Columbus Drive.

7. Although Grand Pier and/or its consultants and contractors, conducted subsurface borings at the 200 East Illinois Street site, none was addressed to the possibility of thorium residues despite the fact that Grand Pier knew or should have know of the presence of thorium residues and/or the possibility of the presence of thorium residues.

8. Ray M. Chin, the principal behind Grand Pier and a trained engineer, previously worked for Commonwealth Edison and was involved with one or more nuclear power

generating stations, where he obtained familiarity with radionuclides and the potential human health risks associated with them. Ray M. Chin knew or should have known of the presence of thorium residues at the 200 East Illinois Street site.

9. At the time Grand Pier acquired the property at 200 East Illinois Street site, it knew or should have known of the presence of thorium residues at the site.

10. The pavement covering the 200 East Illinois Street site acted as a shield to prevent human exposure to the "gamma radiation" associated with thorium residues. In a September 1999 Enforcement Confidential Addendum regarding paved areas adjacent to the Lindsay Light II Site, EPA determined that the radioactive material in the soils was not water soluble and thus did not present a water contamination risk and that the shielding effects of the asphalt, concrete, and overburden prevent the release of the radiation to humans or the environment. EPA also determined in the September 1999 Enforcement Confidential Addendum that the radioactive materials would be released to the environment if the shielding materials were disturbed or if a person tunneled into the radioactive materials. The September 1999 Enforcement Confidential Addendum pertains to the Action Memorandum accompanying an Administrative Order on Consent regarding the Lindsay Light II Site.

11. In January 2000, Grand Pier began to remove the pavement on the surface of the 200 East Illinois Street site, to excavate the site, and to dispose of that material at the Beverly Gravel Site, a quarry in Elgin, Illinois. Grand Pier undertook these actions to prepare for construction of a commercial building despite the fact that Grand Pier knew or should have known that its actions would cause a risk to human health and the environment from exposure to gamma radiation.

12. Only by Grand Pier's removal of the pavement and excavation of the site for construction of a commercial development, was the public and the environment exposed to the risks of thorium. Grand Pier undertook the removal of the pavement and excavation of the site for its own economic benefit. Kerr-McGee did not stand to benefit economically from Grand Pier's commercial development activities.

13. In February 2000, EPA directed cessation of these excavation activities pending a survey to determine whether the excavation would expose thorium residues. After a survey by EPA personnel indicated the presence of thorium residues, EPA amended a 1996 unilateral administrative order with respect to the 316 East Illinois Street site to direct thorium removal activities at the 200 East Illinois Street site by Grand Pier. EPA also directed the removal of the thorium residues that Grand Pier had disposed of at the Beverly Gravel Site.

14. In March 2000, Kerr-McGee and Grand Pier reached an agreement by which both parties reserved all rights to seek future reimbursement, but, to enable prompt conduct of removal activities directed by EPA, Kerr-McGee undertook to arrange transportation and disposal of thorium residues to be excavated by Grand Pier's contractor at the 200 East Illinois Street site.

15. As a result of Grand Pier's actions, Kerr-McGee has incurred approximately \$3.6 million of costs.

16. Pursuant to a consent decree under § 107 of CERCLA, 96 U.S.C. § 9607, entered in the United States District Court for the Northern District of Illinois in June 2004, Kerr-McGee has reimbursed EPA approximately \$130,000 for its costs of oversight and response with respect to the 200 East Illinois Street site.

17. Grand Pier has not paid any share of these EPA costs or reimbursed Kerr-McGee for any of the costs incurred by Kerr-McGee.

COUNTER-COMPLAINT COUNT I: 415 ILCS 5/21(e)

18. Kerr-McGee repeats and realleges the allegations of paragraphs of 1-17 of its Counter-Complaint as if fully set forth herein.

19. The Act provides that no person shall dispose, 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 the Act and of regulations and standards thereunder. 415 ILCS 5/21(e).

20. Grand Pier's removal of asphalt, concrete, and overburden at the 200 East Illinois Street site, the excavation of the site, and the subsequent disposal of that material were acts of "disposal," as that term is defined in 415 ILCS 5/3.185, other than at a site or facility which meets the requirements of the Act and of regulations and standards thereunder.

PRAYER FOR RELIEF

WHEREFORE, Kerr-McGee prays for judgment against Grand Pier and AISLI as follows:

A. An order requiring Counter-Complaint Respondents to reimburse Kerr-McGee for the \$3.6 million in response costs that Kerr-McGee has incurred and the \$130,000 Kerr-McGee reimbursed to the United States related to removal of thorium at the 200 East Illinois Street site, together with maximum lawfully allowed interest thereon;

B. An order requiring Counter-Complaint Respondents to pay the maximum civil penalties provided for by the Act;

C. Such other and further relief as the Board may deem just and proper.