

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) **PCB NO. 17-45**
)
 MAGNA TAX SERVICE CO., INC.,)
)
 Respondent.)

NOTICE OF FILING

To: William D. Ingersoll, Brown, Hay & Stephens, LLP
205 South Fifth Street, Suite 700, P.O. Box 2459, Springfield, IL 62705-2459

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Notice of Filing and Motion to Strike Respondent's Affirmative Defenses, a copy of which is herewith served upon you.

Respectfully submitted,

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

By: s/Rachel Medina
Rachel Medina, #6297171
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: June 7, 2017

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2017, I served a true and correct copy of the Notice of Filing and Motion to Strike Respondent's Affirmative Defenses via electronic mail to:

William D. Ingersoll
Brown, Hay & Stephens, LLP
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
wingersoll@bhslaw.com

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN, Attorney General of the
State of Illinois,

BY: s/Rachel Medina
Rachel Medina
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 17-45
)	
MAGNA TAX SERVICE CO., INC.,)	
)	
Respondent.)	

MOTION TO STRIKE
RESPONDENT'S AFFIRMATIVE DEFENSES

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby moves the Illinois Pollution Control Board ("Board"), pursuant to Section 101.506 of the Board's regulations, 35 Ill. Adm. Code 101.506, to strike the affirmative defenses raised by the Respondent, MAGNA TAX SERVICE CO., INC. In support of this Motion, the Complainant states as follows:

I. INTRODUCTION

On February 12, 2017, the Complainant filed its Complaint alleging violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2014), and Board regulations, 35 Ill. Adm. Code 101.100 et seq. The Complaint's allegations relate to an underground storage tank ("UST") release at Respondent's property, located at 120 North 14th Street, Mattoon, Coles County, Illinois ("Site"). The Illinois Environmental Protection Agency ("Illinois EPA") discovered the release on October 5, 2011. Complainant alleges the following violations stemming from the UST release, which Respondent failed to address for over a year:

- Open Dumping:
 - Section 21(a) of the Act, 415 ILCS 5/21(a) (2014) – Causing or allowing dark liquid discharged from the UST to be consolidated at the Site;
 - Section 21(e) of the Act, 415 ILCS 5/21(e) (2014) – Causing or allowing the UST to discharge, deposit, spill or leak waste material into the environment;
- Failure to Perform Waste Determination:
 - Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2014), and 35 Ill. Adm. Code 722.111 – Failing to determine whether the waste released from the UST was a hazardous waste or a special waste;
- Unpermitted Waste Storage or Disposal:
 - Section 21(d)(2) of the Act, 415 ILCS 21(d)(2) (2014), and 35 Ill. Adm. Code 812.101(a) – Failing to apply for a waste disposal permit for the Site; Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2014) – Failing to maintain a waste disposal permit for the Site;
- Water Pollution:
 - Section 12(a) of the Act, 415 ILCS 12(a) (2014) - Causing, threatening or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution; and,

- Water Pollution Hazard:
 - Section 12(d) of the Act, 415 ILCS 12(d) (2014) – Depositing contaminants on the Site in such place and manner so as to create a water pollution hazard.

On April 7, 2017, Respondent filed its Answer to the Complaint. The Answer included the following affirmative defenses:

Affirmative Defense I: Limitation of Liability Pursuant to Section 58.9

Affirmative Defense II: Counts IV and V [asserting that Respondent may not be required to perform any response action at the Site due to a September 9, 2008 No Further Remediation Letter, pursuant to Section 58.10 of the Act, 415 ILCS 5/58.10 (2014)].

On May 8, 2017, Respondent filed its Amended Affirmative Defenses, including the previously-omitted September 9, 2008 No Further Remediation Letter Respondent claims as a basis for Affirmative Defense II, and related documents. For reasons described below, both affirmative defenses are insufficiently pled. Complainant respectfully requests that both affirmative defenses be stricken with prejudice.

II. LEGAL STANDARDS

Section 103.204 of the Board's regulations, 35 Ill. Adm. Code 103.204, provides, in pertinent part, as follows:

Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

When a purported affirmative defense is insufficiently pled, a Complainant may raise its objections to the defense before the Board and ask that it be stricken, pursuant to Section 101.506 of the Board's regulations, 35 Ill. Adm. Code 101.506, which provides as follows:

All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result.

An affirmative defense is defined as “[a] defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true.” *Black's Law Dictionary* (10th ed. 2014). An affirmative defense essentially admits the allegations in the complaint, and then asserts new matter which defeats a plaintiff's right to recover. *Vroegh v. J & M. Forklift*, 165 Ill. 2d 523, 530 (1995). An affirmative defense must do more than offer evidence to refute properly pleaded facts in a complaint. *Pryweller v. Cohen*, 282 Ill. App. 3d 899, 907 (1st Dist. 1996), *aff'd* 169 Ill. 2d 588 (1996). Rather, an affirmative defense must offer facts which are capable of negating the alleged cause of action. *Id.* If the pleading does not admit the apparent right to the claim and instead merely attacks the sufficiency of the claim, it is not a valid affirmative defense. *Warner Agency, Inc. v. Doyle*, 121 Ill. App. 3d 219, 222-223 (4th Dist. 1984).

Moreover, facts establishing an affirmative defense must be pled specifically, in the same manner as facts in a complaint. *International Ins. Co. v. Sargent & Lundy*, 242 Ill.App.3d 614, 630 (1st Dist. 1993). In determining the sufficiency of any defense, a court will disregard any conclusions of law that are not supported by specific facts. *Richco Plastic Co. v. IMS Co.*, 288 Ill. App. 3d 782, 784-85 (5th Dist. 1997). The facts establishing an affirmative defense must be pled with the same degree of specificity required by a plaintiff establishing a cause of action. *Int'l Ins.*

Co., 242 Ill. App. 3d at 630. Affirmative defenses that are totally conclusory in nature and devoid of any specific facts supporting the conclusion are inappropriate and should be stricken. *Id.* at 635.

This motion is brought pursuant to Section 101.506 of the Board's regulations, 35 Ill. Adm. Code Section 101.506, and seeks to strike the affirmative defenses raised by Respondent in its Amended Affirmative Defenses because they are factually and legally insufficient.

III. ARGUMENT

A. Respondent's Affirmative Defense I Should Be Stricken Because Section 58.9 of the Act, 415 ILCS 5/58.9, Is Inapplicable to the Subject UST Release.

The only assertion that Respondent makes in its Affirmative Defense I that is in the form of an affirmative defense is its claim that Section 58.9 of Title XVII of the Act, 415 ILCS 5/58.9 (2014), should apply to limit liability as to all five counts in the Complaint. However, "[o]ne must enter through a door before one can throw something out of the window....A statute must be read as a whole, and all relevant parts must be considered." *State Oil Co. v. People*, 352 Ill. App. 3d 813, 817 (2d Dist. 2004). So, before Respondent could avail itself of the proportionate share liability provision of Section 58.9, Title XVII would need to be applicable in its entirety to the UST release that is the subject of this enforcement action. *Id.*

Rather, corrective action measures for UST releases, including heating oil tanks, are governed by Title XVI (Petroleum Underground Storage Tanks), Section 57 et seq. of the Act, 415 ILCS 5/57 et seq. (2014). Specifically, Section 57.1 of the Act, 415 ILCS 5/57.1 (2014), provides, in pertinent part, as follows:

Sec. 57.1. Applicability.

- (a) An owner or operator of an underground storage tank who meets the definition of this Title shall be required to conduct tank removal, abandonment and repair, site investigation,

and corrective action in accordance with the requirements of the Leaking Underground Storage Tank Program.

- (b) An owner or operator of a heating oil tank as defined by this Title may elect to perform tank removal, abandonment or repair, site investigation, or corrective action, unless the provisions of subsection (g) of Section 57.5 are applicable.

Consistent with the foregoing provision, Section 58.1(a)(2) of Title XVII of the Act, 415 ILCS 5/58.1(a)(2) (2014), confirms that underground storage tank removal and subsequent corrective action is *not* governed by Title XVII (Site Remediation Program), Section 58 et seq. of the Act, 415 ILCS 5/58 et seq. Section 58.1(a)(2) provides as follows:

Any person, including persons required to perform investigations and remediations under this Act, may elect to proceed under this Title unless

- (i) the site is on the National Priorities List (Appendix B of 40 CFR 300),
- (ii) the site is a treatment, storage, or disposal site for which a permit has been issued, or that is subject to closure requirements under federal or State solid or hazardous waste laws,
- (iii) *the site is subject to federal or State underground storage tank laws, or*
- (iv) investigation or remedial action at the site has been required by a federal court order or an order issued by the United State Environmental Protection Agency. To the extent allowed by federal law and regulations, the sites listed under items (i), (ii), (iii), and (iv) may utilize the provisions of this Title, including the procedures for establishing risk-based remediation objectives under Section 58.5.

415 ILCS 5/58.1(a)(2) (2014) (emphasis added). The Illinois Appellate Court has held that, where underground storage tank laws are applicable to subject leaking USTs, the USTs' owners are not

entitled to avail themselves of the proportionate liability provisions in Section 58.9. *State Oil*, 352 Ill. App. 3d at 817.

In this case, Respondent's Affirmative Defense I on its face acknowledges that the UST release at the Site is subject to the Leaking Underground Storage Tank ("LUST") program. *See* Affirmative Defense I at ¶ 4. According to the relevant Hazardous Materials Incident Report on Illinois EPA's website—of which this Board may take notice pursuant to Section 101.630 of the Board's regulations, 35 Ill. Adm. Code 101.630—Respondent reported a "leak or spill" of "suspected heating oil" at the Site to the Illinois Emergency Management Agency on September 17, 2013. *See* Exhibit A¹. Respondent registered and obtained a removal permit for the leaking UST at the subject Site from the Office of the State Fire Marshal ("OSFM") on or about October 3, 2013. *See* Exhibit B². Respondent then enrolled the heating oil UST cleanup in the LUST program by submitting an application for LUST Fund eligibility, which was received by OSFM on or about November 6, 2013, and approved on November 18, 2013. *See* Exhibit C³.

The Respondent elected to enter the LUST program. It cannot now attempt to shelter itself from liability under Section 58.9 of the Site Remediation Program, 415 ILCS 5/58.9 (2014). Since the release in the instant matter is related to an UST being remediated as part of the LUST program and, thus, subject to Title XVI (Petroleum Underground Storage Tanks), it is clear that Section 58.1(a)(2) of the Act, 415 ILCS 5/58.1(a)(2) (2014), exempts Respondent from the applicability of

1 This copy of the Hazardous Materials Incident Report was downloaded from the Leaking UST technical file for the Site located on Illinois EPA's Document Explorer website at <http://external.epa.illinois.gov/DocumentExplorer> (last visited May 26, 2017).

2 This copy of the approved permit was downloaded from OSFM's Division of Petroleum and Chemical Safety Permits website at <http://webapps.sfm.illinois.gov/ustsearch/Facility.aspx?ID=4045478> (last visited May 26, 2017). The Board may take notice of records on OSFM's website pursuant to 35 Ill. Adm. Code 101.630.

3 This copy of the UST history, including LUST Fund Eligibility and Deductibility Determinations, was downloaded from OSFM's Division of Petroleum and Chemical Safety Permits website at <http://webapps.sfm.illinois.gov/ustsearch/Facility.aspx?ID=4045478> (last visited May 26, 2017).

Title XVII (Site Remediation Program) as a whole, with respect to the subject release.

Accordingly, Respondent's Affirmative Defense I is legally insufficient and should be stricken with prejudice.

Respondent's Affirmative Defense I also alleges that Respondent was not the proximate cause of the subject release. This allegation is conclusory in nature and inappropriate for an affirmative defense, in that it seeks to merely refute the claim. And, in any event, the facts Defendant plead in that regard do not actually refute the claim. For instance, that the chemical constituents were located at the Site and the Site operated before the Site was owned by the Respondent does not negate the allegation that Respondent caused or allowed those constituents to be released into the environment during its ownership of the Site. Thus, the only point for consideration under Respondent's Affirmative Defense I is whether Section 58.9 can be a basis for an affirmative defense.

Since Section 58.9 is inapplicable to the Respondent and the facts of this matter, Affirmative Defense I is insufficiently pled, and Complainant respectfully requests that this affirmative defense be stricken with prejudice.

B. Respondent's Affirmative Defense II Should Be Stricken Because the 2008 Focused No Further Remediation Letter Was Issued Based Upon Specific Title XVII Remediation Activities And Therefore Is Inapplicable to the Subject UST Release.

The No Further Remediation ("NFR") Letter issued to Wabtec Corporation for the subject Site (former Young Radiator site) on September 9, 2008 was a focused NFR Letter, and does not release Respondent of responsibility for the subsequently discovered UST release that is the subject of the Complaint. *See* Amended Affirmative Defenses, Appendix A at 11 ("This *focused* No Further Remediation Letter . . . signifies a release from further responsibilities under the Act

for the performance of the approved remedial action.”) (emphasis added). Under the Site Remediation Program (“SRP”), a focused investigation is utilized when the applicant “has specified limitations on the recognized environmental conditions or contaminants of concern to be covered by the No Further Remediation Letter.” 35 Ill. Adm. Code 740.430. In this case, the subject Site was entered in the Site Remediation Program in 1998. *See* Exhibit D.⁴ The activities that began at this Site in 1998 were for the purpose of investigating and remediating solvent contamination (see Exhibit E⁵), and not for the purpose of addressing a release associated with a heating oil UST, which explains why the investigation proceeded under Title XVII (Site Remediation Program) instead of Title XVI (Petroleum Underground Storage Tanks).

As already explained above, an investigation for a UST release may not proceed under Title XVII. Had the subject UST been identified during Wabtec’s 1998 investigations, Wabtec would have needed to proceed under Title XVI with respect to any releases from it. Thus, the focused NFR Letter that was issued to Wabtec Corporation in 2008 was limited to the contaminants pursued in the investigation conducted under the Title XVII SRP.

Since the 2008 NFR letter was based on limited investigation and cleanup activities associated with Title XVII and not Title XVI, it is clear that the NFR letter was obtained outside of any evaluation of discharges from the UST, which are at issue in the subject matter. Accordingly, any release from further responsibility pursuant to Section 58.10 of the Act, 415 ILCS 5/58.10 (2014), is only as to the subject of what was investigated and pursued for the 2008 focused NFR

4 This copy of the Site Remediation Program record is available from Illinois EPA’s website at http://epadata.epa.state.il.us/land/srp/srp_sites.asp?IEPAID=0290255010 (last visited June 5, 2017).

5 This copy of the Site Remediation Program Review Checklist was downloaded from the Site Remediation – Technical file for the Site located on IEPA’s Document Explorer website at <http://external.epa.illinois.gov/DocumentExplorer> (last visited May 26, 2017).

Letter, and certainly is not a release from responsibility as to any and all new releases of contamination from a different, previously-undiscovered source.

The release of contaminants associated with the heating oil UST in the subject Complaint was identified over three years after the 2008 focused NFR Letter was issued and over a decade after the subject Site was entered in the SRP for solvent investigation and remediation. Again, the UST was not identified as part of the investigative or remedial activities upon which the 2008 focused NFR Letter was based. Had the UST been identified at that time, it would have been removed and remediated under Title XVI.

Allowing the Respondent to avoid remediating the later-discovered UST release based on an earlier, unrelated focused NFR Letter would run counter to the protection of human health and the environment, and contrary to the public policy of dealing with USTs under a separate Title of the Act. Moreover, it would be unconscionable to create an incentive for landowners vis-à-vis a focused NFR Letter to cause or allow additional or new contamination, or escape from liability from new releases of chemical constituents, merely because other contamination had been remediated at their sites in the past.

Even if the 2008 focused NFR Letter were applicable to the facts and circumstances of the subject matter, it would be merely *prima facie* evidence that the Site did not constitute a threat to human health and the environment and did not require further remediation, which could be rebutted by contrary evidence. Respondent's assertion that "[t]he Complaint makes no allegation of rebutting [the NFR Letter's] conclusion," Affirmative Defense II at ¶ 4, is both irrelevant and false. The assertion is irrelevant because there is no burden on a plaintiff to rebut an affirmative defense until the defendant has established that the affirmative matter defeats the plaintiff's claim. *See Doe v. University of Chicago Medical Center*, 2015 IL App (1st) 133735, ¶ 37. And the

assertion is false, because the Complaint does assert facts regarding the contaminants identified in the soil and its proximity to groundwater, thereby alleging a threat to human health and the environment that requires remediation.

Since the 2008 focused NFR Letter cannot serve as the basis for an affirmative defense to liability for the release of contaminants which are the subject of the Complaint, Affirmative Defense II is insufficiently pled, and Complainant respectfully requests that this affirmative defense be stricken with prejudice.

IV. CONCLUSION

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order striking the Respondent's Affirmative Defense I and Affirmative Defense II and granting any other relief the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 
RACHEL R. MEDINA
Assistant Attorney General

Attorney ID No. 6297171
500 South Second Street
Springfield, Illinois 62706
217/782-9034
RMedina@atg.state.il.us
ebs@atg.state.il.us
Dated: 6-7-17



Hazardous Materials Incident Report



0290255010 - Coles
Ballinger, Dennis
Leaking UST Tech File

Incident #: H-2013-1007
 Entered By: Kirgan, Ken (IEMA) on 2013-09-13 10:01:31
 Data Input Status: Closed
 Leaking Underground Storage Tank (LUST): Yes

Caller:	Robert Rogers	IEPA-DIVISION OF RECORDS MANAGEMENT	
Call Back #:	217/519-5120	RELEASABLE	
Caller Represents:	Bodine Environmental Services	OCT 17 2013	
Hazmat Incident Type:	Leak or spill	REVIEWER JKS	
INCIDENT LOCATION			
Incident Location:	120 N 14th St		
County:	Coles 61938	City:	Mattoon
Primary IEMA Region:	9	Secondary IEMA Region:	
Full Address:	120 N 14th St, Mattoon, IL		
Latitude:		Longitude:	
Milepost:		Sec:	
Twp.:		Range:	
Area Involved:	Fixed Facility		
Media or medium into which the release occurred:	Ground		

WEATHER INFORMATION	
Temp (deg F):	n/a
Wind Dir/Speed m.p.h.:	n/a

MATERIALS INVOLVED			
Material Name:	suspected heating oil	Material Type:	Liquid
CHRIS Code:	unknown	CAS #:	unknown
UN/NA #:	unknown		
Is this a 302(a) Extremely Hazardous Substance?	Unknown		
Is this a RCRA Hazardous Waste?	Unknown		
Is this a RCRA regulated facility?	No		
Container Type:	Under ground storage tank	Container Size:	1-unknown size
Amount Released:	unknown	Rate of Release/min:	unknown
Duration of Release:	unknown		
Cause of Release:	unknown		
Estimated Spill Extent:	unknown	Spill Extent Units:	

EXHIBIT
A

Date/Time Occurred:	(Date/Time Unknown)
Date/Time Discovered:	2013-09-13 09:30

Number Injured:	0	Where Taken:	none
Number Killed:	0	# Evacuated:	0
On Scene Contact:	Robert Rogers	On Scene Phone #:	217/519-5120

Proper safety precautions to take as a result of the release, including evacuation:
none

Assistance needed from State Agencies:
none

Containment/Cleanup actions and plans:
tank removal at sometime in the future

Responsible Party:	unknown to caller	<i>Dennis Ballinger</i>
Contact Person:	unknown to caller	
Callback Phone Number:	unknown to caller	
Facility Manager:	unknown to caller	
Facility Manager Phone #:	unknown to caller	
Street Address:	unknown to caller	<i>PO Box 1452</i>
City:	unknown to caller	State: <i>Illinois</i> Zip Code: <i>62525</i>

Emergency Units Contacted	Contacted	On Scene	Agencies Contacted
ESDA			none
Fire			none
Police			none
Sheriff			none
Other			none

AGENCIES OR PERSONS NOTIFIED			
Agency	Date/Time	Name of Person	Notification Action
IEPA, NRTP, OSFM	2013-09-13 10:04	emailed	Report Sent
IEMA Region 9	2013-09-13 10:04	emailed	Report Sent

Narrative:

Follow-Up Information:



OFFICE OF THE ILLINOIS STATE FIRE MARSHAL
 Division of Petroleum and Chemical Safety
 1035 Stevenson Drive
 Springfield, Illinois 62703-4259
 (217)785-1020

FOR OFFICE USE ONLY
 Facility # 4-045478
 Permit # 01011-2013REM
 Request Rec'd 10/03/2013
 Amended Date
 Approval Date 10/3/2013 JC
 Permit Expires 4/3/2014

Permit for REMOVAL of Underground Storage Tank(s) and Piping for Petroleum and Hazardous Substances.

Permission to remove underground storage tank(s) or piping is hereby granted. Such removal shall not commence until the contractor the permit was issued to or an employee of that contractor (this does not include a subcontractor) shall establish a date certain to perform the UST activity by contacting the Office of the State Fire Marshal, Division of Petroleum and Chemical Safety, by telephone at the Springfield office between 8:30 a.m. and 12:00 p.m., at which time a mutually agreed upon date and time for the UST activity shall be scheduled. **THIS PERMIT IS VALID FOR SIX MONTHS FROM THE APPROVAL DATE.**

<p>(1) OWNER OF TANKS - Corporation, partnership, or other business entity: Magna Tax Service Co., Inc. P.O. Box 1452 Decatur, IL 62525 Contact: Dennis Ballinger</p>	<p>(2) FACILITY - name and address where tanks are located: Former Young Radiator 120 N. 14th Street Mattoon, Coles Co., IL Contact: Dennis Ballinger</p>
--	--

(3) REMOVAL OF TANKS:

- (a) *Number and size of tanks being removed:* (TK # 1) - 1,000 gallons
- (b) *Description/location of piping being removed:*
- (c) *Product stored in each tank:* (TK # 1) - Heating Oil
- (d) *Reason of tanks being removed:*
- (e) *If tank(s) is leaking, indicate IEMA incident number:* H20131007
- (f) *Date each tank was last used:* (TK # 1) - 01/01/1985

(4) The owner must notify this Office when completion of tank removal has occurred, on the Notification for Underground Storage Tank Form. This form can be obtained at www.sfm.illinois.gov or by calling (217)785-1020. After removal is completed, the owner/operator shall perform a site assessment by measuring for the presence of a release where contamination is most likely to be present at the UST site. This is in accordance with the Illinois Administrative Code 176.360 (a) regulations and 40 CFR Part 280.72 (a) Federal Register Requirement.

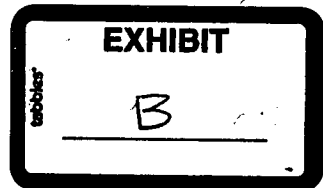
(5) **SPECIAL CONTINGENCIES:** Removing tank and associated piping.

<p>(6) PERSON, FIRM OR COMPANY PERFORMING WORK:</p>	
<p>Bodine Environmental Service, Inc. 5350 East Firehouse Road Decatur, IL 62521</p>	<p>Contact Person: Robert Rogers Phone: (217) 428-3629 Contractor Registration # IL-1124 Exp. 05/06/2014</p>

Sincerely,

Jim Coffey

cc: Storage Tank Safety Specialist -
 Fire Department -
 Division File
 (Rev. - 9/10)



Division of Petroleum & Chemical Safety

[Print Detail Page](#) [Export to Excel](#) [Last Search Page](#)

Facility Details		Owner Details	
Facility Number:	4045478	Owner Name:	Magna Tax Service Co., Inc.
Facility Name:	Former Young Radiator	Owner Address:	P.O. Box 1452 Decatur, IL 62525
Address:	120 N. 14th Street Mattoon, IL 61938	Owner Status:	Current Owner
County:	Coles	Purchase Date:	12/6/1990
Status:	Closed	Type of Financial Responsibility:	
Facility Type:	Commercial / Retail	Financial Responsibility Reporting Due Date:	
Motor Fuel Type:			
Owner Type:	Private		
Green Tag Decal:			
Green Tag Issue Date:			
Green Tag Expiration Date:			
Motor Fuel Dispensing Permit Inspection Date:			
Motor Fuel Dispensing Permit Expiration Date:			

Owner Summary

[Click for Facility/Tank Ownership history](#)

Owner Number	Owner Name	Owner Status	Purchase Date
U0037020	Magna Tax Service Co., Inc.	Current Owner	12/6/1990

Permits (Unexpired)

[Click for permit history](#)

No Active Permits Found

Deficiencies (Current)

No Deficiencies Found

IEMA Numbers Associated with the Facility

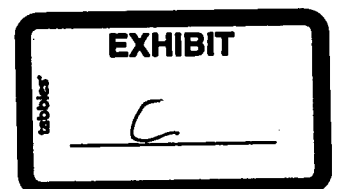
IEMA Number	Inspection Date	Inspection Type	Permit Number
13-1007	10/17/2013	Removal Log	01011-2013REM

LUST Fund Eligibility and Deductibility Determinations

IEMA Number	Status	OSFM Received Date	OSFM Response Date	Deductible	Letter
13-1007	Eligible	11/6/2013	11/18/2013	\$5,000	

Tank Information

Tank Number	Capacity	Product	Status	Red Tag Issued	Fee Due
1	1500	Heating Oil	Removed		\$0.00



LPC # SEARCH RESULTS


[Return to Search Page \(/land/srp/index.asp\)](/land/srp/index.asp)

Map this site 

Young Radiator

LPC#: 0290255010

**USEPA
ID:**

ILD005078571 

Active: No
(/land/srp/glossary.asp#Active)


Address: 120 North
14th Street
Mattoon, IL
61938
Coles
County

Date 7/20/1998
Enrolled:

Project Manager: Murphy
(/land/srp/pm.asp?
WEBPM=Murphy)

Section
4(y)
Letter:

No Further Remediation Letters

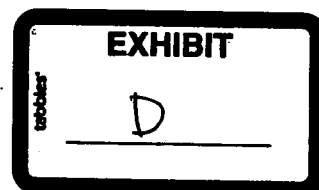
9/9/2008 

Remediation Applicant

Company Young Radiator Company, Inc.
Contact Todd Shingleton
Address 1001 Air Brake Avenue
City Willmerding, PA
Zip Code 15148

Consultant

Company: STS Consultants, Ltd.
Contact: Steven T. Newlin
Address: 750 Corporate Woods Parkway
City: Vernon Hills, IL
Zip Code: 60061-3153



Site Remediation Program Review Checklist

9-9-08

A. General Information

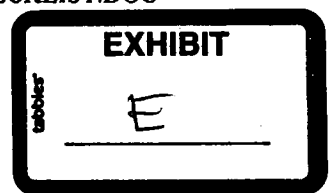
- 1. Project/Site Name (County): **Young Radiator (Coles County)** LP52-726
 Illinois Inventory ID Number: 0290255010 6.25 acres
 Address: Young Radiator Plant 2; 120 North 14th Street Rec'd SA 20-Jul-98
 City: Mattoon Zip Code: 61938
- 2. Remediation Applicant(s): Young Touchstone, a division of Wabtec Company
 Contact Person(s): Todd Shingleton, Corp. Mngr. Environmental & Safety
 Address: 1001 Airbrake Road
 City: Wilmerding State: PA Zip Code: 15148
 Phone: 412-825-1609 Fax 412-825-1501
- 3. RA=s Agent(s): N/A
- 4. RA=s Consultant(s): American Geosciences, Inc.
 Contact Person(s): Troy E. Scott
 Address: 3925 Reed Blvd., Suite 400
 City: Murrysville State: PA Zip Code: 15668
 Phone: 724-733-7003 Fax: 724-733-1003
- 5. RELPE(s): N/A
- 6. Property Owner(s): Magna Tax Service, Inc.
 Contact Person(s): Dennis Ballinger, Pres.
 Address: 1301 E. Mound Road, Suite 350
 City: Decatur State: IL Zip Code: 62526
 Phone: 217-875-5311 Fax:
- 7. Illinois EPA
 Community Relations Coordinator: Phone:
 OCS: Phone: Fax:
 Attorney: Phone: Fax:
 FOS: Phone: Fax:
- 8. Other Interested Parties:

^ For multiple listings, attached additional sheets containing all applicable information above.

RELEASABLE

SEP 09 2008

REVIEWER MD



B. Project Summary

1. Reason for Participation in the SRP (e.g., property transfer pending, Illinois determination on remediation activity conducted at the site, Brownfields, etc.), description of recognized environmental conditions and related contaminants of concern at the site, site history, and assurances sought from the Illinois EPA (e.g., comprehensive NFR letter, focused NFR letter, or 4(y) letter):

Investigation and remediation of an abandon industrial site where chlorinated solvents (TCE/PCE) and their degradation products have contaminated soils and groundwater. The groundwater plume is shallow and extends into the adjacent 12st Street east of the Site. A focused NFR is sought for the solvent remediation.

The Young Radiator site was initially a corn and flour mill at the turn of the century. Later, the site was used for engine manufacturing and a foundry. Young Radiator operated the site from 1950 until the plant closed in 1986. Also, portions of the site were used as public schools in the past.

The Focused COCs include VOC's, SVOCs as found in the Site soil. There are 3 VOCs that exceed their Tier 1 soil objectives and the same 3 VOCs exceed the Class 2 GW standards: Cis-1,2-DCE; TCE; VCh. The SVOC are detected at concentrations below their respective Tier 1 remediation objectives.

The principal contaminants found in groundwater are similar to the soil contaminants, consisting primarily of TCE, DCE and VCh. Relatively high concentrations are distributed along a plume running E-W down the middle of the site. The contamination plume mimics the groundwater flow direction E to W (high levels of contamination are found in MW-12, MW-6, MW-5 and MW-4S/4D). Total chlorinated concentrations in MW-5 @ 39 mg/l and 19 mg/l in previous event; MW-6 @ 4 mg/l.

2. Site Description (i.e., description of the regional location and land uses of the surrounding areas adjacent to the remediation site):

The 6.25 acre Young Radiator site is located in down town Mattoon (Coles Co.). The site is bordered by 12th Street on the east, 14th Street on the west, and by alleys on the north and south. Vicinity land use includes residential property to the east across 12th Street, commercial use to the west and south including a Post Office facility directly west across 14th Street, and a City of Mattoon Streets and Sanitation equipment facility across the alley to the north. Site buildings border directly on the alleys and sidewalk on the western half of the site, while a chain link fence borders the eastern half of the site, along the alleys and eastern sidewalk.

The site is currently occupied by a vacant industrial building. The Mattoon General Plan Update, March 1993 indicates that the site is zoned I and C3, for industrial and service commercial use. The proposed post-remedial land use is anticipated to remain industrial/commercial.

3. Groundwater Class and general geology:

Class 1. Several shallow wells have hydraulic conductivities of 2×10^{-4} to 8×10^{-4} cm/sec due to permeability of sand and gravel units inner-bedded with silty clay tills. The predominant silty clays have hydraulic conductivities estimated at 10^{-6} to 10^{-7} cm/sec. The overall hydro geologic conditions suggest a Class 2 groundwater condition based on the hydro geologic conditions (geologic cross sections are provided from site well logs in the SIR tables 4 & 4A), however, ROs were conservatively developed to protect Class 1 groundwater.

The site soil consists of silty to sandy clay fill soil at the near-surface, with gravel, topsoil, and cinders intermixed. The fill material is generally less than 2 feet thick, although occasionally as deep as 6 feet. The native soil beneath the fill is typically silty to sandy clay, with silt and sand seems locally. The silt and sand seems as generally wet below a depth of 3-6 feet. A 15.5' seem of course sand and fine gravel zone was encountered at one location (MW-4D), but not at other locations. The deepest boring to 42' and the 3 deep wells to 32 feet encountered silty clay.

There are several potable wells listed by ISGS as being 1/2 mile west of the site, (in the apparent up gradient direction of the site) and being more than 1 mile east of the site. The City of Mattoon indicated no potable water supply wells are in use within the City, to their knowledge. According to the ISWS, there are no potable wells, the nearest well would be 5000 feet to the east and screened at 80 feet below ground surface.

The groundwater gradient is from W to E, with an apparent high (elevation) at former degreaser pit (center of site w/in bldg.) The groundwater gradient steepest at 0.026 near SW corner (0.0029 elsewhere on site). The groundwater depth fluctuates from 3 to 6 feet below ground surface.

The plume of groundwater contamination extends to the east approximately 100 feet at a total chlorinated concentration of 0.5 mg/l (between the gravel drive and Prairie Ave.).

The nearest surface water body is a tributary of Kickapoo Creek, located approximately 4,000 feet southeast of the Site.

4. Description of how the remediation objectives meet the Tiered Approach to Corrective Action Objectives ("TACO") criteria (35 Ill. Adm. Code 742):

The Tier 1 ROs were applied to the ingestion and inhalation exposure pathways. TCE and naphthalene exceed their Tier 1 inhalation objectives. Site specific soil inhalation values were calculated for TCE and naphthalene with the Tier 2 SSL equations S-5, S-6, S-7, S-13, S-14 as presented in the ROR. The soil component of the groundwater ingestion pathway and the groundwater remediation objectives were determined with the Tier 2 models R-12 (1,1-DCE; cis-1,2-DCE; PCE; TCE; VCh and Pb) and R-15/R-26 (1,1,1-TCE; 1,1-DCE; Ben; cis-1,2-DCE; trans-1,2-DCE; TCE and VCh). The calculated Tier 2 remediation objectives assume a compliance point 180 feet from the source width.

5. Remedial Action(s) performed:

In November of 2003, a zero-valent iron permeable reactive barrier (PRB) was installed at the Site. The PRB was placed on the leading edge of the contaminant plume in order to promote chemical reductive de-chlorination of the chlorinated solvent contamination. The de-chlorination process is a sequential hydrogenolysis and reductive Cl- elimination that converts TCE through a series of reductions (cis-1,2-DCE to vinyl chloride to ethene) to ethane (Figure 4 in RAP). A continuous trencher was used to install the barrier that extends 350 feet long, 1.5 feet wide and 15 feet deep. The PRB treatment was effective at reducing the concentrations of the chlorinated contaminants as determined by the groundwater trends up gradient and down gradient of the barrier.

Down gradient of the PRB, MW-3 was set to monitor the groundwater within the 12 Street right-of-way (where groundwater use is restricted with the HAA). MW-3 concentrations are stabilized at levels below their

respective Tier 2 ROs. The analytical results from MW-15 located down-gradient of 12th Street continue to demonstrate non-detectable concentrations of COCs. In addition; the last two rounds of groundwater samples revealed that attenuation of the COCs continued on site, where the concentrations are now all below their calculated Tier 2 values.

6. **Applicable Engineered Barriers and Institutional Controls proposed/implemented:** The Site use will be restricted to industrial/commercial. The Site use of groundwater will be restricted. The groundwater use adjacent to the Site will also be restricted with a Highway Authority Agreement executed by the City of Mattoon (Appendix F of the March 2007 RACR) to exclude the groundwater beneath 12th Street.

A concrete cap will be placed over the former degreaser pit. The concrete cap will serve as an engineered barrier to exclude the inhalation pathway. The at-grade concrete cap will consist of a 6-inch slab of concrete covering a minimum of 8-inch gravel and sand sub base that overlies a geotextile fabric. The concrete cap will cover an area of approximately 60' x 60'.

7. **Post-remediation requirements:** Maintain the engineered barrier.
8. **Other environmental determinations or actions:** None
9. **Other services requested by the RA under the SRP:** None
10. **Services provided by the Review and Evaluation Licensed Professional Engineer ("RELPE"):** None.