

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 27 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

PCB No. 06-115

(Enforcement - Land, Water)

NATIONAL CITY ENVIRONMENTAL,)
LLC, an Illinois limited liability corporation,)
and NATIONAL CITY RECYCLING, LLC,)
an Illinois limited liability corporation,)

Respondents.)

NOTICE OF FILING

TO: Delbert D. Haschmeyer
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

Division Chief of Environmental Enforcement
Office of the Attorney General
188 West Randolph St., 20th Floor
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board on behalf of Respondents National City Environmental, LLC and National City Recycling, LLC its Answer and the Appearances of John B. Simon and Bill S. Forcade. A copy of each document is herewith served upon you.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Respectfully submitted,

NATIONAL CITY ENVIRONMENTAL, LLC,
an Illinois limited liability corporation, and
NATIONAL CITY RECYCLING, LLC, an Illinois
limited liability corporation,

By: 

One of its attorneys

John B. Simon
Bill S. Forcade
Steven M. Siros
JENNER & BLOCK LLP
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

Dated: February 27, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

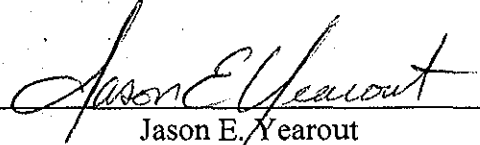
CERTIFICATE OF SERVICE

I, Jason E. Yearout, an attorney, hereby certify that I have served National City Environmental, LLC's and National City Recycling, LLC's Answer and the Appearances of John B. Simon and Bill S. Forcade, via first-class mail with postage fully prepaid, upon the following on this 27th day of February, 2006:

TO: Delbert D. Haschmeyer
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

Division Chief of Environmental Enforcement
Office of the Attorney General
188 West Randolph St., 20th Floor
Chicago, IL 60601

By: _____


Jason E. Yearout

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STATE OF ILLINOIS
Pollution Control Board

PCB No. 06-115
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APPEARANCE

Pursuant to 35 Ill. Admin. Code § 101.400(a), I hereby file my appearance in this proceeding, on behalf of National City Environmental, LLC and National City Recycling, LLC.

Respectfully submitted,

NATIONAL CITY ENVIRONMENTAL, LLC,
an Illinois limited liability corporation, and
NATIONAL CITY RECYCLING, LLC, an Illinois
limited liability corporation,

By: 

John B. Simon

John B. Simon
Bill S. Forcade
Steven M. Siros
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Respondents.)

APPEARANCE

Pursuant to 35 Ill. Admin. Code § 101.400(a), I hereby file my appearance in this proceeding, on behalf of National City Environmental, LLC and National City Recycling, LLC.

Respectfully submitted,

NATIONAL CITY ENVIRONMENTAL, LLC,
an Illinois limited liability corporation, and
NATIONAL CITY RECYCLING, LLC, an Illinois
limited liability corporation,

By: 

Bill S. Forcade

John B. Simon
Bill S. Forcade
Steven M. Siros
JENNER & BLOCK LLP
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Chicago, IL 60611
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NATIONAL CITY ENVIRONMENTAL,)
LLC, an Illinois limited liability corporation,)
and NATIONAL CITY RECYCLING, LLC,)
an Illinois limited liability corporation,)

Respondents.)

**RESPONDENTS NATIONAL CITY ENVIRONMENTAL, LLC AND
NATIONAL CITY RECYCLING, LLC'S ANSWER AND AFFIRMATIVE DEFENSES**

NOW COME Respondents, NATIONAL CITY ENVIRONMENTAL, LLC and
NATIONAL CITY RECYCLING, LLC (collectively, "St. Louis Auto Shredding" or "SLAS"),
by their attorneys, and respond to the Complaint and state as follows:

COUNT I

PERMIT VIOLATIONS AT THE NORTHWEST UNIT (ACTIVE AREA)

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and conditions of Section 42 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42 (2004).

ANSWER: To the extent Paragraph 1 of the Complaint contains conclusions of law, no response is required. SLAS admits the remaining allegations of Paragraph 1 of the Complaint.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: To the extent that Paragraph 2 contains conclusions of law, no response is required. SLAS admits the remaining allegations of Paragraph 2 of the Complaint.

3. At all times relevant to this complaint, NATIONAL CITY ENVIRONMENTAL, LLC, was the owner and NATIONAL CITY RECYCLING, LLC, was the operator of a facility located in National City, St. Clair County, Illinois ("facility"). The facility is commonly known as, and the Respondents are hereinafter collectively referred to as, "St. Louis Auto Shredding."

ANSWER: Complainant has failed to specify the time period denoted by the phrase "at all times relevant to this complaint." As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them. However, SLAS admits that National City Environmental, LLC is the current owner and National City Recycling, LLC is the current operator of a facility located in National City, Illinois.

4. The operations of St. Louis Auto Shredding at the facility include the shredding of automobiles and white goods (e.g. household appliances), the recycling of materials, and the disposal of waste in on-site landfills, which are designated as the Northwest Unit (Active Area) and the Southeast Unit (Closed Area).

ANSWER: SLAS admits the allegations in Paragraph 4 of the Complaint.

5. The Southeast Unit has been closed under the 807 regulations and ceased accepting waste in September 1992. The Northwest Unit operates under the 814 Subpart C regulations.

ANSWER: To the extent that Paragraph 5 contains conclusions of law, no response is required. SLAS admits the remaining allegations in Paragraph 5 of the Complaint.

6. The Illinois EPA has previously issued permits to St. Louis Auto Shredding, including Permits 1994-065-LFM and 1996-293-SP.

ANSWER: To the extent that Paragraph 6 contains conclusions of law, no response is required. SLAS admits that Illinois EPA ("IEPA") has issued to SLAS several different operating and construction permits, and various Significant Modifications thereto, including but not limited to those contained in Permit Log Nos. 1994-065-LFM and 1996-293-SP. SLAS lacks

sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 6 of the Complaint, and therefore denies each and every one of them.

7. Permit 1994-065-LFM, Vol. II, ch. 5, pp. 19-20 - Elimination of Trench 3, provides:

The NW fill area was originally permitted for development in 1976. . . . The waste in Trench 3 will be removed so that the liner and leachate drainage/collection systems may be installed over the entire NW fill area. . . . Alternatively, St. Louis Auto Shredding may submit for approval, a modified design for this portion of the site (eliminating the need for removal) or a modified design appropriate for disposal of the waste as characterized. . . .

ANSWER: The allegations contained in Paragraph 7 of the Complaint require no response, as the language of the Permit speaks for itself.

8. Permit 1994-065-LFM, Condition V.10, provides:

The following monitoring points are to be used in the groundwater detection monitoring program for this facility (Wells G32M, G33M and G34M shall be installed in locations shown on Figure 1 of the addendum dated February 27, 2001 to Application Log No. 2000-362). . . #G32M, #G33M and #G34M Installation date @ 15 May 2001 . . . @ Wells must be installed in order to obtain 2nd quarter 2001 sampling.

ANSWER: The allegations contained in Paragraph 8 of the Complaint require no response, as the language of the Permit speaks for itself.

9. Permit 1994-065-LFM, Condition V.12(d), provides:

The application groundwater quality standards (AGQS) are subject to the following conditions:

* * *

- d. AGQS values must be determined for all of the parameters which appear in either Lists G1 or G2. AGQS values must also be established for the dissolved constituents listed in G1. These shall be proposed in a permit application to be submitted to the Illinois EPA no later than October 31, 1994. The AGQS values shall be calculated using the

statistical method described on page 15 of Attachment 11 to the application, Log No. 1994-065.

ANSWER: The allegations contained in Paragraph 9 of the Complaint require no response, as the language of the Permit speaks for itself.

10. Permit 1994-065-LFM, Condition V.14, provides:

A complete listing of MAPC's for each parameter listed in Condition V.12 for each well within the zone of attenuation identified in Condition V.10 shall be proposed in a permit application to be submitted to the Illinois EPA no later than October 31, 1994.

ANSWER: The allegations contained in Paragraph 10 of the Complaint require no response, as the language of the Permit speaks for itself.

11. Permit 1994-065-LFM, Condition V.17, provides:

Within 90 days of confirmation of any monitored increase, the operator shall submit a permit application for significant modification to begin an assessment monitoring program in order to determine whether the solid waste disposal facility is the source of the contamination and to provide information needed to carry out a groundwater impact assessment in accordance with 35 IAC 811.819(b).

ANSWER: The allegations contained in Paragraph 11 of the Complaint require no response, as the language of the Permit speaks for itself.

12. Permit 1994-065-LFM, Condition V.221, provides:

The operator shall implement the revised assessment monitoring plan dated July 13, 2000, and approved as Modification No. 2. . . . All data collected during assessment and the results of the assessment activities shall be submitted to the Illinois EPA, along with findings and recommendations as an application for significant modification no later than December 31, 2001. During assessment monitoring and pending approval of the assessment report, piezometers P26M, P22M and P24M shall be monitored in accordance with Special Condition V.12 and V.20.

ANSWER: The allegations contained in Paragraph 12 of the Complaint require no response, as the language of the Permit speaks for itself. SLAS further notes that no "Condition V.221" exists for Permit No. 1994-065-LFM.

13. Per permit 1994-065-LFM, St. Louis Auto Shredding was to submit maximum allowable predicted concentrations ("MAPC") and applicable groundwater quality standards ("AGQS") values in order to determine site-specific groundwater quality standards. St. Louis Auto Shredding did submit the AGQS values via a permit application in July 1996, but the application was denied by the Illinois EPA in September 1996.

ANSWER: To the extent that Paragraph 13 of the Complaint cites Permit 1994-065-LFM, no response is required, as the language of the Permit speaks for itself. SLAS lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies each and every one of them. Responding further, SLAS states that in addition to its July 1996 permit application, on several occasions subsequent to July 1996, SLAS submitted AGQS and MAPC values to IEPA. Each submission complied with all applicable IEPA regulations.

14. In October 1998, the Illinois EPA conducted a groundwater sampling event and a groundwater compliance inspection. As a result of this inspection, the Illinois EPA determined the existence of various compliance deficiencies; the Illinois EPA subsequently issued violation notices ("VN") to the site owner and operator. In St. Louis Auto Shredding's Compliance Commitment Agreement, the Respondents pledged to submit the MAPC and AGQS proposed values as a permit application by April 1999. This application was received as #199-146, but contained deficiencies. St. Louis Auto Shredding requested a meeting with the Illinois EPA in September 1999, and the result was that the Respondents agreed to submit an Assessment Plan by November 1999.

ANSWER: SLAS admits that it received violation notices from IEPA on or about December 30, 1998, and further admits that it submitted a Compliance Commitment Agreement to IEPA on or about February 8, 1999. SLAS further states that it submitted permit renewal applications and revised AGQS and MAPC values to IEPA in early April of 1999. Each submission complied with all applicable IEPA regulations, and SLAS specifically denies that these applications and values contained deficiencies.

SLAS further states that IEPA provided comments on SLAS's applications and values in July of 1999, and SLAS promptly and completely responded to those comments. Representatives of the parties met in September 1999 to discuss technical aspects of these submissions. Shortly thereafter, SLAS submitted an Assessment Monitoring Plan, which IEPA approved on August 11, 2000 as Modification No. 2 to its operating permit for the Northwest (active) Unit (No. 1994-065-LFM).

SLAS lacks sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 14 of the Complaint, and therefore denies each and every one of them.

15. The Assessment Plan was submitted and approved by the Illinois EPA. From the Assessment Plan, a Groundwater Assessment Report was submitted to the Illinois EPA as permit application 2002-182. This Assessment Report was to contain additional data and information essential for review of applications 1999-146 and 1999-134. On January 31, 2003, permit applications 2002-182, 1999-134 and 1999-146 were denied.

ANSWER: SLAS admits that IEPA approved its Assessment Monitoring Plan on August 11, 2000. SLAS further admits that it submitted a Groundwater Assessment Report to IEPA under Permit Log No. 2002-182. SLAS further states that it was in regular communication with IEPA representatives regarding the contents and technical aspects of this Report from the time it submitted its Groundwater Assessment Report until IEPA denied SLAS's permit applications, which complied with all applicable statutes and regulations, on January 31, 2003. For example, SLAS provided extensive comments on a September 25, 2002 IEPA draft permit denial letter, and numerous representatives of both SLAS and IEPA met on November 22, 2002 to discuss the substantive aspects of both SLAS's pending permit applications and IEPA's draft denial letter. As a result of that meeting, SLAS submitted additional information and materials to IEPA on or about January 28, 2003. Each of the submissions to IEPA described above met all applicable IEPA regulatory requirements, and the sum of information SLAS provided IEPA on

these topics was more than sufficient for IEPA to issue SLAS the operating permits to which it is entitled.

SLAS further states that IEPA, a mere three days later, denied SLAS's permit applications, which complied with all applicable statutes and regulations, on January 31, 2003. SLAS further states that it appealed those permit denials in a timely manner to the Board on March 5, 2003 (PCB Case Nos. 03-138, 03-139, and 03-140). These appeals were consolidated on March 20, 2003 and remain pending with the Board. To date, IEPA has filed no appearance before the Board in these cases, and has in no other way responded to these permit appeals.

16. Thus, at all times relevant to this complaint, continuing until on or about January 21, 2005, St. Louis Auto Shredding has disposed of waste in the Northwest Unit (Active Area) without an operating permit issued by the Illinois EPA.

ANSWER: Complainant has failed to specify the time period denoted by the phrase "at all times relevant to this complaint." As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them. In addition, SLAS specifically denies that it has disposed of waste in the Northwest Unit without an operating permit. SLAS also states that each of its permit applications, applications for significant modification, or other submissions to IEPA conformed with all applicable statutes and regulations.

17. On November 26, 2002, and February 3, 2003, the Illinois EPA conducted inspections of the facility.

ANSWER: SLAS lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint, and therefore denies each and every one of them.

18. As a result of these inspections, the Illinois EPA issued VN-2002-01055 and M-2002-1057 to the Respondents. A meeting between St. Louis Auto Shredding and the Illinois EPA was held on April 18, 2003. On May 1, 2003, St. Louis Auto Shredding submitted a revised Compliance Commitment Agreement and waived the requirements of Section 31.

ANSWER: SLAS admits that the IEPA issued VN-2002-01055 and M-2002-01057 to SLAS, and that its representatives met with IEPA representatives on or about April 18, 2003. SLAS further admits that it submitted a revised Compliance Commitment Agreement to IEPA that waived the requirements of Section 31(a) on or about May 1, 2003. SLAS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 18 of the Complaint, and therefore denies each and every one of them.

19. Permit 1994-065-LFM requires that St. Louis Auto Shredding install liner and leachate drainage/collection systems within the Northwest Unit (Active Area); this installation as originally designed would first require the removal of waste from a portion of the Northwest Unit (Active Area) designated as Trench 3. This permit allows, alternatively, St. Louis Auto Shredding to submit to the Illinois EPA a modified design for this portion (eliminating the need for removal) or a modified design appropriate for disposal of the waste as characterized.

ANSWER: To the extent that Paragraph 19 of the Complaint cites or otherwise construes an IEPA-issued permit, no response is required, as the language of the permit speaks for itself. Responding further, SLAS states that it in fact has satisfied the permit conditions set forth in Permit 1994-065-LFM by excavating Trench 3 and placing the excavated materials from this Trench (after re-processing and re-characterization) in the site's West Cell, which IEPA approved for operation on January 21, 2005 (as Modification No. 4 to the operating permit for the Northwest Unit).

20. Commencing on some date known to Respondent and continuing to some date known to Respondent, St. Louis Auto Shredding has failed to either remove the waste from Trench 3 of the Northwest Unit (Active Area) or submit to the Illinois EPA a modified design for this portion.

ANSWER: SLAS denies the allegations in Paragraph 20 of the Complaint. Responding further, SLAS states that it, on several occasions, made comprehensive proposals to IEPA concerning excavating Trench 3, processing of those materials, and disposing of the resulting waste in a new cell. IEPA refused to grant a permit for construction of a new cell based exclusively on an erroneous legal interpretation of the Board's financial assurance regulations.

IEPA sought to impose such *ultra vires* and unnecessary conditions on those proposals prior to issuing a permit to SLAS. After SLAS, under protest, provided non-discounted financial assurances, IEPA approved Modification No. 4 to the Northwest Unit's operating permit on January 21, 2005, whereupon SLAS immediately proceeded to excavate and re-process Trench 3 materials. SLAS further states that it has completely removed the material from Trench 3, processed said material, and disposed of the resulting waste in the site's West Cell. See Answer to Paragraph 19, *supra*. IEPA acknowledged this fact during a site inspection it conducted in December of 2005.

21. Permit 1994-065-LFM, Conditions V.3c and V.3d, also requires that St. Louis Auto Shredding shall sample and test upgradient wells twice. By December 31, 1994, the operator shall submit to the Illinois EPA an application for significant modification which includes the following information:

* * *

- c. The groundwater data from at least two sampling events, including an evaluation, comparing the AGQS values listed in Condition V.12 of this permit to the new data from upgradient wells G20S, G20M and G20D.
- d. If the new groundwater data indicates a significant change from the AGQS values in this permit, the operator shall include a reevaluation of the groundwater impact assessment and a proposal for the establishment of new AGQS and MAPC values.

One of the primary purposes of such an application is to provide a re-evaluation of the groundwater impact assessment in the event that sampling data indicates a significant change in groundwater quality. At all times relevant to this complaint, St. Louis Auto Shredding has failed to submit to the Illinois EPA an approved application for the significant modification of permit to address the necessary groundwater issues.

ANSWER: To the extent that Paragraph 21 of the Complaint quotes or otherwise characterizes language from an IEPA-issued permit, no response is required, as the Permit language speaks for itself. Additionally, Complainant has failed to specify the time period denoted by the phrase "at all times relevant to this complaint." As a result, SLAS lacks

sufficient information to form a belief as to the truth of the allegations in Paragraph 21, and therefore denies each and every one of them.

Responding further, SLAS states that it has addressed these groundwater issues by submitting applications for significant modification to Permit 1994-065-LFM, which applications contained approvable terms and conditions and satisfied all applicable IEPA regulations. Nonetheless, IEPA denied those applications, even though the applications complied with all applicable statutes and regulations. Furthermore, to the extent Paragraph 21 alleges or infers any delay in SLAS's submission of an application for significant modification, SLAS denies same as any delay was caused by IEPA's failure to timely approve SLAS's applications, all of which met all applicable IEPA regulatory requirements.

22. Commencing on some date known to Respondent, St. Louis Auto Shredding has failed to install groundwater monitoring wells as specified in permit 1994-065-LFM, Condition V.10, to-wit: wells G32M, G33M and G34M.

ANSWER: To the extent that Paragraph 22 of the Complaint cites or otherwise construes language from an IEPA-issued permit, no response is required, as the Permit language speaks for itself. To the extent that Paragraph 22 of the Complaint contains conclusions of law, no response is required. SLAS denies the remaining allegations in Paragraph 22 of the Complaint.

23. Permit 1994-065-LFM, Condition V.12(d), requires that AGQS values must be determined for all of the parameters which appear in either Lists G1 or G2. These were to be proposed in a permit application to be submitted to the Illinois EPA by no later than October 31, 1994. To date, no approved application for significant modification containing AGQS values has been submitted to the Illinois EPA.

ANSWER: To the extent that Paragraph 23 of the Complaint quotes or otherwise construes language from an IEPA-issued permit, no response is required, as the Permit language speaks for itself. SLAS denies the remaining allegations contained in Paragraph 23 of the Complaint. Responding further, SLAS states that it has submitted numerous AGQS proposals to

IEPA since 1994, each of which met the requirements of all applicable IEPA regulations. IEPA has denied each of these applications for reasons unrelated to the merits of the AGQS proposals themselves.

24. Permit 1994-065-LFM, Condition V.14, requires a complete listing of MAPC's for each parameter listed in Condition V.12 for each well within the zone of attenuation identified in Condition V.10 to be proposed in a permit application submitted to the Illinois EPA no later than October 31, 1994. To date, no approved MAPC list has been submitted as a permit application to the Illinois EPA.

ANSWER: To the extent that Paragraph 24 of the Complaint quotes or otherwise construes language from an IEPA-issued permit, no response is required, as the Permit language speaks for itself. SLAS denies the remaining allegations contained in Paragraph 24 of the Complaint. Responding further, SLAS states that it has submitted numerous MAPCs lists to IEPA since 1994, each of which met the requirements of all applicable IEPA regulations. IEPA has rejected each MAPC list for reasons unrelated to the merits of the MAPCs proposals themselves.

25. Permit 1994-065-LFM, Condition V.17, requires that within 90 days of confirmation of any monitored increase, the operator shall submit a permit application for significant modification to begin an assessment monitoring program in order to determine whether the solid waste disposal facility is the source of the contamination and to provide information needed to carry out a groundwater impact assessment in accordance with 35 Ill. Adm. Code 811.319(b). To date, no permit has been acquired for a significant modification to begin an assessment monitoring program has been submitted to the Illinois EPA, although the facility has monitored increases as defined by Condition V.16.

ANSWER: To the extent that Paragraph 25 of the Complaint cites or otherwise construes the language of an IEPA-issued permit, no response is required, as the Permit language speaks for itself. SLAS further notes that the last sentence of Paragraph 25 is unclear as to whether it alleges that SLAS has not acquired a permit or whether SLAS has not submitted an application for significant modification.

SLAS denies the remaining allegations contained in Paragraph 25 of the Complaint. Responding further, SLAS states that it has submitted applications on several occasions for significant modifications to begin an assessment monitoring program, each of which satisfied the requirements of all applicable IEPA regulations. IEPA has denied these applications for reasons unrelated to the merits of the applications themselves.

26. Permit 1994-065-LFM, Condition V.21, requires that the operator shall implement the revised assessment monitoring plan dated July 13, 2000, and approved as Modification No. 2. All data collected during assessment and the results of the assessment activities shall be submitted to the Illinois EPA, along with findings and recommendations as an application for significant modification no later than December 31, 2001. To date, no approved assessment report has been submitted, as the assessment report which was submitted as permit application 2002-182 was denied by the Illinois EPA on January 21, 2003.

ANSWER: To the extent that Paragraph 26 of the Complaint cites or otherwise construes the language of an IEPA-issued permit, no response is required, as the Permit language speaks for itself. SLAS denies the remaining allegations contained in Paragraph 26 of the Complaint. Responding further, SLAS states that it did submit and implement an adequate assessment monitoring plan that complied with all applicable IEPA regulations, and further states that it was in regular communication with IEPA representatives regarding the contents and technical aspects of this plan from the time it submitted its Groundwater Assessment Report until IEPA denied SLAS's permit applications, which complied with applicable requirements. For example, SLAS provided extensive comments on a September 25, 2002 draft denial letter, and both SLAS and IEPA met on November 22, 2002 to discuss SLAS's pending permit applications and IEPA's draft denial letter. As a result of this meeting, SLAS provided IEPA with additional information and materials on or about January 28, 2003.

SLAS further states that on January 31, 2003, just three days thereafter, IEPA denied SLAS's permit applications, each of which complied with all applicable statutes and regulations. SLAS appealed those permit denials in a timely manner to the Board on March 5, 2003 (PCB

Case Nos. 03-138, 03-139, and 03-140). These appeals were consolidated on March 20, 2003 and remain pending with the Board. To date, IEPA has filed no appearance before the Board in these cases, and has in no other way responded to these permit appeals.

27. Section 21 of the Act, 415 ILCS 5/21 (2004) provides, in pertinent part, as follows:

* * *

No person shall:

- d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 - 1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit. . . . ; or
 - 2. In violation of any regulations or standards adopted by the Board under this Act; or
- e. 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 this Act and of regulations and standards thereunder.

ANSWER: To the extent that Paragraph 27 of the Complaint quotes language from the Illinois Environmental Protection Act (the "Act"), no response is required, as the language of the Act speaks for itself.

28. By conducting waste-disposal operations in the Northwest Unit (Active Area) without an operating permit issued by the Illinois EPA, the Respondents have violated Section 21(d)(1) of the Act, 415 ILCS 5121(d)(1) (2004).

ANSWER: To the extent Paragraph 28 cites to, or otherwise construes the language of, the Act, no response is required, as the Act's language speaks for itself. SLAS denies the remaining allegations in Paragraph 28 of the Complaint. SLAS specifically denies that it has conducted waste-disposal operations in the Northwest Unit without an appropriate operating permit in violation of Section 21(d)(1) of the Act.

29. By failing to either timely remove the waste from Trench 3 of the Northwest Unit (Active Area) or submit to the Illinois EPA a modified design for this portion, the Respondents violated Permit 1994-065-LFM and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 29 cites or otherwise construes either the Act or an IEPA-issued permit, no response is required, as the language of such documents speaks for itself. SLAS denies the remaining allegations in Paragraph 29 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act.

Responding further, SLAS states that it has in fact removed the material from Trench 3, as described in its answer to Paragraph 19, *supra*. Further, to the extent any delays occurred concerning SLAS's removal of material from Trench 3, such delays were caused by IEPA's failure to timely approve SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

30. By failing to submit to the Illinois EPA an approved application for the significant modification of permit to address the necessary groundwater issues, the Respondents have violated Permit 1994-065-LFM, Conditions V.3c and V.3d and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 30 cites or otherwise construes the Act or an IEPA-issued permit, no response is required, as the language of such documents speaks for itself. SLAS denies the remaining allegations in Paragraph 30 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act.

Responding further, SLAS specifically denies that it has failed to submit to the IEPA an application for significant modification relating to groundwater issues. Additionally, to the extent any delays occurred concerning approval of SLAS's applications for significant modification, such delays were caused by IEPA's failure to timely approve SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

31. By failing to timely install groundwater monitoring wells as specified, to-wit: wells G32M, G33M and G34M, the Respondents have violated Permit 1994-065-LFM, Condition V.10 and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 31 cites or otherwise construes either the Act or an IEPA-issued permit, no response is required, as the language from those documents speaks for itself. SLAS denies the remaining allegations in Paragraph 31 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act. Additionally, to the extent any delays occurred concerning the installation of these wells, such delays were caused by IEPA's failure to timely approve SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

32. By failing to submit to the Illinois EPA an approved application for significant modification containing AGQS values, the Respondents have violated Permit 1994-0665-LFM, Condition V.12(d) and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 32 cites or otherwise construes either the Act or an IEPA-issued permit, no response is required, as the language from these documents speaks for itself. SLAS denies the remaining allegations in Paragraph 32 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act.

Responding further, SLAS specifically denies that it has failed to submit to IEPA a sufficient application for significant modification containing AGQS values. Additionally, to the extent any delays occurred concerning the approval of such values, the delays were caused by IEPA's failure to timely approve SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

33. By failing to submit to the Illinois EPA an approved MAPC list as a permit application to the Illinois EPA, Respondents have violated Permit 1994-065-LFM, Condition V.14 and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 33 cites or otherwise construes language from the Act or an IEPA-issued permit, no response is required, as the language from those documents

speaks for itself. SLAS denies the remaining allegations in Paragraph 33 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act. Responding further, SLAS specifically denies that it has failed to submit to IEPA a sufficient MAPC list as a permit application to IEPA. Additionally, to the extent any delays occurred concerning the approval of a sufficient MAPC list, such delays were caused by IEPA's failure to timely approve SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

34. By failing to submit a permit application for a significant modification to begin an assessment monitoring program to the Illinois EPA, although the facility monitored increases as defined by Condition V.16, the Respondents have violated Permit 1994-065-LFM, Condition V.17 and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 34 cites or otherwise construes language from the Act or an IEPA-issued permit, no response is required, as the language from those documents speaks for itself. SLAS denies the remaining allegations in Paragraph 34 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act. Responding further, SLAS specifically denies that it has failed to submit a permit application to IEPA for a significant modification to begin an assessment monitoring program. Additionally, to the extent any delays occurred concerning approval of SLAS's proposed assessment monitoring program, such delays were caused by IEPA's failure to timely approve SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

35. By failing to submit an approved assessment report to the Illinois EPA, the Respondents have violated Permit 1994-065-LFM, Condition V.21 and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 35 cites or otherwise construes language from the Act or an IEPA-issued permit, no response is required, as the language in those documents speaks for itself. SLAS denies the remaining allegations in Paragraph 35 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act. Responding further, SLAS

specifically denies that it has failed to submit a sufficient assessment report to EPA. Additionally, to the extent any delays occurred concerning the approval of SLAS's proposed assessment report, such delays were caused by IEPA's failure to timely approve SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

COUNT II

PERMIT VIOLATIONS AT SOUTHEAST UNIT (CLOSED AREA)

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count II.

ANSWER: SLAS incorporates its responses to Paragraphs 1 through 27 above. SLAS further notes that the paragraph numbering of the Complaint from this point forward is not consecutive, *e.g.* this paragraph should be numbered 36, the next 37 and so on. In order to preserve its rights, SLAS thus incorporates its responses to Paragraph 28 through 35 above.

28. Permit 1996-293-SP, Attachment A, Monitoring Program, Item 6.b., provides:

The permittee shall conclude that a significant change in groundwater quality has occurred if . . . the value for any parameter exceeds: The Class I groundwater quality standards listed in Subpart D of 35 IAC 620 Standards (this class applies until an adequate determination has been made by the Permittee that another class applies pursuant to Subpart B of 35 IAC 620 Standards.)

ANSWER: The allegations in Paragraph 28 of the Complaint require no response, as the Permit language speaks for itself.

29. Permit 1996-293-SP, Attachment A, Monitoring Program, Item 8.b., provides:

In the event a significant change in groundwater quality has occurred or has been confirmed, the permittee shall: Submit an assessment monitoring plan within 30 days of the significant change as determined in Item No. 6 or No. 7 above in the form of a supplemental permit application. The assessment monitoring plan shall include appropriate methods for determining the source of the increase, the potential threat to human health and the environment and the concentration and extent of the contaminants

if any. The assessment monitoring plan shall, at a minimum, include expanded sampling requirements for the affected well(s) and shall be implemented within 30 days of approval from the Illinois EPA.

ANSWER: The allegations in Paragraph 29 of the Complaint require no response, as the Permit language speaks for itself.

30. Permit 1996-293-SP, requires that St. Louis Auto Shredding determine from the groundwater sampling data whether the Class I groundwater quality standards have been exceeded. One of the primary purposes of such determination is to propose pursuant to permit 1996,293-SF, Attachment A, Monitoring Program, Item 8.b, a groundwater assessment monitoring plan in the event that sampling data indicates a significant change in groundwater quality.

ANSWER: SLAS admits that the IEPA issued Permit No. 1996-293-SP. To the extent that Paragraph 30 of the Complaint cites or otherwise construes language from an IEPA-issued permit, no response is required, as the Permit language speaks for itself. SLAS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 30 of the Complaint, and therefore denies each and every one of them.

31. At all times relevant to this complaint, St. Louis Auto Shredding has failed to submit to the Illinois EPA a determination from the groundwater sampling data whether the Class I groundwater quality standards have been exceeded.

ANSWER: Complainant has failed to specify the time period denoted by the phrase “at all times relevant to this complaint.” As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them.

32. At all times relevant to this complaint, St. Louis Auto Shredding has failed to submit a ground water assessment monitoring plan to the Illinois EPA.

ANSWER: Complainant has failed to specify the time period denoted by the phrase “at all times relevant to this complaint.” As a result, SLAS lacks sufficient information to form a

belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them.

33. By failing to submit to the Illinois EPA a determination from the groundwater sampling data whether the Class I groundwater quality standards have been exceeded, the Respondents have violated Permit 1996-293-SP, Attachment A, Monitoring Program, Item 6.b., and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2004).

ANSWER: To the extent Paragraph 33 of the Complaint cites or otherwise construes language from the Act or from an IEPA-issued permit, no response is required, as the language from those documents speaks for itself. SLAS denies the remaining allegations in Paragraph 33 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act.

34. By failing to submit a ground water assessment monitoring plan to the Illinois EPA, the Respondents have violated Permit 1996-293-SP, Attachment A, Monitoring Program, Item 8.b., and thereby violated Section 21(d)(1) of the Act, 415 ILCS 5121(d)(1) (2004).

ANSWER: To the extent Paragraph 34 of the Complaint cites or otherwise construes language from the Act or from an IEPA-issued permit, no response is required, as the language from those documents speaks for itself. SLAS denies the remaining allegations in Paragraph 34 of the Complaint, and specifically denies that it has violated Section 21(d)(1) of the Act.

COUNT III

WASTE DISPOSAL VIOLATIONS

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count III.

ANSWER: SLAS reincorporates its responses to all prior Paragraphs above.

28. Section 807.313 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.313, provides as follows:

No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act.

ANSWER: The allegations in Paragraph 28 of the Complaint require no response, as the language of the regulations speaks for itself. Responding further, SLAS denies that it has operated or is operating or developing a sanitary landfill.

29. Section 807.315 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.315, provides as follows:

No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill.

ANSWER: The allegations in Paragraph 29 of the Complaint require no response, as the language of the regulations speaks for itself. Responding further, SLAS denies that it has operated or is operating or developing a sanitary landfill.

30. At all times relevant to this complaint, St. Louis Auto Shredding has disposed of waste at a site that does not meet the requirements of the Act and the regulations thereunder.

ANSWER: Complainant has failed to specify the time period denoted by the phrase "at all times relevant to this complaint." Complainant has also failed to delineate to which operating unit(s) of the site these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them. Additionally, SLAS specifically denies that it has disposed of waste at a site not meeting the requirements of either the Act or IEPA regulations.

31. At all times relevant to this complaint, St. Louis Auto Shredding has allowed the discharge of contaminants into the groundwater as prohibited by Section 807.313 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.33.

ANSWER: To the extent that Paragraph 31 of the Complaint cites or otherwise construes IEPA's regulations, no response is required, as the language of the regulations speaks for itself. Additionally, Complainant has failed to specify the time period denoted by the phrase "at all times relevant to this complaint." Complainant has also failed to delineate to which

operating unit(s) of the site these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them. SLAS denies the remaining allegations in this paragraph of the Complaint, and specifically denies that it has violated Section 807.313 of the Board's Waste Disposal Regulations. SLAS further states that it has not violated "35 Ill. Adm. Code 807.33," as cited in this Paragraph.

32. At all times relevant to this complaint, St. Louis Auto Shredding has caused or allowed the development or operation of a sanitary landfill without proving to the satisfaction of the Illinois EPA that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill as prohibited by Section 807.315 of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 807.315.

ANSWER: To the extent that Paragraph 32 of the Complaint cites or otherwise construes IEPA's regulations, no response is required, as the language of the regulations speaks for itself. Additionally, Complainant has failed to specify the time period denoted by the phrase "at all times relevant to this complaint." Complainant has also failed to delineate to which operating unit(s) of the site these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them. SLAS also specifically denies that it has violated Section 807.315 of the Board's Waste Disposal Regulations.

33. By disposing of waste at a site that does not meet the requirements of the Act and the regulations thereunder, the Respondents have violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

ANSWER: To the extent that Paragraph 33 of the Complaint cites or otherwise construes the Act, no response is required, as the language of the Act speaks for itself. SLAS denies the remaining allegations in this paragraph of the Complaint. Responding further, Complainant has failed to delineate both the time period and the operating unit(s) of the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as

to the truth of these allegations, and therefore denies each and every one of them. SLAS also specifically denies that it has violated Section 21(e) of the Act.

34. By conducting waste-disposal operations in violation of the regulations or standards adopted by the Board under this Act, the Respondents have violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2004).

ANSWER: To the extent that Paragraph 34 of the Complaint cites or otherwise construes the Act, no response is required, as the language of the Act speaks for itself. SLAS denies the remaining allegations in this paragraph of the Complaint, and specifically denies that it is or has been conducting waste-disposal operations in violation of Section 21(d)(2) of the Act. Responding further, Complainant has failed to delineate both the time period and the operating unit(s) of the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

35. These violations have been willful, knowing or repeated and will continue unabated unless and until enjoined by this Court.

ANSWER: SLAS denies the allegations in this Paragraph of the Complaint. Responding further, Complainant has failed to delineate both the time period and the operating unit(s) of the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

In addition, SLAS states that throughout its course of dealings with IEPA, SLAS has been both cooperative and accommodating regarding IEPA's myriad demands and inquiries. SLAS's cooperation also included submission of numerous sets of facility and environmental information and plans, which in total provided IEPA sufficient information to issue operating

permits to SLAS. Nonetheless, IEPA unreasonably delayed approving in a timely manner SLAS's permit applications, all of which met all applicable IEPA regulatory requirements.

COUNT IV

WATER POLLUTION VIOLATIONS

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count IV.

ANSWER: SLAS reincorporates its responses to all prior Paragraphs above.

28. Section 12 of the Act, 415 ILCS 5/12 (2004), provides, in pertinent part, as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in an State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

* * *

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

ANSWER: The allegations in Paragraph 28 of the Complaint require no response, as the language of the Act speaks for itself.

29. Section 3.170 of the Act, 415 ILCS 5/3.170 (2004), provides as follows:

"Contaminant" is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.

ANSWER: The allegations in Paragraph 29 of the Complaint require no response, as the language of the Act speaks for itself.

30. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides as follows:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the

State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

ANSWER: The allegations in Paragraph 30 of the Complaint require no response, as the language of the Act speaks for itself.

31. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), provides as follows:

“Waters” means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

ANSWER: The allegations in Paragraph 31 of the Complaint require no response, as the language of the Act speaks for itself.

32. Section 620.405 of the Board’s Groundwater Quality Standards, 35 Ill. Adm. Code 620.405, provides as follows:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded;

a) Inorganic Chemical Constituents:

Constituent	Units	Standard
	* * *	
Boron	mg/L	2.0
	* * *	
Iron	mg/L	5.0
	* * *	
Manganese	mg/L	0.15
	* * *	
Sulfate	mg/L	400.0
	* * *	
Total Dissolved Solids (TDS)	mg/L	1,200
	* * *	

b) Organic Chemical Constituents:

* * *

Constituent	Standard (mg/L)
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* * *

Vinyl Chloride*	0.002
-----------------	-------

* * *

*Denotes a carcinogen.

ANSWER: The allegations in Paragraph 32 of the Complaint require no response, as the language of the regulations speaks for itself.

34. During the November 26, 2002, inspection, the Illinois EPA noted the following in its review of the facility's groundwater for the May 2002 sampling event:

SOUTHEAST UNIT

Well Number	Contaminant	Sample Result Total ug/l	Class I Standard Exceedance Total ug/l
G10S	Boron	2630	2000
	Iron	40800	5000
	Manganese	1340	150
	TDS	2470	1200
G10M	Iron	24500	5000
	Manganese	1760	150
G10D	Iron	20200	5000
	Manganese	336	150
	TDS	1650	1200
	Vinyl Chloride	7.08	2
G12S	Iron	39200	5000
	Manganese	4650	150

Well Number	Contaminant	Sample Result Total ug/l	Class I Standard Exceedance Total ug/l
G12M	Iron	9620	5000
	Manganese	590	150
G12D	Iron	17000	5000
	Manganese	420	150
G13S	Sulfate	406 mg/l	400 mg/l
	Manganese	451	150
G14S	Boron	2410	2000
	Iron	18900	5000
	Manganese	2570	150
	TDS	1470	1200
G14M	Iron	12400	5000
	Manganese	1160	150
G15S	Sulfate	631 (mg/l)	400 (mg/l)
	Iron	51100	5000
	Manganese	1460	150
	TDS	2470	1200
G16S	Boron	8670	2000
	Manganese	6270	150
	TDS	1560	1200

NORTHWEST UNIT

Well Number	Contaminant	Sample Result Total ug/l	GW Limit Total ug/l
G21S	Selenium	6	4

Well Number	Contaminant	Sample Result Total ug/l	GW Limit Total ug/l
G23S	Acetone	3.85	3 (AGQS value)
G24S	Sulfate	1450	637.431
G27S	Benzene	8.18	5 (Class I GW 620 Standards)
	Acetone	3.39	3
G28S	Sulfate	1570	637.431
G29S	Acetone	3.37	3

ANSWER: SLAS lacks sufficient information to form a belief as to the truth of the allegations contained in this Paragraph of the Complaint, and therefore denies each and every one of them. SLAS further notes that no Paragraph 33 exists in this count of the Complaint.

35. Subsequent to the November 26, 2002, inspection, the Illinois EPA inspector noted that benzene had been elevated at downgradient well G27S for some time. In 2001, benzene tested at 8.0 ug/l on March 3, 2001, 6.8 ug/l on September 8, 2001 and 7.6 ug/l on October 27, 2001.

ANSWER: SLAS lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint, and therefore denies each and every one of them.

36. At all times relevant to this complaint, St. Louis Auto Shredding has deposited contaminants upon the land in such place and manner so as to create a water pollution hazard and has caused, threatened or allowed the discharge of contaminants into the environment, including the groundwater, so as to cause or tend to cause water pollution in Illinois, or so as to violate regulations or standards adopted by the Board.

ANSWER: To the extent that Paragraph 36 of the Complaint references or otherwise construes language from IEPA's regulations, no response is required, as the language of the regulations speaks for itself. Additionally, Complainant has failed to specify the time period denoted by the phrase "at all times relevant to this complaint" or any location on which such

alleged deposits took place. As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them.

SLAS denies the remaining allegations contained in Paragraph 36 of the Complaint. Responding further, SLAS specifically denies that it has deposited contaminants upon the land in such place and manner so as to create a water pollution hazard, and further denies that it has caused, threatened or allowed the discharge of contaminants into the groundwater so as to cause water pollution.

37. At all times relevant to this complaint, St. Louis Auto Shredding has caused, threatened or allowed the release of contaminants into the groundwater so as to cause groundwater quality standards for boron, iron, manganese, sulfate, total dissolved solids, and vinyl chloride to be exceeded.

ANSWER: Complainant has failed to specify the time period denoted by the phrase “at all times relevant to this complaint” or any location at which such alleged release took place. As a result, SLAS lacks sufficient information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies each and every one of them. Responding further, SLAS denies that it has caused, threatened or allowed contaminants to be released into groundwater such that groundwater quality standards have been exceeded.

38. By depositing contaminants upon the land in such place and manner so as to create a water pollution hazard, the Respondents have violated 12(d) of the Act, 415 ILCS 5/12(d) (2004).

ANSWER: To the extent that Paragraph 38 of the Complaint cites or otherwise construes the Act, no response is required, as the language of the Act speaks for itself. SLAS denies the remaining allegations contained in Paragraph 38 of the Complaint, and specifically denies that it has created a water pollution hazard in violation of Section 12(d) of the Act.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient

information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

39. By causing, threatening, or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution, the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

ANSWER: To the extent that Paragraph 39 of the Complaint cites or otherwise construes the Act, no response is required, as the language of the Act speaks for itself. SLAS denies the remaining allegations contained in Paragraph 39 of the Complaint, and specifically denies that it has discharged contaminants into the environment so as to cause or tend to cause water pollution in violation of Section 12(a) of the Act.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

40. By causing, threatening, or allowing the release of contaminants into the groundwater so as to cause groundwater quality standards for boron, iron, manganese, sulfate, total dissolved solids, and vinyl chloride to be exceeded, the Respondents have violated Sections 620.405 and 620.410 of the Board's Groundwater Quality Standards, 35 Ill. Adm. Code 620.405 and 620.410, and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/2(d)(2) (2004).

ANSWER: To the extent that Paragraph 40 of the Complaint cites or otherwise construes the Act or IEPA's regulations, no response is required, as the language therein speaks for itself. SLAS denies the remaining allegations contained in Paragraph 40 of the Complaint, and further incorporates its response to Paragraph 37 of this Count of the Complaint. SLAS also specifically denies that it has violated Section 21(d)(2) of the Act.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient

information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

COUNT V

MARCH 24, 2003, OPEN DUMPING VIOLATIONS

1-5. Complainant realleges and incorporates by reference herein paragraphs 1 through 4 and 27 of Count I as paragraphs 1 through 5 of this Count V.

ANSWER: SLAS reincorporates its responses to Paragraphs 1 through 4 and 27 above, but notes that, due to the Complaint's non-consecutive paragraph numbering, multiple Paragraph 27's exist. As such, SLAS incorporates its responses to any and all Paragraph 27's above, as well.

6. Section 21 of the Act, 415 ILCS 5/21 (2004), provides, in pertinent part, as follows:

No persons shall:

- a. Cause or allow the open dumping of any waste.
- p. In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

* * *

- 1. Litter.

* * *

ANSWER: The allegations in Paragraph 6 of the Complaint require no response, as the language of the Act speaks for itself.

7. Section 3.305 of the Act, 415 ILCS 5/3.305 (2004), provides the following definition:

“OPEN DUMPING” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

ANSWER: The allegations in Paragraph 7 of the Complaint require no response, as the language of the Act speaks for itself.

8. Section 3.445 of the Act, 415 ILCS 5/3.445 (2004), provides the following definition:

“SANITARY LANDFILL” means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day’s operation, or by such other methods and intervals as the board may provide by regulation.

ANSWER: The allegations in Paragraph 8 of the Complaint require no response, as the language of the Act speaks for itself.

9. Section 721.102(e)(2)(C) of the Board’s regulations, 35 Ill. Adm. Code 721.102(e)(2)(C), provides:

(e)(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in subsections (e)(1)(A) through (e)(1)(C) of this Section:

* * *

(C) Materials accumulated speculatively;

ANSWER: The allegations in Paragraph 9 of the Complaint require no response, as the language of the regulations speaks for itself.

10. Section 721.101(c)(8) of the Board’s regulations, 35 Ill. Adm. Code 721.101(c)(8), provides:

(c) For purposes of Sections 721.102 and 721.106:

* * *

(8) A material is “accumulated speculatively” if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and had a feasible means of being recycled; and that - during the calendar year

(commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (i.e., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under Section 721.104(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation). Materials are no longer in this category once they are removed from accumulation for recycling, however.

ANSWER: The allegations in Paragraph 10 of the Complaint require no response, as the language of the regulations speaks for itself.

11. On March 24, 2003, the Illinois EPA conducted an inspection of the facility. During the site visit, the Illinois EPA spoke with the site superintendent who stated that no waste auto fluff had been removed from the site since 1997, and the unprocessed auto fluff pile was awaiting one or two final processes. One of these final processes is through the Heavy Media Building and the other process is the Eddy Current System (ECS). According to the 2002 year end Illinois Nonhazardous Special Waste annual Report Site Information Form submitted by the facility, the facility had on site 167,335 cubic yards of unprocessed auto fluff, which has been accumulating since the beginning of 1998.

ANSWER: SLAS admits to submitting the 2002 year end Illinois Nonhazardous Special Waste annual Report Site Information Form to IEPA. SLAS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 11 of the Complaint, and therefore denies each and every one of them. Responding further, SLAS specifically denies that there was any "waste auto fluff" pile on site. Any "unprocessed auto fluff" on site was material being processed and, therefore, any accumulation that may have occurred at any point in time did not constitute speculative accumulation. As a result, any auto

fluff pile that may have existed on site would not have constituted waste. Furthermore, SLAS states that no "unprocessed auto fluff pile" currently exists at the site.

12. During the March 24, 2003, site visit, the Illinois EPA estimated the accumulation was approximately 175,000 cubic yards. At the southern edge of the L-shaped pile, the Illinois EPA observed a water hose at the base of the pile and a water sprinkler at the top of the pile. A small pile of dirt for fire control purposes was also located nearby.

ANSWER: SLAS admits that it has a water hose and water sprinkler on site as part of the facility's fire suppression system. Responding further, SLAS specifically denies that there was any "waste auto fluff" pile on site. Any "unprocessed auto fluff" on site was material being processed and, therefore, any accumulation that may have occurred at any point in time did not constitute speculative accumulation. As a result, any auto fluff pile that may have existed on site would not have constituted waste. Furthermore, SLAS states that no "unprocessed auto fluff pile" currently exists at the site. SLAS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 12 of the Complaint, and therefore denies each and every one of them.

13. According to 35 Ill. Adm. Code 721.102(e)(2)(C) and 721.101(c)(8), this unprocessed auto fluff is a speculatively accumulated material and, thus, may be classified as waste.

ANSWER: To the extent that Paragraph 13 of the Complaint cites or otherwise construes IEPA's regulations, no response is required, as the language of the regulations speaks for itself. To the extent that Paragraph 13 of the Complaint contains conclusions of law, no response is required. SLAS lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies each and every one of them. SLAS further denies that it is or has been engaged in speculative accumulation, as that term is defined in the Board's regulations and denies that it is in violation of 35 Ill. Adm. Code 721.102(e)(2)(C) and 721.101(c)(8).

14. Based on the March 24, 2003, site visit, Violation Notices, dated May 20, 2003, were sent to the Respondents. On October 9, 2003, the Illinois EPA mailed subsequent Notices of Intent to Pursue Legal Action letters to the Respondents.

ANSWER: SLAS admits that it received from IEPA Violation Notices, dated May 20, 2003, and Notices of Intent to Pursue Legal Action letters, dated October 9, 2003. SLAS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 14 of the Complaint, and therefore denies each and every one of them.

15. On a date better known to the Respondents, but no later than 1997 and continuing through the date on which this Complaint is filed, the Respondents have caused or allowed the open dumping of waste at a disposal site upon its property. The site is not permitted by the Illinois EPA as a sanitary landfill, nor does the disposal site meet the requirements of the Act and of the regulations and the standards promulgated thereunder.

ANSWER: To the extent that Paragraph 15 of the Complaint cites or otherwise construes any requirements from the Act or IEPA's regulations, no response is required, as the language of those documents speaks for itself. SLAS denies the remaining allegations in this Paragraph of the Complaint, and specifically denies that it has caused or allowed open dumping of waste.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

16. By causing or allowing the open dumping of waste, the Respondents have violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

ANSWER: To the extent that Paragraph 16 of the Complaint cites or otherwise construes the Act, no response is required, as the language of the Act speaks for itself. SLAS denies the remaining allegations in this Paragraph of the Complaint, and specifically denies that it has caused or allowed open dumping of waste in violation of Section 21(a) of the Act.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

17. On a date better known to the Respondents, but no later than 1997 and continuing through the date on which this Complaint is filed, the Respondents have disposed or stored waste at a site upon its property, or transported waste for disposal or storage to a site upon its property, and such site does not meet the requirements of the Act and of the standards and regulations promulgated thereunder.

ANSWER: To the extent that Paragraph 17 of the Complaint cites or otherwise construes the Act or IEPA's regulations, no response is required, as the language of those documents speaks for itself. SLAS denies the remaining allegations in Paragraph 17 of the Complaint.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

18. By disposing or storing or transporting waste at or to a site which does not meet the requirements of the Act and of the standards and regulations promulgated thereunder, the Respondents have violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

ANSWER: To the extent that Paragraph 18 of the Complaint cites or otherwise construes the Act, no response is required, as the language of the Act speaks for itself. SLAS denies the remaining allegations in this Paragraph of the Complaint, and specifically denies that it has violated Section 21(e) of the Act.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient

information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

19. On a date better known to the Respondents, but no later than 1997 and continuing through the date on which this Complaint is filed, the Respondents have caused or allowed the open dumping of waste in a manner which has resulted in litter.

ANSWER: SLAS denies the allegations in Paragraph 19 of the Complaint, and specifically denies that it has caused or allowed open dumping of waste in a manner resulting in litter.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

20. By causing or allowing the open dumping of waste in a manner which has resulted in litter at or from the dump site, the Respondents have violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2004).

ANSWER: To the extent that Paragraph 20 of the Complaint cites or otherwise construes language from the Act, no response is required, as the language of the Act speaks for itself. SLAS denies the remaining allegations in this Paragraph of the Complaint, and specifically denies that it has violated Section 21(p)(1) of the Act.

Responding further, Complainant has failed to delineate both the time period and the location at the site to which these allegations apply. As a result, SLAS lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies each and every one of them.

Respectfully submitted,

NATIONAL CITY ENVIRONMENTAL, LLC,
an Illinois limited liability corporation, and
NATIONAL CITY RECYCLING, LLC, an Illinois
limited liability corporation,

By: 

One of their attorneys

Dated: February ____, 2006

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