

ILLINOIS POLLUTION CONTROL BOARD

January 5, 2006

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.	)	

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KERR-MCGEE CHEMICAL LLC	)	
	)	
Counter-Complainants,	)	
	)	
v.	)	PCB 05-157
	)	(Citizens Enforcement - Land)
GRAND PIER CENTER LLC, and	)	
AMERICAN INTERNATIONAL	)	
SPECIALTY LINES INSURANCE CO., as	)	
subrogee of Grand Pier Center LLC,	)	
	)	
Counter-Respondents.	)	

ORDER OF THE BOARD (by G.T. Girard):

There are several pending motions in this proceeding all of which address affirmative defenses. The motions and responses were filed by the respondent/counter complainant, Kerr McGee Chemical LLC (Kerr McGee)<sup>1</sup>, and by the complainants/counter respondents, Grand Pier Center LLC and American International Specialty Lines Insurance Company (Grand Pier). The Board will first set forth the procedural background of this proceeding and then the general rule

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<sup>1</sup> On October 11, 2005, Kerr McGee filed a "Notice of Name Change" to Tronox LLC. However at this time, Kerr McGee has not filed a motion asking for the caption in the case to be amended. Further, as the filings at issue in this order began with Kerr McGee as the named party, the Board will continue to refer to the respondent, cross-complainant as Kerr McGee.

of law concerning affirmative defense. Next, the Board will address Kerr McGee's affirmative defenses followed by Grand Pier's affirmative defenses.

### **PROCEDURAL BACKGROUND**

On February 25, 2005, Grand Pier filed a complaint against River East LLC, Chicago Dock and Canal Trust, Chicago Dock and Canal Company, and Kerr-McGee Chemical, LLC (Kerr-McGee). *See* 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.204. On April 4, 2005, Kerr-McGee filed a motion to dismiss the complaint. Grand Pier alleges in a three-count complaint that respondents violated Sections 21(e), 12(a), and 12(d) of the Environmental Protection Act (Act) (415 ILCS 5/21(e), 12(a) and (d) (2002)). Grand Pier further alleges that respondents violated these provisions by depositing hazardous substances on the land at the site known as the RV3 North Columbus Drive Site. This site is generally located at 316 East Illinois, in Chicago, Cook County. On May 19, 2005, the Board denied the motion to dismiss and accepted the complaint for hearing.

On June 13, 2005, Kerr-McGee filed a counter complaint against Grand Pier Center, which the Board accepted for hearing on July 21, 2005. Kerr-McGee alleges that Grand Pier violated Section 21(e) of the Act (415 ILCS 5/21(e) (2004)). Kerr-McGee alleges that complainants violated the Act by removing asphalt, concrete and overburden at the site located at 200 East Illinois, in Chicago, Cook County.

Kerr McGee and Grand Pier filed timely answers to the complaint (June 13, 2005) and counter complaint (August 12, 2005), which included several asserted affirmative defenses. Also Grand Pier filed a counter complaint to the counter complaint. Kerr McGee and Grand Pier have timely filed motions to strike the affirmative defenses on July 5, 2005 and September 14, 2005.

### **LEGAL BACKGROUND ON AFFIRMATIVE DEFENSES**

The Board's procedural rules provide that "any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing." 35 Ill. Adm. Code 103.204(d). In a valid affirmative defense, the respondent alleges "new facts or arguments that, if true, will defeat . . . the government's claim even if all allegations in the complaint are true." People v. Community Landfill Co., PCB 97-193, slip op. at 3 (Aug. 6, 1998). The Board has also defined an affirmative defense as a "response to a plaintiff's claim which attacks the plaintiff's legal right to bring an action, as opposed to attacking the truth of claim." Farmer's State Bank v. Phillips Petroleum Co., PCB 97-100, slip op. at 2 n. 1 (Jan. 23, 1997) (quoting *Black's Law Dictionary*). Furthermore, if the pleading does not admit the opposing party's claim, but instead attacks the sufficiency of that claim, it is not an affirmative defense. Worner Agency v. Doyle, 121 Ill. App. 3d 219, 221, 459 N.E.2d 663, 635 (4th Dist. 1984).

### **KERR MCGEE'S AFFIRMATIVE DEFENSES**

On June 13, 2005, Kerr McGee timely filed an answer and ten affirmative defenses (Answer) in response to the complaint filed by Grand Pier on February 25, 2005. On July 5, 2005, Grand Pier filed a motion to dismiss the affirmative defenses (Mot. Strike). On September 22, 2005, Kerr McGee filed a motion to withdraw affirmative defenses and a motion to amend the remaining affirmative defenses (Mot. Amend). On October 11, 2005, Grand Pier responded in opposition to the motion to amend (Resp.), but not objecting to the motion to withdraw. On October 21, 2005, Kerr McGee filed a reply (Reply).

The Board will first address the motion to amend and Grand Pier's response. Next, the Board will discuss the affirmative defenses.

### **Motion to Amend**

As there is no objection to Kerr McGee's motion to withdraw certain affirmative defenses, the Board grants the motion to withdraw. Therefore, the first, second, third, fourth, and tenth affirmative defenses are withdrawn. As to the remaining five affirmative defenses, Kerr McGee seeks to amend the affirmative defenses and Grand Pier objects to allowing amendment of the affirmative defenses. Grand Pier objects because the affirmative defenses, "even as amended, fail to plead facts with the necessary degree of specificity." Resp. at 2. In the response, Grand Pier continues to argue the sufficiency of the affirmative defenses as pled. In order to fully review Kerr McGee's assertion of affirmative defenses, the Board grants the motion to amend. The Board will accept the arguments in Grand Pier's response to the motion to amend as a part of Grand Pier's arguments that the affirmative defenses are insufficiently pled.

The remaining affirmative defenses from the June 13, 2005 Answer are the Fifth, Sixth, Seventh, Eighth, and Ninth. Briefly, the Fifth affirmative defense alleges that Grand Pier contributed to the alleged violations and is proportionately liable for that contribution. Answer at 11. The Sixth affirmative defense argues that a third party or events preceded, intervened, and/or superceded the acts of Kerr McGee. *Id.* The Seventh affirmative defense as pled alleges that Grand Pier assumed the risk for incurring any damage. *Id.* The Eighth affirmative defense alleges that the complaint is preempted by federal law. *Id.* The Ninth affirmative defense asserts that Kerr McGee is entitled to contribution protection with respect to the complaint. Answer at 11-12.

### **The Remaining Affirmative Defense**

Kerr McGee sets forth the following affirmative defenses:

- A. The Fifth affirmative defense pled by Kerr McGee is that if and to the extent that Kerr McGee is found liable, Grand Pier's recovery, if any, should be proportionally reduced because Grand Pier's own fault contributed to Grand Pier's injuries, if any, and Grand Pier is liable under the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)), Answer at 11;

- B. The Sixth affirmative defense pled by Kerr McGee is that Grand Pier's claims are barred because of preceding, intervening, and/or superceding acts of third parties or because of events which Kerr McGee had no control, *id.*;
- C. The Seventh affirmative defense offered by Kerr McGee is that Grand Pier knowingly and voluntarily assumed the risk of incurring any alleged damage they may have suffered and are therefore precluded from recovery, Answer at 11;
- D. Kerr McGee's Eighth affirmative defense is that the complaint is preempted by federal law, Answer at 11;
- E. The Ninth affirmative defense also relies on federal law and Kerr McGee alleges that with respect to Counts I, II, and III of the complaint Kerr McGee is entitled to contribution protection under 42 U.S.C. § 9613(f)(2).

### **Kerr McGee Arguments**

In support of the Fifth, Sixth and Seventh affirmative defenses, Kerr McGee asserts that Grand Pier retained environmental consultants to perform an environmental review of the site at 200 East Illinois Street before Grand Pier acquired the property. Mot. Amend at 2. Kerr McGee argues that no file review to investigate the nature of the environmental concerns was undertaken by Grand Pier or the consultants retained by Grand Pier. *Id.* Kerr McGee maintains that a file review would have established that the ongoing cleanup at 316 East Illinois had revealed that pockets of thorium residues extended beyond the western property boundary beneath the sidewalks and Columbus Drive. *Id.*

Kerr McGee asserts that Grand Pier knew or should have known that prior to construction of Columbus Drive in the mid 1980s, 316 East Illinois Street and 200 East Illinois Street were contiguous. Mot. Amend at 2. Kerr McGee argues that even though subsurface borings were taken at 200 East Illinois, none of the boring addressed thorium residues. Mot. Amend at 2-3. Kerr McGee maintains that the pavement covering 200 East Illinois acted as a shield to protect the public against gamma radiation, which is associated with thorium, and the United States Environmental Protection Agency (USEPA) indicated that removal of the shielding materials could result in a release into the environment of radioactive material. Mot. Amend at 3.

Kerr McGee maintains that Grand Pier began to remove pavement from the site at 200 East Illinois in January 2000 to prepare for construction of a commercial building at the site. Mot. Amend at 3. Kerr McGee asserts that Grand Pier knew or should have known that removal of the pavement and excavation of the site would result in a risk to human health by allowing exposure to radiation. *Id.* Kerr McGee argues that only by Grand Pier's removal of the pavement and excavation was the public and the environment exposed to the risks of thorium. *Id.*

Kerr McGee argues that Grand Pier undertook the removal of the pavement and excavation for Grand Pier's economic benefit. Mot. Amend at 4. Kerr McGee asserts that the USEPA ordered cessation of the activities at 200 East Illinois in February 2000 and amended an

administrative order for 316 East Illinois to direct thorium removal activities at the 200 East Illinois site. *Id.*

As to the Eight and Ninth affirmative defenses Kerr McGee argues that 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)). Kerr McGee asserts that “its liability to the United States for some or all of a response action or for some or all of the costs” has been resolved through “a judicially approved settlement referenced in 42 U.S.C. § 9613(f)(2).” Mot. Amend at 4, citing 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) of CERCLA); Crown Cork and Seal Co., Inc. v. Clark Equipment 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) of CERCLA); Devo Corp. v Zuber, 804 F.Supp. 1182, 1185 (D. Neb. 1992); United States v. Pretty Products, Inc., 780 F. Supp. 1488 (S.D. Ohio 1991). Kerr McGee asserts that with respect to 200 East Illinois, Kerr McGee is a party to an agreement specified in 42 U.S.C. § 9613(f)(2) and the costs sought by Grand Pier are matters addressed in the agreement. Mot. Amend at 5.

### **Grand Pier’s Arguments**

In Grand Pier’s motion to strike, Grand Pier argues that as first pled Kerr McGee has completely omitted any facts to support the legal conclusions enunciated in the alleged affirmative defenses. Mot. Strike at 4. Grand Pier asserts that even as amended the affirmative defenses fail to plead facts with the necessary degree of specificity. Resp. at 2, citing International Insurance Co. v. Sargent & Lundy, 242 Ill.App.3d 614, 609 N.E.2d 842, 853 (1st Dist. 1993). Specifically with regard to the Fifth affirmative defense, Grand Pier argues that the alleged defense fails to “give color to Grand Pier’s allegation” in the complaint that Grand Pier was an innocent purchaser. Resp. at 2. Grand Pier maintains that because Kerr McGee does not “give color” to Grand Pier’s claim, the defense is not properly pled and should be stricken. *Id.* Grand Pier asserts that a properly pled affirmative defense confesses or admits the cause of action and the Fifth affirmative defense fails to do so. *Id.*

Grand Pier argues that the Sixth affirmative defense fails to specify what acts of a third party bar Grand Pier’s claim and without more the defense should be stricken. Resp. at 3. Grand Pier alleges that Kerr McGee has been actively involved in the remediation of contamination at the 316 East Illinois site. *Id.* Grand Pier argues that certainly by 1996 Kerr McGee was sufficiently in control that Kerr McGee could have advised adjacent landowners that the soil was contaminated with thorium. *Id.*

Regarding the Seventh affirmative defense, Grand Pier asserts that Kerr McGee had provided no support for the proposition that assumption of the risk is an affirmative defense to violations of the Act. Resp. at 3. Further Grand Pier argues that a review of precedent does not reveal authority that supports the concept that assumption of the risk is a defense against violation of the Act. *Id.* Grand Pier also maintains that Kerr McGee again fails to “give color” to the allegation in Grand Pier’s complaint and therefore the defense should be stricken. Resp. at 3-4.

Concerning the Eighth affirmative defense, Grand Pier argues that Kerr McGee has failed to plead with specificity what documents equate to a settlement such that federal law would preempt Grand Pier's claims. Resp. at 4. Grand Pier asserts that Kerr McGee's statement that some or all of Kerr McGee's liability has been resolved through a settlement is ambiguous and reveals that Kerr McGee may not know what has been resolved. *Id.* Grand Pier maintains that if Kerr McGee is relying on the unilateral administrative order (UAO), then Kerr McGee's reliance is misplaced. *Id.* Grand Pier asserts that a UAO does not constitute a settlement. Resp. at 4, citing Pharmacia Corp. v. Clayton Chemical Acquisition LLC, 382 F.Supp2d 1079 (S.D. Ill. 2005).

Grand Pier asserts that with the Ninth affirmative defense, Kerr McGee again fails to give color to Grand Pier's complaint. Resp. at 4. In addition, Grand Pier maintains that there has been no settlement entered concerning the site which gives contribution protection to Kerr McGee. Mot. Strike at 6. Grand Pier asserts that the only settlement includes language that limits contribution protection for Kerr McGee. *Id.* Grand Pier argues that the complaint does not seek reimbursement for any costs associated with "matters addressed" by the consent decree and this affirmative defense should be stricken. Mot. Strike at 7.

### **Kerr McGee's Reply**

Kerr McGee asserts that the Fifth, Sixth, and Seventh affirmative defense are well pled and should not be stricken. Reply at 2-4. Specifically, Kerr McGee argues that the Fifth and Seventh affirmative defenses are not denials of the allegations in the complaint but rather are compatible with the allegations in the complaint. Reply at 2, 5. Kerr McGee argues that the Fifth affirmative defense "gives color" to Grand Pier's claim and then asserts a new matter by which Grand Pier's apparent right is defeated. Reply at 3. With the Seventh affirmative defense, Kerr McGee argues that Grand Pier should have taken a more cautious approach with the site and investigated site contamination before beginning construction. Reply at 5.

Kerr McGee argues that the allegations of the Sixth affirmative defense are also well pled as Kerr McGee makes specific allegations that Grand Pier failed to investigate potential environmental issues before proceeding with construction. Reply at 4. Kerr McGee asserts that whether Kerr McGee had "control" over the actions of Grand Pier and others is an issue for hearing and the defense should not be stricken. *Id.*

In reply, Kerr McGee argues that the Eighth affirmative defense is well pled because Kerr McGee has pled that in at least one instance Kerr McGee has entered into a settlement with USEPA. Reply at 5. As to the Ninth affirmative defense, Kerr McGee asserts that Grand Pier has misread and therefore misunderstood the affirmative defense. Reply at 6. Kerr McGee maintains that none of Grand Pier's remarks are directed to the ninth affirmative defense. *Id.*

### **Discussion**

The facts establishing an affirmative defense must be pled with the same degree of specificity as required by a plaintiff to establish a cause of action. International Insurance Co.,

609 N.E.2d 842, 853, citing Kermeen v. City of Peoria, 65 Ill. App. 3d 969, 973; 382 N.E.2d 1374 (3rd Dist. 1978). A motion to dismiss an affirmative defense admits all well-pleaded facts constituting the defense and attacks only the legal sufficiency of those facts. International Insurance Co., 609 N.E.2d 842, 854. Where the well-pleaded facts of an affirmative defense raise the possibility that the party asserting them will prevail, the defense should not be stricken. *Id.*

Grand Pier generally attacks the affirmative defenses as not being well pled. The Board disagrees. Kerr McGee has alleged that Grand Pier took steps at 200 East Illinois that directly resulted in the release of contaminants and that Grand Pier should have known that the step taken would or could result in such a release. If those facts are proven, there is the possibility that Kerr McGee could prevail (*see International Insurance Co.*, 609 N.E.2d 842, 854). Further, if Kerr McGee establishes that pursuant to federal law a settlement has been entered into, which alleviates Kerr McGee of the responsibility for further cleanup of the site, or gives Kerr McGee immunity from a finding of violation, this too could allow Kerr McGee to prevail. Therefore, the Board denies Grand Pier's motion to strike the Fifth, Sixth, Seventh, Eighth, and Ninth affirmative defenses.

### **GRAND PIER'S AFFIRMATIVE DEFENSES**

On August 12, 2005, Grand Pier timely filed an answer, including eleven affirmative defenses, and a counterclaim to the counter-complaint (Answer2). On September 14, 2005, Kerr McGee filed a motion to dismiss the counter-complaint and to strike certain affirmative defenses (Mot. Strike2). Grand Pier responded to the motion on October 4, 2005, (Resp.2) and on October 21, 2005, Kerr McGee filed a reply (Reply2).

### **Grand Pier's Affirmative Defenses and Counterclaim**

Grand Pier sets forth eleven affirmative defenses as follows:

1. Kerr McGee fails to allege any claim or cause of action against American International Specialty Lines Insurance Company, Answer2 at 5;
2. Kerr McGee's claims are barred because Kerr McGee acted as a volunteer, *id.*;
3. Kerr McGee assumed the risk, and is estopped from asserting the counter-claim against Grand Pier, Answer at 6;
4. Kerr McGee's claim has been waived by Kerr McGee's own actions, *id.*;
5. Kerr McGee's claims are barred by the doctrine of unclean hands, *id.*;
6. Kerr McGee's alleged injuries and damages were caused by Kerr McGee's own negligence, *id.*;

7. The alleged acts or omissions of Grand Pier are not the proximate cause of any alleged environmental contamination and resulting damages claimed by Kerr McGee, *id.*;
8. Any injuries, damages, or conditions alleged by Kerr McGee were caused by the acts or omissions of third parties not under the control of Grand Pier, *id.*;
9. Kerr McGee has failed to mitigate any purported damages, *id.*;
10. Grand Pier was the innocent purchaser of the property at 316 East Illinois and did not possess any knowledge that the site was contaminated by radioactive thorium, *id.*;
11. Kerr McGee's claim if found by the Board to be valid, must be limited to Grand Pier's proportionate share of liability. Answer at 7.

Grand Pier's counterclaim to the counter-complaint, alleges that Grand Pier, if found liable, is entitled to contribution pursuant to "An Act in Relation to Contribution Among Tort Feasors" 740 ILCS 100/5 (2004) (Contribution Act). Answer2 at 7-8.

### **Kerr McGee's Motion Arguments**

Kerr McGee argues that the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth affirmative defenses should be stricken because the alleged affirmative defenses are not pled with the same degree of specificity required by plaintiff to establish a cause of action. Mot. Strike2 at 3-4, citing International Insurance Co., 609 N.E.2d 842, 843. Kerr McGee argues that Grand Pier fails to include facts to support the allegations and as such the defenses should be stricken. Mot. Strike2 at 4.

Kerr McGee asserts that Grand Pier, in the response to the motion to strike, attempts to rely on allegations not pled to bolster the affirmative defenses. Reply2 at 2. Kerr McGee argues that Grand Pier does not explain how allegations in the complaint that Kerr McGee was obedient to a USEPA order, support Grand Pier's affirmative defense. *Id.* Kerr McGee maintains that Grand Pier also draws on improper inferences to bolster the alleged affirmative defenses. Mot. Strike2 at 3.

Kerr McGee further asserts that Grand Pier's response demonstrates that the Seventh and Eighth affirmative defenses are not proper affirmative defenses. Reply2 at 5. Kerr McGee argues that rather the allegations contained in the Seventh and Eighth affirmative defenses are denials of the allegations in the counter-complaint. Reply2 at 5-6.

Regarding Grand Pier's counterclaim, Kerr McGee argues that the claim should be dismissed because Grand Pier failed to ask for leave to file the counterclaim or in the alternative because the counterclaim is duplicative. Reply2 at 4-5. Kerr McGee asserts that Grand Pier did not ask for leave to file the counterclaim as required by 35 Ill. Adm. Code 103.206(d). *Id.* Alternatively, Kerr McGee argues that the counterclaim seeks the same relief as the relief sought



in the complaint brought by Grand Pier. Reply2 at 5. Therefore, Kerr McGee argues the counterclaim is duplicative.

### **Grand Pier's Response**

Grand Pier argues that the affirmative defenses are sufficiently pled. Response2 at 1. Grand Pier asserts that the allegations in the Grand Pier's original complaint have been incorporated by Grand Pier in the assertion of eleven affirmative defenses. Response2 at 2. Grand Pier points to specific allegations in the Grand Pier's complaint to support the alleged affirmative defenses. Response2 at 2-4.

Regarding the counterclaim filed by Grand Pier, Grand Pier asserts that the counterclaim is brought pursuant to the Contribution Act rather than the Environmental Protection Act and seeks allocation of Kerr McGee's asserted liability. Response2 at 4. Because Grand Pier's complaint relates to Grand Pier's damages, while the counterclaim relates to Kerr McGee's alleged damages, Grand Pier asserts the counterclaim cannot be duplicative. *Id.* Grand Pier also now seeks leave to file the counterclaim. *Id.*

### **Discussion**

Grand Pier has incorporated the allegations contained in Grand Pier's complaint in the alleged affirmative defenses. The Board has already accepted the complaint and Kerr McGee has not offered any argument to convince the Board that Grand Pier's allegations in the complaint lack sufficiency to proceed. By incorporating the allegations from the original complaint, along with additional pleadings in Grand Pier's assertion of eleven affirmative defenses, the Board finds that the alleged affirmative defenses of Grand Pier have been pled sufficiently.

The Board is however convinced by the arguments that Kerr McGee makes in the reply that the Seventh and Eighth alleged affirmative defenses are not proper affirmative defenses. The Board agrees that both of these alleged affirmative defenses appear to be denials of the allegations in the counter complaint, not affirmative defenses. The Board therefore strikes Grand Pier's Seventh and Eighth affirmative defenses.

The Board will not strike the First, Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, and Eleventh alleged affirmative defenses pled by Grand Pier as Kerr McGee's argument that the alleged affirmative defenses are not sufficiently pled is without merit. Therefore, the alleged affirmative defenses are sufficiently pled and Grand Pier may proceed with those alleged affirmative defenses.

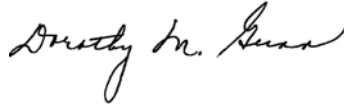
As to the counterclaim, the Board will dismiss the counterclaim. The Board need not decide if the counterclaim is duplicative, rather, the Board need look no further than Grand Pier's own statement that the counterclaim is filed pursuant to the Contribution Act and not the Environmental Protection Act. The Board only has the authority granted to the Board by the General Assembly and that authority is limited to hearing cases alleging violations of the Environmental Protection Act. Therefore, the counterclaim is dismissed.

**CONCLUSION**

The Board grants Kerr McGee's motion to withdraw certain affirmative defenses. The Board denies Kerr McGee's motion to strike affirmative defenses, in part and grants the motion in part, striking the Seventh and Eighth alleged affirmative defense. The Board also denies Grand Pier's motion to strike affirmative defenses. The Board finds that the pleading contains sufficient specificity to allow the parties to proceed with the remaining affirmative defenses as alleged. The Board also grants Kerr McGee's motion to dismiss the counterclaim as the counterclaim seeks relief pursuant to the Contribution Act and the Board is not authorized to grant such relief. This matter has previously been accepted for hearing and the Board directs the hearing officer to proceed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 5, 2006, by a vote of 4-0.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn", written in a cursive style.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board