

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

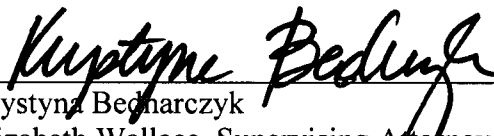
| | | |
|--|---|--------------------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 11-79 |
| |) | (Enforcement – Water) |
| INVERSE INVESTMENTS L.L.C., |) | |
| an Illinois limited liability company, |) | |
| |) | |
| Respondent. |) | (VIA ELECTRONIC FILING) |
| |) | |

NOTICE OF FILING

| | |
|----------------------------------|--|
| TO: Jennifer T. Nijman | Bradley P. Halloran |
| Nijman Franzetti LLP | Hearing Officer |
| 10 S. LaSalle Street, Suite 3600 | Illinois Pollution Control Board |
| Chicago, Illinois 60603 | 100 West Randolph Street, Suite 11-500 |
| | Chicago, Illinois 60601 |

PLEASE TAKE NOTICE that on July 11, 2012, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed before the Illinois Pollution Control Board, PEOPLE'S ANSWER TO RESPONDENT'S DEFENSE TO THE COMPLAINT, a true and correct copy of which is attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

By: 
Krystyna Becharczyk
Elizabeth Wallace, Supervising Attorney
Assistant Attorneys General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-1511

DATE: July 11, 2012

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| by LISA MADIGAN, Attorney |) | |
| General of the State Illinois, |) | |
| |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 11-79 |
| |) | (Enforcement – Water) |
| INVERSE INVESTMENTS L.L.C., |) | |
| an Illinois limited liability company, |) | |
| |) | |
| Respondent. |) | |
| |) | |

PEOPLE’S ANSWER TO RESPONDENT’S DEFENSE TO THE COMPLAINT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, (“People”), and herein responds to Respondent’s, INVERSE INVESTMENTS L.L.C. (“Inverse”), Defenses to the Complaint, as follows:

RESPONDENT’S DEFENSE TO THE COMPLAINT

Respondent, Inverse Investments, L.L.C., asserts the following defense without waiving Complainant’s obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law.

RESPONDENT DID NOT CAUSE OR ALLOW WATER POLLUTION

43. Respondent acquired the property through an inheritance in June 2005.

ANSWER: Complainant neither admits nor denies the allegations of paragraph 43 as this information was provided to the Complainant by the Respondent. The Complainant has no independent knowledge of the allegations contained in Paragraph 43.

44. Since prior to 2005, the Site has been enrolled in the Site Remediation Program

("SRP") under Section 58 of the Act, 415 ILCS 5/58.

ANSWER: Complainant admits the allegations of paragraph 44.

45. Since June 2005, Respondent has conducted remedial response activities at the Site under the supervision and approval of the Illinois EPA.

ANSWER: Respondent's statement that it "conducted remedial response activities" constitutes a conclusion of law and requires no response. To the extent that a response is required, Complainant denies the allegations contained in Paragraph 45. Furthermore, Complainant specifically denies that Respondent's activities at the Site were "under the supervision and approval of the Illinois EPA."

46. Any contaminants of concern found in the soil and groundwater at the Site are from historical conditions.

ANSWER: Complainant is without sufficient information to admit or deny the allegations in paragraph 46 and therefore denies same. Complainant further states that Respondent's characterization that "contaminants of concern found in the soil and groundwater at the Site are from historical conditions" is not a defense to violations of Section 12(a) of the Act as alleged in paragraph 32 of Count I of the Complaint.

47. All businesses that may have discharged or contributed to any contamination at the Site ceased operating prior to 2005.

ANSWER: Complainant is without sufficient information to admit or deny the allegations in paragraph 47 and therefore denies same.

48. Respondent had no control over the migration of the contaminants through the groundwater prior to its inheritance in 2005.

ANSWER: Complainant is without sufficient information to admit or deny the allegations in paragraph 48 and therefore denies same. To the extent that Respondent's statement that it "had no control over the migration of contaminants" constitutes a conclusion of law, it requires no response. To the extent that a response is required, Complainant denies the allegations contained in Paragraph 48.

49. By actively participating in the SRP since inheriting the property, Respondent has taken extensive precautions at the Site to prevent other intervening causes of any discharge of

contaminants into the environment.

ANSWER: Complainant is without sufficient information to admit or deny the allegations in paragraph 49 and therefore denies same.

50. "Discharge" is not defined in the Act, however, under the Federal Clean Water Act, which delegates the authority of enforcement to the State of Illinois, migration of contaminants is not a "discharge". 33 U.S.C. 1362(16), (12). *See Aiello v. Town of Brookhaven*, 136 F.Supp.2d 81, 120 (E.D.N.Y. 2001) citing *Friends of Santa Fe County v. LAC Minerals, Inc.*, 892 F.Supp. 1333, 1354 (D.N.M. 1995). *See also Wilson v. Amoco Corp.* 33 F.Supp.2d 969, 975 (D.Wyo., 1998) (concluded that migration of residual contamination from previous releases is not an ongoing discharge, and holding otherwise would undermine the CWA's limitations in the statute's definition of points source) *But see Sierra Club v. Union Oil Co.*, 853 F.2d 667, 671 (9th Cir.1988).

ANSWER: The allegations contained in paragraph 50 constitute conclusions of law and require no response. The authorities cited speak for themselves. To the extent a response is required, Complainant denies the allegations.

51. Respondent has not caused or allowed the discharge of contaminants into the water because Respondent did not have control over the migration of the contaminants.

ANSWER: Complainant is without sufficient information to admit or deny the allegations in paragraph 51. The allegations contained in paragraph 51 also constitute conclusions of law and require no response. To the extent a response is required, Complainant denies the allegations.

52. Respondent has not caused or allowed the discharge of contaminants into the water because Respondent has taken extensive precautions to prevent other intervening causes of any further discharge of contaminants into the environment.

ANSWER: Complainant is without sufficient information to admit or deny the allegations in paragraph 52. The allegations contained in paragraph 52 also constitute conclusions of law and require no response. To the extent a response is required, Complainant denies the allegations.

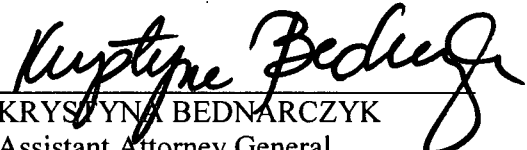
53. Respondent has not caused or allowed the discharge of contaminants into the water because migration of contaminants is not a discharge under the Act.

ANSWER: Complainant is without sufficient information to admit or deny the allegations in paragraph 53. The allegations contained in paragraph 53 also constitute conclusions of law and require no response. To the extent a response is required, Complainant denies the allegations.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex ret. LISA MADIGAN, Attorney
General of the State of Illinois

By: _____


KRYSZYNA BEDNARCZYK
Assistant Attorney General
Environmental Bureau North
69 West Washington Ave., 18th Floor
Chicago, Illinois 60602
(312) 814-1511

Date: July 11, 2012

CERTIFICATE OF SERVICE

I, Krystyna Bednarczyk, an Assistant Attorney General in this case, do certify that I caused to be served electronically this 11th day of July, 2012, the foregoing NOTICE OF FILING and PEOPLE'S ANSWER TO RESPONDENT'S DEFENSE TO THE COMPLAINT, upon the following person:

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

and to the following persons, by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

Jennifer T. Nijman
Nijman Franzetti LLP
10 S. LaSalle Street, Suite 3600
Chicago, Illinois 60603

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



KRYSTYNA BEDNARCZYK