

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	
)	
WASTE HAULING LANDFILL, INC., JERRY)	PCB No. 10-9
CAMFIELD, A. E. STALEY MANUFACTURING)	(Enforcement – Land, Cost
CO., ARCHER DANIELS MIDLAND, INC.,)	Recovery)
ARAMARK UNIFORM SERVICES, INC., BELL)	
SPORTS, INC., BORDEN CHEMICAL CO.,)	
BRIDGESTONE/FIRESTONE, INC., CLIMATE)	
CONTROL, INC., CATERPILLAR INC., COMBE)	
LABORATORIES, INC., GENERAL ELECTRIC)	
RAILCAR SERVICES CORPORATION, P & H)	
MANUFACTURING, INC., TRINITY RAIL)	
GROUP, INC., TRIPPLE S REFINING)	
CORPORATION, and ZEXEL ILLINOIS, INC.,)	
)	
Respondents.)	

NOTICE OF FILING

TO:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph Street
Chicago, IL 60601

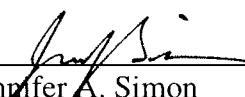
Matthew J. Dunn, Chief
James L. Morgan, Sr. Assistant Attorney General
Environmental Bureau
Environmental Enforcement/Asbestos Litigation Division
500 South Second Street
Springfield, Illinois 62706

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Persons included on the attached SERVICE LIST

PLEASE TAKE NOTICE that on this date I have filed with the Office of the Clerk of the Pollution Control Board Caterpillar’s Motion to Dismiss and Memorandum in Support of Motion to Dismiss, a copy of which is herewith served upon you.

CATERPILLAR INC.



Jennifer A. Simon

Date: September 2, 2009

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CERTIFICATE OF SERVICE

I, the undersigned, certify that, on this September 2, 2009, I have served electronically the attached Motion to Dismiss and Memorandum in Support of Motion to Dismiss upon the following person:


John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and by U.S. Mail, first class postage prepaid, to the following persons:

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Matthew J. Dunn, Chief
James L. Morgan, Sr. Assistant Attorney General
Environmental Bureau
Environmental Enforcement/Asbestos Litigation Division
500 South Second Street
Springfield, Illinois 62706

The persons included on the attached SERVICE LIST



Jennifer A. Simon

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c/o Jerry Camfield, Sr.
2938 Oakmont Drive
Decatur, IL 62521

Aramark Uniform Services, Inc.
c/o CT Corporation System
208 S LaSalle St., Ste. 814
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Borden Chemical Co.
c/o Prentice Hall Corporation
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Archer Daniels Midland, Inc.
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Bridgestone Firestone, Inc.
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Combe Laboratories, Inc.
c/o CT Corporation System
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General Electric Railcar Services Corp.
c/o CT Corporation System
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P & H Manufacturing, Inc.
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Trinity Rail Group, Inc.
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208 S LaSalle St., Ste. 814
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Triple Refining Corporation
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208 S LaSalle St., Ste. 814
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Decatur, IL 62525

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CORPORATION, and ZEXEL ILLINOIS, INC.,)	
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Respondents.)	

MOTION TO DISMISS

Pursuant to 35 Ill. Adm. Code 101.506, Caterpillar Inc. (“Caterpillar”) submits this Motion to Dismiss the Complaint filed by the People of the State of Illinois (“People”) on July 29, 2009:

1. The Complaint fails to state a valid claim against Caterpillar under Section 415 ILCS 4/22.2(f)(1)-(2). *See* Complaint, ¶ 23. The People have not pled any facts indicating Caterpillar was the owner or operator of a facility from which there was a release (Section 22.2(f)(1)) or that, at the time of disposal, Caterpillar owned a facility from which there was a release (Section 22.2(f)(2)). As the People have failed to set forth any facts demonstrating that Caterpillar is liable under either Section 22.2(f)(1) or (2), the Complaint must be dismissed as to Caterpillar.
2. The Agency failed to follow the notification and pre-suit procedures required by Section 31 of the Illinois Environmental Protection Act (“Act”). As a result, it was never authorized to

refer this matter to the Attorney General, and this matter must be dismissed. In the alternative, the Attorney General was not authorized to bring this matter on behalf of the Agency. That portion of the Complaint must be stricken, and the Agency must not be permitted to participate, directly or indirectly, with the Attorney General in the above-referenced matter until it has followed the procedures set forth in Section 31.

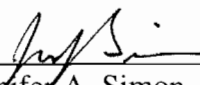
3. The People failed to plead with specificity as required by 35 Ill. Adm. Code Section 103.204(c)(2) and Illinois' fact-pleading standard. The Complaint completely omits "[t]he dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations." 35 Ill. Adm. Code Section 103.204(c)(2). Therefore, the Complaint must be dismissed.

4. The People seek a greater recovery against Caterpillar than the Illinois Proportionate Share Liability Rule allows under 35 Ill. Adm. Code Section 741.205(a) and 415 ILCS 5/58.9(a)(1). Accordingly, the Complaint must be dismissed. To the extent the People are seeking to require Caterpillar to pay a proportionate share of the overall costs and to assess a correspondingly proportionate penalty against Caterpillar, the People have failed to provide "a concise statement of the relief that the complainant seeks," as required by 35 Ill. Adm. Code Section 103.204(c)(2). The People have also failed to plead facts sufficient to support a valid claim under Illinois' proportionate share regulations. *See* Section 741.205(a). Because the Agency has failed to plead any facts by which Caterpillar could deduce its proportionate liability or understand the relief being sought by the Agency, this matter must be dismissed.

5. The People failed to plead facts sufficient to support their request for "damages equal to three times the past, present, and future removal costs ... incurred by the Illinois EPA." *See* Complaint, "Prayer for Relief" ¶ C. Therefore, this prayer for relief must be dismissed.

WHEREFORE, for the reasons set forth above, Caterpillar moves that the Complaint be dismissed in its entirety and the Board grant such further relief as may be just and proper. In the alternative, Caterpillar moves that: (1) the demand for treble damages be stricken; and (2) the Illinois Environmental Protection Agency be barred from further direct or indirect participation in these proceedings until it has followed the procedures set forth in Section 31.

CATERPILLAR INC.



Jennifer A. Simon

Date: September 2, 2009

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Pursuant to 35 Ill. Adm. Code 101.506, Caterpillar Inc. (“Caterpillar”) submits this Memorandum in Support of its Motion to Dismiss the Complaint filed by the People of the State of Illinois (“People”) on July 29, 2009. In support of its Motion, Caterpillar states as follows:

INTRODUCTION

On May 13, 2002, the Illinois Environmental Protection Agency (“Agency”) sent Caterpillar and numerous other parties a “Notice Pursuant to Section 4(q) and 58.9(b) of the Environmental Protection Act” (“Notice”). See Exhibit A. In Section III, ¶ C(1)-(14), of the Notice, the Agency provides a very brief history of the operational and regulatory issues at the Waste Hauling Landfill. Caterpillar is never mentioned here or anywhere else in the document other than the Caption of the Notice. The Notice is completely silent regarding any evidence

identifying a potential nexus between Caterpillar and the Waste Hauling landfill. The only information provided regarding Caterpillar's "involvement" was that "[t]he Parties are persons who may be liable for some or all costs of removal or remedial action..." See Section IV, ¶ E. No basis for this conclusory allegation of liability was set forth, and the nature of Caterpillar's alleged involvement at the site was not articulated. In response, Caterpillar submitted a timely reply to the Agency on June 13, 2002, requesting further information about the release and Caterpillar's alleged contributions. See Exhibit B. In order to obtain any information regarding the Waste Hauling Landfill, Caterpillar was ultimately required to submit a Freedom of Information Act request, which was completed in August, 2002.

The next contact regarding this matter came almost five years later in the form of a letter from the Attorney General's Office dated May 4, 2007. The Attorney General indicated it intended to file suit on June 1, 2007, at the request of the Agency and to recover costs on behalf of the Agency. However, the Attorney General provided no basis for its assertion that Caterpillar was a potentially responsible party to the Waste Hauling Landfill site.

More than two years later, on July 29, 2009, the Attorney General's Office filed this action with the Board. Caterpillar received service of the Complaint on August 3, 2009. Consistent with the previous correspondence, the Complaint failed to provide Caterpillar with any details regarding the waste it allegedly sent to the Landfill, or how Caterpillar is implicated in the alleged release.

Caterpillar now timely files its Motion to Dismiss the Complaint on the following grounds: (1) The People have failed to state a valid claim pursuant to Section 415 ILCS 5/22.2(f)(1)-(2) of the Act; (2) the Agency failed to follow the notification procedures and satisfy the other pre-suit requirements of Section 31 of the Act; (3) the People failed to plead with the

level of specificity required by 35 Ill. Adm. Code Section 103.204 and Illinois' fact-pleading standard; (4) the People seek to impose a greater liability upon Caterpillar than permitted by Illinois' Proportionate Share Liability Rule at 415 ILCS 5/58.9; and (5) the People have not alleged facts sufficient to support their claim for treble damages under paragraph C of the "Prayer for Relief" section of the Complaint.

Since receiving the Agency's Notice in May of 2002, Caterpillar has requested that the Agency provide it with information regarding its liability for contamination at the Waste Hauling Landfill, and has reached out to the Agency in an attempt to reach resolution. However, the Agency failed to provide Caterpillar with a clear foundation for Caterpillar's alleged liability or to elucidate the extent of Caterpillar's alleged liability. Accordingly, the Agency and the People failed to establish a valid basis for the issuance of a 4(q) letter to Caterpillar. The Agency further failed to provide Caterpillar with the notice and opportunity for negotiation set forth in Section 31 of the Act before referring this case to the Attorney General in 2007. Now, the People, in filing their Complaint before this Board, have failed to plead any facts indicating the nature of Caterpillar's involvement in this matter, in violation of the pleading requirements set forth in 35 Ill. Adm. Code Section 103.204(c)(2) and Illinois' fact-pleading standard.

Because of the Agency's failure to submit a valid 4(q) letter, the Agency's failure to complete the other steps outlined in Section 31 of the Act, and the People's failure to state a valid claim or allege facts supporting its allegations against Caterpillar, the Complaint against Caterpillar must be dismissed, and the People may not now seek reimbursement of costs, much less a treble damage penalty, against Caterpillar.

Caterpillar acknowledges that, for purposes of ruling on a motion to dismiss, all well-pled facts contained in the pleading must be taken as true. *George R. Strunk v. Williamson Energy*

LLC, PCB No. 07-135 (Citizens Enforcement -- Air, Noise, Water), 2007 Ill. ENV LEXIS 529, *16-17 (Nov. 15, 2001). Further, a complaint should not be dismissed for failure to state a claim unless “the well-pleaded allegations, considered in the light most favorable to the non-movant, indicate that no set of facts could be proven upon which the petitioner would be entitled to the relief requested.” *George Casanave v. Amoco Oil Company*, PCB No. 97-84 (Enforcement - UST), 1997 Ill. ENV LEXIS 653, *6-7 (November 20, 1997). Nevertheless, here, the People have failed to allege any facts demonstrating Caterpillar is liable under 415 ILCS 5/22.2(f)(1)-(2), the Agency has failed to meet its Section 31 notification and pre-suit responsibilities, and the allegations contained in the Complaint fail to support a valid claim against Caterpillar.

ARGUMENT

I. The People Failed to State a Valid Claim Pursuant to Section 22.2(f)(1)-(2).

The sole foundation of the People’s allegation of liability against each of the defendants lies in paragraph 23, which states that “[r]espondents are each a responsible party as described in Section 22.2(f)(1)-(2) of the Act, 415 ILCS 4/22.2(f)(1)-(2).”¹ Caterpillar is not a responsible party under 415 ILCS 5/22.2(f)(1)-(2), and the People have not set forth any facts indicating either of those two sections are applicable to Caterpillar. Therefore, the Complaint fails to state a valid claim against Caterpillar.

415 ILCS 5/22.2(f)(1) pertains to the “owner and operator of a facility ... from which there was a release.” Section 22.2(f)(2) pertains to any person who, at the time of disposal, “owned or operated the facility ... from which there was a release.” In paragraph 11 of the Complaint, the People allege that “Caterpillar Inc. sent wastes to the Landfill during its operating life and those wastes contained hazardous substances.” No facts have been alleged to support the

¹ Caterpillar presumes the People intended to reference 415 5/22.2(f)(1)-(2).

argument that Caterpillar was the owner or operator of a facility as would be required for Caterpillar to fall within the purview of Section 22.2(f)(1). Similarly, no facts have been alleged indicating that, at the time of disposal, Caterpillar owned a facility from which there was a release, as would be required for liability under Section 22.2(f)(2). Therefore, the People have failed to set forth any facts demonstrating how Caterpillar is liable under either Section 22.2(f)(1) or (2). As a result, the Complaint must be dismissed as to Caterpillar.

II. The Agency Failed to Follow the Notification and Other Pre-Suit Procedures of Section 31 of the Act.

Section 31 of the Act outlines specific notification procedures the Agency must follow before referring a matter to the Attorney General for enforcement. The Agency failed to follow these procedures. Therefore, it was never authorized to refer this matter to the Attorney General. Because the preconditions for filing were never met, this matter must be dismissed.

Alternatively, because the Agency failed to follow the procedures set forth in Section 31 of the Act, the Agency was not authorized to seek enforcement of this matter by the Attorney General, and the Attorney General likewise was not authorized to bring this matter on behalf of the Agency. Therefore, the portion of the Complaint whereby the Attorney General seeks to bring this action at the request of the Agency must be stricken, and the Agency must not be permitted to participate in this proceeding directly or indirectly until it has followed the procedures set forth in Section 31.

Under Section 31(a), the Agency must first send a letter containing a detailed explanation of the violations alleged. *See* 415 ILCS 5/31(a)(1)(B). The Agency's May 13, 2002, Notice failed to provide the necessary facts to support the alleged violations, and was, therefore, insufficient. *See* Exhibit A. Nowhere in the Notice is a detailed, or even rudimentary,

explanation of Caterpillar's alleged violations. Indeed, from the Notice, Caterpillar could not even determine the general nature of its alleged involvement. As a result, Caterpillar responded to the Notice by requesting further information so it could better determine the extent to which it might be liable for response action at the site. *See* Exhibit B. Despite Caterpillar's compliance with its obligations and its attempt to engage the Agency, the Agency never followed the steps required by Section 31(a), including the mandated meetings and negotiations set forth in that section. Caterpillar was never given a meaningful opportunity to pursue pre-referral resolution with the Agency.

Section 31(b) outlines the procedures that must be followed after the completion or waiver of the consultation procedures required by Section 31(a). *See* 415 ILCS 5/31(b); 415 ILCS 5/31(a)(3). The Agency must send a written notice that it intends to pursue legal action and include an offer to meet and resolve the allegations. The Section 31(b) steps are mandatory "as a *precondition* to the Agency's referral or request to the Office of the Illinois Attorney General." 415 ILCS 5/31(b) (emphasis added). Here again, the Agency failed to follow these procedures. Caterpillar was never told that the Agency still considered it a potentially responsible party, and, yet again, Caterpillar was not given the opportunity to cooperate with the Agency and seek resolution before this matter was referred to the Attorney General for enforcement.

The Agency failed to follow the procedures outlined in either Section 31(a) or (b). As a result, the Agency was not authorized to refer this matter to the Attorney General's Office. Absent the Agency's improper referral, this action would likely never have been filed. Accordingly, because of the Agency's failure to follow the clear procedures set forth in Section 31(a) and (b), this action must be dismissed.

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Alternatively, to the extent the Attorney General was authorized to bring the action on its own behalf, the Attorney General was *not* authorized to bring suit on behalf of the Illinois Environmental Protection Agency. Therefore, the portion of the complaint whereby the Attorney General seeks to bring this action at the request of the Agency must be stricken, and the Agency must not be permitted to participate directly or indirectly in the further litigation of this matter. To the extent the Attorney General considers any participation of the Agency necessary to prepare its case in this matter, such participation can only be secured once the Agency completes its obligations under Section 31 of the Act. The completion of those obligations would be far from a mere procedural hurdle. Caterpillar sincerely wishes to pursue consultation with the Agency in accordance with the terms of Section 31, and to seek resolution of this matter without further expenditure of the Board's resources.

Caterpillar recognizes that certain Illinois Pollution Control Board precedent has permitted the Attorney General to bring an action on its own motion and at the request of the Agency despite violations by the Agency of Section 31(a) and (b). *See, e.g., People of the State of Illinois v. Barger Engineering, Inc.*, PCB No. 06-82, 2006 Ill. ENV LEXIS 173 (March 16, 2006). Nevertheless, Caterpillar asserts that this strikes against the purposes of Section 31 and violates the express terms thereof. The clear purpose of Section 31 is to allow parties the opportunity to seek resolution of an Agency claim through negotiation as a mandatory precondition to the Agency's referral of the claim to the Attorney General for litigation. This allows parties the opportunity to resolve environmental disputes with the Agency while avoiding litigation. *See County of Jackson v. Egon Kamarasy*, AC No. 04-63 (Site Code # 0778095036); AC No. 04-64 (Site Code # 0778125013) (Administrative Citation) (Consolidated), 2005 Ill. ENV LEXIS 575, *49-50 (June 16, 2005) ("Section 31 of the Act sets forth a process of notice

of alleged violations from the Agency and an option of meeting with the Agency to give a potential violator the opportunity to resolve alleged violations without being subject to a formal enforcement action. . . . The pre-enforcement process is a precondition to the Agency referring unresolved alleged violations to the Attorney General's Office or the State's Attorney for the filing of a formal complaint.") Caterpillar was not provided the benefits of this opportunity in the case at bar. The occasion to pursue the procedures outlined in Section 31 is particularly important in cases such as this where the basis for the allegations against a respondent (such as Caterpillar) are unclear – and where potentially responsible parties like Caterpillar have attempted to pursue settlement negotiations with the Agency. Section 31(a) and (b) are rendered meaningless if their purposes can be circumvented by the Attorney General inserting the phrase “on its own motion” into its Complaint. Allowing this matter to go forward, and thus presuming the legislature intended Section 31 to be meaningless and devoid of any force, violates the basic canons of statutory interpretation. *See Business & Professional People for Public Interest v. Illinois Commerce Com.*, 146 Ill. 2d 175, 207 (1991) (“When interpreting a statute the primary function of this court is to ascertain and give effect to the intent of the legislature.”); *Collins v. Board of Trustees of Firemen's Annuity & Benefit Fund*, 155 Ill. 2d 103, 111 (1993) (“The statutory language . . . is to be given its plain or ordinary and popularly understood meaning, and the fullest rather than narrowest possible meaning to which it is susceptible.”).

The terms of Section 31(a) and (b) require that the Agency follow specific procedures before it may refer a matter to the Attorney General's office. The Agency failed to follow these procedures, thus denying Caterpillar the benefits thereof, and the opportunity to seek an early resolution so as to prevent the filing of this action. As the preconditions to filing suit were never accomplished, this action must be dismissed until such a time as those preconditions have been

satisfied. Or, in the alternative, the portion of the complaint whereby the Attorney General seeks to bring this action at the request of the Agency must be stricken, and the Agency must not be permitted to participate directly or indirectly in the further litigation of this matter.

III. The People Failed to Plead with the Specificity Required by 35 Ill. Adm. Code Section 103.204 and Illinois' Fact-Pleading Standard.

35 Ill. Adm. Code Section 103.204 requires that a complaint contain “[t]he dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense.” The People have failed to provide any dates or description of the nature, extent, duration, or strength of the Waste Hauling Landfill release, or of Caterpillar’s alleged contribution to that release. Accordingly, Caterpillar is unable to determine the basis of the claims against it, or to prepare an adequate defense to the conclusory allegations contained in the Complaint. Because the People have failed to plead with adequate specificity as required by 35 Ill. Adm. Code Section 103.204, the Complaint must be dismissed.

Illinois is a fact-pleading state. *See People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). This is a higher standard than mere notice-pleading. *See Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 518 (1989). “In assessing the adequacy of pleadings in a complaint, the Board has accordingly stated that ‘Illinois is a fact-pleading state which requires the pleader to set out the ultimate facts which support his cause of action.’” *United City of Yorkville v. Hammon Farms*, PCB No. 08-96 (Citizen's Enforcement -- Land, Air, Water), 2008 Ill. ENV LEXIS 352, *36-37 (October 16, 2008), *quoting Grist Mill Confections*, PCB 97-174, slip op. at 4. “[L]egal conclusions unsupported by allegations of specific facts are

insufficient.” *Id.*, quoting *La Salle Nat'l Trust, N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 557 (Ill. App. Ct. 2d Dist. 1993). “A complaint’s failure to allege facts necessary to recover ‘may not be cured by liberal construction or argument.’” *Id.*, quoting *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 510 (1988), and *People ex rel. Kucharski v. Loop Mortgage Co.*, 43 Ill. 2d 150, 152 (1969).

“Even though charges in an administrative proceeding need not be drawn with the same refinements as pleadings in a court of law, the Act and the Board’s procedural rules provide for specificity in pleadings, and the charges must be sufficiently clear and specific to allow preparation of a defense.” *Jerry R. West, II v. Nokomis Quarry Company*, PCB No. 09-45 (Citizens Enforcement - Air), 2009 Ill. ENV LEXIS 221, *6-7 (June 4, 2009) (internal citations omitted). When complaints fail to meet this standard, the Board has dismissed the matter or stricken the violating counts. *See, e.g., Roche v. Illinois Pollution Control Bd.*, 397 N.E.2d 51, 55 (Ill. App. Ct. 1st Dist. 1979), and *Lloyd A. Fry Roofing Co. v. Pollution Control Bd.*, 20 Ill. App. 3d 301, 305 (Ill. App. Ct. 1st Dist. 1974).

The People have failed to meet the standard set forth in 35 Ill. Adm. Code Section 103.204 or in Illinois’ fact-pleading requirements. Regarding the Waste Hauling Landfill release generally, the Complaint fails to state when this release allegedly occurred, what was allegedly released, the volume of hazardous substances allegedly released, or provide any other detail into the nature of the release. Regarding Caterpillar’s contributions specifically, the Complaint fails to state what materials Caterpillar allegedly sent to the Waste Hauling Landfill, when Caterpillar allegedly sent those materials, the volume of material Caterpillar allegedly sent, or any other details regarding how Caterpillar became involved with the Waste Hauling Landfill or allegedly

contributed to this release. Accordingly, the Complaint must be dismissed for failure to plead with sufficient specificity.

IV. Neither the Agency Nor the People May Seek Damages From Caterpillar that Represent More Than Caterpillar's Proportionate Share of the Liability.

Under 415 ILCS 5/58.9, no action may be filed seeking to force the respondent to pay or perform more than its proportionate share of the cleanup. As the statute states:

Notwithstanding any other provisions of this Act to the contrary, including subsection (f) of Section 22.2, in no event may the Agency, the State of Illinois, or any person bring an action pursuant to this Act or the Groundwater Protection Act to require any person to conduct remedial action or to seek recovery of costs for remedial activity conducted by the State of Illinois or any person beyond the remediation of releases of regulated substances that may be attributed to being proximately caused by such person's act or omission or beyond such person's proportionate degree of responsibility for costs of the remedial action of releases of regulated substances that were proximately caused or contributed to by 2 or more persons.

415 ILCS 5/58.9(a)(1). Caterpillar is at most liable only for its proportionate share of liability at the Waste Hauling Landfill, and cannot be forced to pay or perform more than its proportionate share of the cleanup. To the extent the People are seeking to impose a greater share of liability upon Caterpillar than its proportionate contribution to the alleged release, the claim is in direct contravention of the statutory language. Accordingly, the Complaint must be dismissed.

To the extent the People are seeking for Caterpillar to pay a proportionate share of the overall costs and to assess a correspondingly proportionate penalty against Caterpillar, the People have failed to provide "a concise statement of the relief that the complainant seeks," as required by 35 Ill. Adm. Code Section 103.204. The People have also not pled facts sufficient to support a valid claim under Illinois' proportionate share regulations. Under Section 741.205 of the proportionate share regulations, the burden is on the complainant to prove not only "[t]hat the

respondent proximately caused or contributed to a release,” but also “[t]he degree to which the performance or costs of a response result from the respondent’s proximate causation of or contribution to the release.” *See* Section 741.205(a). This applies to any complaint “filed with the Board that seeks, under the Environmental Protection Act ... [t]o recover the costs of a response that results from a release or substantial threat of a release of regulated substances.” *See* Section 741.105(d). As *People v. Michel Grain Company, Inc.*, PCB 96-143 (Enforcement – Water, Land), 2002 WL 2012414, *3 (August 22, 2002) further explains, “the [proportionate share liability] limits a cost recovery remedy while imposing a burden on complainant to show, among other things, that respondent proximately caused or contributed to the release or substantial threat of release.”

Here, neither the Agency nor the People have specified the nature or degree of Caterpillar’s alleged involvement at the Landfill. In the Agency’s initial 4(q) letter to Caterpillar, the Agency failed to explain the nature of Caterpillar’s involvement or describe the type or amounts of Caterpillar waste that allegedly were sent to Waste Hauling Landfill. Despite Caterpillar’s overtures to understand the basis for and extent of liability being asserted by the Agency, the Agency did not engage Caterpillar in negotiations or explain the foundation for its demands against Caterpillar.

Now, seven years later, the People have filed their Complaint that still fails to allege any facts by which Caterpillar could understand the basis of the claims being brought against it or the nature of the relief being sought. The People have failed to plead sufficient facts regarding the basis for and extent of Caterpillar’s liability, or even to plead any facts by which Caterpillar could deduce the alleged nature and extent of its liability in this matter. Accordingly, there are

no well-pled facts in the Complaint to support the People's cause of action against Caterpillar under the proportionate share regulations.

The People have failed to meet the pleading requirements under 35 Ill. Adm. Code Section 103.204 and 741.205(a) and, as a result, have hindered Caterpillar's ability to prepare a defense. Because of the People's failure to provide a concise statement of the relief it seeks against Caterpillar or to state a valid proportionate share claim, the Complaint must be dismissed. Further, to the extent the People are seeking damages from Caterpillar in excess of Caterpillar's proportionate share of liability at the Waste Hauling Landfill, the Complaint must likewise be dismissed.

V. The People Have No Authority to Request Treble Damages Against Caterpillar.

In paragraph C of the "Prayer for Relief" section of the Complaint, the People request "damages equal to three times the past, present, and future removal costs ... incurred by the Illinois EPA." However, the Complaint fails to allege facts sufficient to support a contention that treble damages are appropriate here with respect to Caterpillar. Therefore, this prayer for relief must be dismissed.

Although the People do not cite any statutory authority for their prayer for treble damages, presumably the prayer for this relief is based on Section 22.2(k) of the Act. However, this section provides for treble damages only when the respondent did not have sufficient cause to decline to undertake the removal action. As *Quincy v. Carlson*, 163 Ill. App. 3d 1049, 1053 (Ill. App. Ct. 4th Dist. 1987) states, "[n]o liability will be found if the alleged responsible party can establish that he (it) acted with 'sufficient cause.'" See also *Solid State Circuits, Inc. v. United States Environmental Protection Agency*, 812 F.2d 383, 391 (8th Cir. Mo. 1987)

(interpreting the parallel federal provision) (“[T]reble damages may not be assessed if the party opposing such damages had an objectively reasonable basis for believing that the EPA’s order was either invalid or inapplicable to it.”). No facts are alleged in the Complaint to support the contention that Caterpillar had sufficient cause to conduct the removal. In fact, Caterpillar had a strong basis for not embarking on a removal action here, as the Agency never provided evidence to support Caterpillar’s share of liability or indicated the extent of relief being sought against Caterpillar.

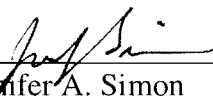
Moreover, even if Caterpillar were liable, its share of liability would necessarily be limited. Caterpillar does not own the Waste Hauling Landfill, has no authority to enter that property, had no responsibility for operating the site, and was at most one of many parties whose waste was disposed of at the site. Therefore, under the Illinois Proportionate Share Liability Rule, even assuming *arguendo*, some liability on behalf of Caterpillar, there is no basis for an order directing Caterpillar to complete the entire removal action. Rather, Caterpillar could only have been required to pay or remediate its proportionate share, an amount the Agency has never alleged. Because the Agency’s Section 4(q) notice to Caterpillar did not set forth a basis for Caterpillar’s liability, Caterpillar had sufficient cause not to undertake a removal action that would have resulted in an expenditure above its proportionate share.

As a result, the People have not pled sufficient facts to allege they are entitled to seek treble damages as to Caterpillar. Paragraph C under “Prayer for Relief” must be dismissed as to Caterpillar.

CONCLUSION

Accordingly, for the reasons set forth above, Caterpillar moves that the Complaint be dismissed in its entirety and the Board grant such further relief as may be just and proper. In the alternative, Caterpillar moves that: (1) the demand for treble damages be stricken; and (2) the Illinois Environmental Protection Agency be barred from further direct or indirect participation in these proceedings until it has followed the procedures set forth in Section 31.

CATERPILLAR INC.



Jennifer A. Simon

Date: September 2, 2009

Kevin G. Desharnais
Jennifer A. Simon
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
(312) 701-8407 (phone)
(312) 706-8117 (fax)
jsimon@mayerbrown.com

EXHIBIT A

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
WASTE HAULING LANDFILL LANDFILL)	EPA FILE NO.
LPC NO. 1158010001)	
)	
Jerry Camfield, Sr.; Waste Hauling Landfill,))	
Inc.; Archer Daniels-Midland; AE Staley MFG))	
Co.; PORTEC Inc.; Thrall Car Manufacturing))	
Co.; Borden Chemical Co.; Bell Helmets -))	
Vetter Productions; Superior Equipment Co.;))	
Climate Control Inc.; Kerr-McGee Corp.;))	
P&H Inc.; Illinois Central Gulf Railroad;))	
Firestone Tire and Rubber Co.; Borg-Warner))	
Corp.; AE Staley Manufacturing Company;))	
General Electric - Railcar Service; Caterpillar))	
Tractor; Means Services Inc.; North American))	
Car Corporation; Marvel Shebler; Combe))	
Lahom Inc.; Waste Hauling, Inc.; Paul))	
McKinney; Nita Noland))	

NOTICE PURSUANT OF SECTIONS 4(q) AND 58.9(b) OF THE ENVIRONMENTAL PROTECTION ACT

I. GENERAL

This Notice is issued pursuant to the authority vested in the Illinois Environmental Protection Agency ("Illinois EPA") by Sections 4(q) and 58.9(b) of the Environmental Protection Act, ("Act"), 415 ILCS 5/4(q) and 415 ILCS 5/58.9(b). Jerry Camfield, Sr.; Waste Hauling Landfill, Inc.; Archer Daniels-Midland; AE Staley Manufacturing Co.; PORTEC Inc.; Thrall Car Manufacturing Co.; Borden Chemical Co.; Bell Helmets - Vetter Productions; Superior Equipment Co.; Climate Control Inc.; Kerr-McGee Corp.; P&H Inc.; Illinois Central Gulf Railroad; Firestone Tire and Rubber Co.; Borg-Warner Corp.; AE Staley Manufacturing Company; General Electric - Railcar Service; Caterpillar Tractor; Means Services Inc.; North American Car Corporation; Marvel Shebler; Combe Lahom Inc.; Waste Hauling, Inc.; Paul McKinney and Nita Noland ("Parties") shall undertake all actions required by, and in accordance with the terms and conditions of, this Notice. The term "Site" is defined for purposes of this Notice as the facility described in Section III(A) of this Notice. Failure by the Parties to undertake these actions may result in sanctions including, but not limited to, the sanctions described in Section XIX of this Notice.

II. OBJECTIVES

The objectives of the Illinois EPA in issuing this notice are: 1) to provide notice to the Parties of a release or substantial threat of release of hazardous substances or pesticides at or attributable to the Site and of the necessity to perform remedial action; 2) to identify appropriate actions for response to the release or the substantial threat of a release of hazardous substances or pesticides at or attributable to the Site; and 3) to provide an opportunity for the Parties to perform such response actions. All activities conducted pursuant to this Notice are subject to approval by the Illinois EPA and shall be substantially consistent with the Illinois Hazardous Substances Pollution Contingency Plan, 35 Ill. Adm. Code 750, as amended.

III. FINDINGS OF FACT

The following constitutes the facts upon which this Notice is based:

A. SITE DESCRIPTION

The Waste Hauling Landfill ("Site") is located in the Southeast corner of the Northeast Quarter of Section Thirteen (13), Township Sixteen (16) North, Range One (1) East of the Third Principal Meridian, Macon County, Illinois.

The Site includes all areas where contaminants have come to be located.

B. IDENTITY OF CURRENT OWNER OR OPERATOR

The Site is owned and operated by Jerry Camfield, Sr. and Waste Hauling, Inc., 2938 Oakmont Drive, Decatur, Illinois 62521.

C. SITE OPERATIONAL AND REGULATORY HISTORY

1. The Waste Hauling Landfill is located less than one-quarter mile South of the Sangamon River in the Southeast corner of the Northeast Quarter of Section Thirteen (13), Township Sixteen (16) North, Range One (1) East of the Third Principal Meridian, Macon County, Illinois.
2. The initial Illinois EPA permit (1973-41-OP) was issued in 1973 and the landfill operated from 1973 to 1992. The Illinois EPA permit was transferred to Jerry Camfield Sr. and Nita Noland of Waste Hauling Landfill, Inc. on June 26, 1980. Also in 1980 the name of the landfill was changed from McKinney Landfill to Waste Hauling, Inc.
3. A Macon County Circuit Court preliminary injunction ceased the landfills' operation in May of 1992. This preliminary injunction required Waste Hauling Landfill to cease and desist from waste disposal operations, remove any leachate

and close a trench that was open at the time to prohibit any further leachate from flowing into the waters of the State.

4. During an Illinois EPA inspection of the landfill on February 9, 1987, the following violations were noted: uncovered refuse, blown litter, acceptance of waste without necessary permits and acceptance of special waste without required manifests.
5. During an Illinois EPA inspection of the landfill on June 29, 1989, the following violations were noted; refuse in standing water, leachate flowing off-site and open burning of refuse.
6. During an Illinois EPA inspection of the landfill on May 21, 1990, the following violations were noted; refuse in standing water, leachate exiting the landfill, acceptance of wastes with out necessary permits, acceptance of waste without required manifests, failure to submit reports required by permits or Illinois Pollution Control Board regulations.
7. Waste Hauling Landfill accepted approximately eighty (80) drums of paint sludge for disposal from Bell Sports, Inc. Before accepting the drums, Waste Hauling Landfill did not test the shipments of waste.
8. In April of 1992, the Illinois EPA investigated Waste Hauling Landfill under a criminal search warrant due to allegations that they accepted hazardous waste for disposal. A witness reported that two separate groups of 55-gallon drums had been disposed of in the landfill. The first was said to have been disposed between April 7 and April 9 of 1992 and consisted of eighty (80) to one hundred (100) drums containing various clear and multi-colored liquids having a "paint thinner" odor. The second group consisted of one hundred-sixty (160) to two hundred (200) drums disposed of in April of 1991. Fifty-three (53) drums were found in the area where the waste was said to have been located. Seven samples were collected from the recovered drums and four of these samples were found to be TCLP toxic for 2-butanone and benzene.
9. In May of 1994, a Macon County Health Department inspection finds leachate exiting the landfill, cover erosion and uncovered waste.
10. In January of 1995, an Illinois EPA inspection finds refuse in standing and flowing water, and leachate exiting the landfill. Another inspection in March of the same year finds the same violations along with inadequate depth of final cover.
11. On April 12, 1995 a meeting was held between the Illinois EPA, Roth and Van Dyke of Bell Sports and SKS Associates for Waste Hauling Landfill to discuss

technical remedies regarding closure and post closure care of Waste Hauling Landfill.

12. In September of 1995, Waste Hauling Landfill, Inc. and Waste Hauling, Inc. filed a cross-claim against Bell Sports, Inc. requesting that Bell Sports, Inc. be found liable for civil penalties due to release of hazardous substances on the premises of the landfill.
13. In May of 1998 the Illinois Pollution Control Board (IPCB) imposed a penalty in the amount of \$472,000 and attorney fees and costs in the amount of \$18,535 against Waste Hauling Landfill, Inc. This was in response to several violations including the transport, storage and disposal of hazardous waste. The IPCB also dismissed the cross-claim between Waste Hauling Landfill, Inc. and Waste Hauling, Inc. and Bell Sports, Inc.
14. An investigation conducted in the summer of 2001 by Earth Tech, Inc. on behalf of the Illinois EPA documented severe erosion on the slopes of the landfill and several active leachate seeps. In addition, a soil gas survey demonstrated that landfill gas is present in off-site locations to the south of the landfill.

D. DEMONSTRATED PRESENCE OF HAZARDOUS SUBSTANCES OR PESTICIDES AT SITE

Leachate at the Site has been tested and found to contain levels of a number of contaminants including: Arsenic, Barium, Chromium, Lead, Mercury, Benzene, Chlorobenzene, and Trichloroethene. Numerous seeps have been noted on the East and North sides of the landfill and in additional locations on the top of the landfill. These seeps feed into the surface drainage of the site which runs in to an intermittent stream on the northeast side of the landfill. This stream is a tributary to the Sangamon River which is located only a few hundred yards to the north.

IV. CONCLUSIONS OF LAW

- A. The Site described in Section III(A) of this Notice is a facility as defined in Section 22.2(h)(1) of the Act, 415 ILCS 5/22.2(h)(1).
- B. Each of the Parties is a "person" as defined in Section 3.26 of the Act, 415 ILCS 5/3.26.
- C. Materials, wastes and constituents thereof at the Site are "hazardous substances" as defined in Section 3.14 of the Act, 415 ILCS 5/3.14, or "pesticides" as defined in Section 3.71 of the Act, 415 ILCS 5/3.71.

- D. The past, present or potential migration of hazardous substances or pesticides from the Site constitutes an actual or substantial threat of "release" as defined in Section 3.33 of the Act, 415 ILCS 5/3.33.
- E. The Parties are persons who may be liable for some or all costs of removal or remedial action incurred by the State of Illinois pursuant to Sections 22.2(f) and 58.9(a) of the Act, 415 ILCS 5/22.2(f) and 415 ILCS 5/58.9(a), for a release or substantial threat of a release of a hazardous substance or pesticide.

V. DETERMINATION

Based on the Findings of Fact and Conclusions of Law set forth above, the Illinois EPA has determined that the response actions identified in this Notice are appropriate to mitigate the release or substantial threat of a release of hazardous substances or pesticides at or from the Site.

VI. IDENTIFIED RESPONSE ACTION

The Parties shall furnish the necessary personnel, materials, services, facilities, and otherwise do all things necessary or appropriate to fully comply with the following provisions:

- A. Specifically, the Parties shall submit design plans to accomplish the following:
 - 1. diligently comply with the Act and the Illinois Pollution Control Board's regulations;
 - 2. properly cover exposed refuse, contour the Site for proper drainage, establish adequate final cover of compacted clay or another suitable material over the entire Site and vegetate the final cover;
 - 3. eliminate the erosion channels and monitor, control and eliminate leachate seeping from the Site;
 - 4. ensure that leachate does not cause or threaten to cause water pollution in Illinois;
 - 5. ensure that landfill gas is vented properly to prevent off-site migration and destruction of vegetation;
 - 6. eliminate ponding on the surface of the Site and conduct any other maintenance as needed and required by any permit(s) issued by the Illinois EPA, the Act and the Illinois Pollution Control Board's regulations.

- H. Assurance that all engineering work performed pursuant to this Notice is fully documented and under the supervision and certification of a licensed professional engineer registered and in good standing in Illinois. All document certification shall be by indelibly inked signature over the author's typed full name, title, Illinois registration number, Illinois professional engineer's seal and the date of signature for the following statement:

I certify under penalty of law that this document, supporting documents, and all attachments were prepared under my direction or supervision. To the best of my knowledge and belief, this document, supporting documents, and all attachments are true, accurate, and complete. All work was completed in strict accordance with the approved plans and specifications, using sound engineering practices. I am aware that there are significant penalties for submitting false information or withholding material data, including the possibility of fine and imprisonment for knowing violations.

- C. Acquisition of express written approval by the Illinois EPA of all contractors, subcontractors, consultants, and laboratories used to conduct the work performed pursuant to this Notice prior to the initiation of such work.
- D. The Parties are also responsible for operation and maintenance activities as required by the Parties permit(s) as issued by the Illinois EPA, the Act and the Pollution Control Board's regulations.
- E. The Parties must provide financial assurance for the Site as required by any permit(s) issued by the Illinois EPA, the Act and the Illinois Pollution Control Board's regulations.
- F. The Parties shall comply with the following schedule:
1. Readily approvable design plans, specifications and an Operation and Maintenance Plan shall be submitted to the Illinois EPA Project Manager within 45 days of the date of this Notice. The documents shall contain the certification listed in Section VI (B).
 2. Implementation of the design plans shall begin within 30 days of Illinois EPA approval of the design plans.
 3. Construction shall be completed within 120 days of Illinois EPA approval of the design plans.

4. A readily approvable final completion report shall be submitted within 45 days of completion of construction. The documents shall contain the certification listed in Section VI (B).
 5. Annual Operation and Maintenance Progress Reports shall be submitted in November of every year. The documents shall contain the certification listed in Section VI (B).
- G. The Parties shall cease and desist from further violations of the Act and the Illinois Pollution Control Board's regulations.

VII. RESPONSE TO NOTICE AND OPPORTUNITY TO CONFER

- A. Each Party shall respond to the Illinois EPA in writing within thirty (30) days of the effective date of this Notice identifying the nature and extent of the corrective measures that such Party is willing to undertake to comply with the terms and conditions of this Notice. If any Party fails to so respond, the Illinois EPA will assume that such Party refuses to undertake these identified response actions and the Illinois EPA will proceed accordingly. A schedule to which the Parties agree to bound for the implementation of such measures is included in Section VI(F) of this Notice. The Illinois EPA will also construe any notice received from the Parties which does not commit said Parties to perform all the work and other obligations required by this Notice as a refusal of said Parties to comply with this Notice.

Each Party shall indicate the appropriate name, title, address and telephone number for further Illinois EPA contact with that Party in this matter.

- B. Except as otherwise indicated, all notifications required of the Parties by this Notice shall be sent to:

Chris Nickell, #24
Project Manager
Remedial Project Management Section
Division of Remediation Management
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

and to:

Kyle Davis, #21
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

- C. The Parties shall provide to the Illinois EPA project manager identified in Section VII(B) of this Notice five (5) copies of all reports, notifications or other documents submitted to the Illinois EPA in compliance with this Notice. The Parties shall provide to the Illinois EPA Assistant Counsel identified in Section VII(B) of this Notice one copy of all reports, notifications, or other documents submitted to the Illinois EPA in compliance with this Notice. Additional copies shall be provided upon request of the Illinois EPA.
- D. If any Party has knowledge of any person not named in this Notice who may be liable for a release or substantial threat of a release of hazardous substances or pesticides at the Site, the Illinois EPA requests that the Party provide the identification of such other person and the factual basis for assumption of liability by such person under Sections 22.2(f) and 58.9 of the Act, 415 ILCS 5/22.2(f) and 415 ILCS 5/58.9.
- E. The response required by Section VII(A) of this Notice shall contain a status report of any discussions or negotiations with federal, state or local government authorities, or any voluntary action or involvement in a lawsuit regarding the Site or contamination attributable to the Site. A copy of this written response shall be provided to any other party involved in those discussions.
- F. The Illinois EPA extends to the Parties an opportunity to confer on any matters addressed in this Notice within thirty (30) days of the effective date of this Notice. A conference at the Illinois EPA's headquarters may be requested by any of the Parties through written request directed to the Illinois EPA Assistant Counsel named in Section VII(B) of this Notice. Such request may not delay the Parties' performance of the identified response action.

VIII. DESIGNATED PROJECT MANAGERS

The project manager for the Illinois EPA is identified in Section VII(B). The Parties shall designate a project manager prior to the initiation of any work or task required under Section VI of this Notice. The project manager for the Parties shall be responsible for administering the performance of the Parties' obligations under this Notice. The Illinois EPA's project manager and the Parties' project manager shall ensure that all communications, coordination, report submittals, correspondence, approvals, and scheduling are directed, as appropriate, to the counterpart project manager.

The Illinois EPA may designate an on-scene coordinator to augment Illinois EPA supervision of Site Activities and compliance with the terms and conditions of this Notice. The on-scene coordinator is supervised by the Illinois EPA's project manager.

IX. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Parties shall make the results of all sampling, tests or other data generated by the Parties or on the Parties' behalf with respect to implementation of this Notice available to the Illinois EPA and shall submit such data upon request. The Illinois EPA shall similarly make available to the Parties the results of all sampling, tests, or other data regarding the Site generated by the Illinois EPA or on the Illinois EPA's behalf.

At the request of the Illinois EPA, the Parties shall allow split or duplicate samples to be taken by the Illinois EPA and its authorized representatives of any samples collected by the Parties with respect to the contamination at or attributable to the Site. The Parties shall notify the Illinois EPA not less than seven (7) calendar days in advance of any sample collection activities. Failure to so notify the Illinois EPA may invalidate the results of such sample analyses for the purposes of compliance with this Notice.

The Illinois EPA and any Illinois EPA authorized representative and the Illinois Attorney General's Office shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Parties in carrying out the terms of this Notice; conducting such tests as the Illinois EPA may deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to the Illinois EPA by the Parties. The Parties shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data in any way pertaining to work undertaken pursuant to this Notice. All persons with access to the Site pursuant to this Section of this Notice shall comply with an Illinois EPA-approved Site health and safety plan.

X. RECORD PRESERVATION

The Parties shall preserve during the pendency of this Notice and for a minimum of six (6) years after its termination, all records and documents in the Parties' possession or in the possession of the Parties' divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. The Parties may fulfill this obligation by retention on microfilm or other comparable record keeping. Upon completion of this six (6) year period, the Parties shall notify the Illinois EPA thirty (30) days prior to the destruction of any such documents. Upon request, the Parties shall make available to the Illinois EPA such records or copies of such records at no cost to the Illinois EPA. Compliance with this Section shall not be construed to indicate a waiver of any applicable right or privilege.

XI. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Notice, including the completion of the work set forth in Section VI, the Parties are not released for liability, if any, for any costs of removal or remedial action incurred by the Illinois EPA at the Site beyond the scope of this Notice. The Illinois EPA reserves:

- A. The right to take any enforcement action pursuant to the Act or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or of this Notice.
- B. All rights that it may have, including the Illinois EPA's right both to disapprove of work performed by the Parties and to request that the Parties perform tasks in addition to those required in this Notice. In the event that Parties decline to perform any additional tasks, the Illinois EPA reserves the right to undertake any such work.
- C. The right to undertake removal or remedial actions at any time.
- D. The right to seek reimbursement from the Parties thereafter for any and all costs incurred by the State of Illinois related to the release or threatened release of hazardous substances or pesticides at or attributable to the Site.

XII. ABATEMENT OF ENDANGERMENT

In the event that the Director of the Illinois EPA, or the Director's designated representative, determines that any activities or circumstances at the Site are creating an immediate and significant risk of endangerment to human health or the environment, the Director may issue a notice to cease further implementation of the identified response action. Where the Director halts any tasks for a specified period of time, the Parties may be given an additional amount of time to complete subsequent tasks. No such extension shall be allowed if any delay is attributable in whole or in part to the acts or omissions of any Party, its agents, employees, representatives, contractors or subcontractors. This additional time may not exceed the actual period during which identified response actions were halted by the Director. For purposes of the Notice, the designated representative of the Director includes the Illinois EPA's project manager and on-scene coordinator.

XIII. REIMBURSEMENT OF COSTS

The Illinois EPA shall submit to the Parties summary accountings and requests for reimbursement of all response and oversight costs incurred by the State of Illinois with respect to the Site for which each Party is liable. These accountings shall include costs incurred by the Illinois EPA as a result of a release or substantial threat of a release of hazardous substances or pesticides during current and prior State fiscal years including,

but not limited to, response and oversight costs incurred by the Illinois EPA prior to the effective date of this Notice. The Parties shall pay the amount of in satisfaction of claim(s) the State has for all investigation, response and oversight costs it incurs. Costs include administrative costs, allocated costs, direct costs and indirect costs.

The Parties shall remit a certified check for the amount of the request reimbursement made payable to Treasurer-State of Illinois, with a notation for deposit in the Illinois Hazardous Waste Fund, within thirty (30) calendar days of the date of the request. Checks should specially identify the Site, the Site's Special Waste Generator Number and the Parties' Federal Employer Identification Number and should be addressed to the following:

Illinois Environmental Protection Agency
Fiscal Services, #2
P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

The Parties shall also send a copy of the transmittal letter to the Illinois EPA's project manager identified in Section VII(B) of this Notice.

If any of the Parties fail to remit the requested reimbursement to the Illinois EPA within thirty (30) calendar days of the date of request, the Illinois EPA will assume that the Party refuses to reimburse such costs and the Illinois EPA will proceed accordingly. The Illinois EPA reserves the right to bring an action against any of the Parties pursuant to the Act for recovery of all response and oversight costs incurred by the State of Illinois relative to this Notice as well as any other costs incurred by the State of Illinois relative to response activities conducted pursuant to the Act at the Site for which that Party is liable.

XIV. ANNUAL HAZARDOUS WASTE GENERATOR REPORTS

All hazardous wastes, as defined in Section 3.15 of the Act, 415 ILCS 5/3.15, generated at the Site through activities conducted pursuant to this Notice or any subsequent Notice may be subject to annual reporting requirements pursuant to 35 Ill. Adm. Code 722.141. Hazardous wastes treated, stored or disposed on the Site, or shipped off the Site for storage, treatment, or disposal during any calendar year shall be reported to the Illinois EPA by no later than the first day of March of the following year. Reporting requirements, instructions and current reporting forms are available from the Illinois EPA by contacting the following:

Facility Reporting Unit, #24
Planning and Reporting Section
Bureau of Land
Illinois Environmental Protection Illinois EPA

P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

XV. OTHER CLAIMS

Nothing in this Notice shall constitute or be construed as a release or waiver from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the presence, generation, storage, treatment, handling, transportation, release, management or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

XVI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Notice shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

XVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Notice is the date on which it was posted by Certified Mail to the Parties. Such date is identified below the Director's signature block at the close of this Notice.

The Illinois EPA may amend this Notice. Such amendment shall be in writing and shall be effective on the date on which it was posted by Certified Mail to the Parties.

Any reports, plans, specifications, schedules, and attachments required by this Notice are, upon approval by the Illinois EPA, incorporated into the terms and conditions of this Notice. Any non-compliance with such Illinois EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a failure to comply with the terms and conditions of this Notice.

No informal advice, guidance, suggestions, or comments by the Illinois EPA regarding reports, plans, specifications, schedules, or any other documents submitted by the Parties will relieve the Parties of their obligation to obtain such formal approval as may be required by this Notice.

XVIII. PARTIES BOUND

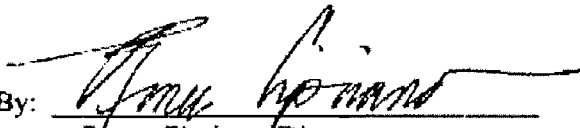
This Notice shall apply to and be binding upon the Parties and their subsidiaries, principals, estates, officers, directors, agents, representatives, successors, and assignees and upon all persons, contractors, subcontractors and consultants acting under or for either the Parties or the Illinois EPA or both. No change in ownership or corporate or partnership status relating to the Site will in any way alter the Parties' responsibility under this Notice. The Parties shall be responsible for carrying out all activities required of the Parties under this Notice.

XIX. FAILURE TO COMPLY WITH THIS NOTICE

Pursuant to Section 22.2(k) of the Act, 415 ILCS 5/22.2(k), if any Party fails without sufficient cause to perform the identified response action in accordance with the terms and conditions of this Notice, the Party may be liable to the State of Illinois for punitive damages in an amount that is equal to three (3) times the amount of costs incurred by the State of Illinois as the result of that Party's failure to perform the identified response action. Any such punitive damages shall be assessed in addition to costs otherwise recovered from the Parties pursuant to Section 22.2(f) and 58.9 of the Act, 415 ILCS 5/22.2(f) and 415 ILCS 5/58.9, and in addition to any other penalty or relief provided by the Act, 415 ILCS 5/1 et seq., or any other law.

XX. TERMINATION AND SATISFACTION

The provisions of this Notice shall be deemed satisfied upon the Parties receipt of written notice from the Illinois EPA that the Parties have demonstrated, to the satisfaction of the Illinois EPA, that all of the requirements, terms and conditions of this Notice, including any additional tasks which the Illinois EPA has determined to be necessary, have been completed.

By: 
Renee Cipriano, Director
Illinois Environmental Protection Agency

Date: 5/13/02

Date of Mailing: 5/17/02

EXHIBIT B



Caterpillar Inc.

100 NE Adams Street
Peoria, Illinois 61629

June 13, 2002

Chris Nickell, #24
Project Manager
Remedial Project Management Section
Division of Remediation Management
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Kyle Davis, #21
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
P.O. Box 10726
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Subject: Waste Hauling Landfill Landfill LPC No. 1158010001

Gentlemen:

I am writing on behalf of Caterpillar Inc. with respect to the Illinois Environmental Protection Agency's (hereinafter "Agency") Notice Pursuant of Sections 4(q) and 58.9(b) of the Environmental Protection Act, dated May 13, 2002 with an effective date of May 17, 2002, (hereinafter "Notice") with respect to the above-referenced site. This response should not in any way be interpreted as an admission of liability with respect to the site.

The Notice names "Caterpillar Tractor" as one of two-dozen "Parties." The Notice also states that each Party shall respond within 30 days of the Notice's effective date committing to undertake response actions at the site.

It is not reasonably possible for Caterpillar to respond to the Notice in the manner required by the Agency within the time frame specified by the Agency. As you know, the Site Operational and Regulatory History section of the Notice does not mention Caterpillar or indicate the basis on which Caterpillar might be liable under the Act. If the Agency has information indicating Caterpillar's liability, we would appreciate if you would provide that information to Caterpillar immediately.

Electronic Filing - Received, Clerk's Office, September 2, 2009

It appears the Notice contemplates that the "Parties" coordinate with each other in providing a response. See Notice § VII.A (stating that IEPA seeks a response committing the Parties to "perform all the work"). Indeed, since receiving the Notice Caterpillar has discussed the site with a listed Party, and will continue with and expand upon such discussions. However, it is not practical for the 24 named parties to communicate and reach a consensus within the short 30-day time frame.

Caterpillar intends to consult with the Agency and other Parties in an effort to determine whether and to what extent Caterpillar may be liable for response action at the site, appropriate response action, and other related matters.

Please direct further Illinois EPA contact with Caterpillar to me at the address and phone number indicated herein.

Yours truly

A handwritten signature in black ink, appearing to read 'Timothy J. Callanan', with a long horizontal flourish extending to the right.

Timothy J. Callanan
Attorney

Telephone: 309/675-4277

Facsimile: 309/675-6620