

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

**RECEIVED**  
CLERK'S OFFICE

DEC 26 2006

STATE OF ILLINOIS  
Pollution Control Board

MATHER INVESTMENT PROPERTIES, )  
L.L.C., )  
Complainant/Counter-Respondent, )  
v. )  
ILLINOIS STATE TRAPSHOOTERS )  
ASSOCIATION, INC., )  
Respondent/Counter-Complainant. )

Case No. 05-29

**NOTICE OF FILING AND PROOF OF SERVICE**

TO: Dorothy Gunn, Clerk, Illinois Pollution Control Board, 100 West Randolph Street,  
James R. Thompson Center, Suite 11-500, Chicago, IL 60601-3218;

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

Charles H. Northrup, Sorling, Northrup, Hanna, Cullen & Cochran, Suite 800 Illinois  
Building, 607 East Adams, P.O. Box 5131, Springfield, IL 62705; and

Richard Ahrens, Lewis, Rice & Fingersh, 500 N. Broadway, Suite 2000, St. Louis, MO  
63102-2147.

PLEASE TAKE NOTICE that on Friday, December 22, 2006, I filed with the Office of  
the Clerk of the Pollution Control Board an original and nine copies of Respondent's Motion to  
the Board For Leave to File Counter-Complaint Instantly and the Answer and Counter-  
Complaint by U.S. Mail.

The undersigned certifies that he served the Respondent's Motion to the Board For Leave  
to File Counter-Complaint Instantly and the Answer and Counter-Complaint by mailing a copy  
to the above persons by U.S. Mail on Friday, December 22, 2006.

Respectfully submitted,

ILLINOIS STATE TRAPSHOOTERS  
ASSOCIATION, INC., Respondent,

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY:

  
Patrick D. Shaw

Mohan, Alewelt, Prillaman & Adami  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

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ASSOCIATION, INC.,	)	
	)	
Respondent/ Counter-Complainant	)	

**MOTION TO THE BOARD FOR LEAVE TO FILE COUNTER-COMPLAINT**  
**INSTANTER**

COMES NOW Respondent/ Counter-Complainant, Illinois State Trapshooters Association, Inc., pursuant to Section 103.206 of the Board's Procedural Rules (35 Ill. Admin. Code Sec. 103.206), and moves to file a Counter-Complaint against Mather Investment Properties, LLC (hereinafter "Mather"), as follows:

1. On November 30, 2006, Mather filed its First Amended Complaint.
2. Contemporaneous with the filing of this motion, Respondent is filing its Answer, which includes a Counter-Complaint against Mather.
3. Pursuant to Section 103.206, a party wishing to file a counter-complaint must move the Board for leave to file the pleading. (35 Ill. Admin. Code 103.206(d))
4. The Subject matter of the Counter-Complaint relates to the subject matter of the First Amended Complaint and there should be no difficulty in addressing these issues within the current discovery schedule.

WHEREFORE, Respondent/ Counter-Complainant, Illinois State Trapshooters Association, Inc., prays for leave to file the Counter-Complaint *instante*.

Respectfully Submitted by,

ILLINOIS STATE TRAPSHOOTERS ASSOCIATION,  
INC.,

Respondent/Counter-Complainant,

**By: MOHAN, ALEWELT, PRILLAMAN & ADAMI**

By: 

Patrick D. Shaw

1 North Old Capitol Plaza, Suite 325  
Springfield, Illinois 62701-1323  
(217) 528-2517 (phone)  
(217) 528-2553 (facsimile)

and

**LEWIS, RICE & FINGERSH, L.C.**

Richard A. Ahrens  
500 North Broadway, Suite 2000  
St. Louis, Missouri 63102  
(314) 444-7691 (phone)  
(314) 612-7691 (facsimile)

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ILLINOIS STATE TRAPSHOOTERS	)	
ASSOCIATION, INC.,	)	
	)	
Respondent/ Counter-Complainant	)	

**ANSWER AND CCOUNTER-COMPLAINT**

**ANSWER**

COMES NOW Respondent, Illinois State Trapshooters Association, Inc., and for its Answer to the First Amended Complaint in this proceeding, states as follows:

(1) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1, and so denies the same.

(2) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2, and so denies the same.

(3) Respondent admits the allegations of Paragraph 3.

(4) Respondent admits that on or about October 13, 1998, Panther Creek Office Park, L.L.C. and Respondent entered into a contract for the sale of certain real property in Sangamon County, Illinois, which speaks for itself as to its meaning and effect. Respondent denies the allegations of Paragraph 4 except as herein admitted.

(5) Respondent admits that on or about August 24, 1999, the parties entered an amendment to the real estate purchase contract, which speaks for itself as to its meaning and effect. Respondent denies the remaining allegations of Paragraph 5.

(6) Respondent denies that Mather has performed all of its obligations under the contract. In particular, Respondent states that the contract called for the purchaser to clean up all target debris and residue on the property, which Mather has failed to do. Respondent admits that Mather Investment Properties, L.L.C. took title to the property on or about September 28, 2000. Respondent denies each and every remaining allegation of Paragraph 6.

(7) Respondent admits that at certain times a gun club has been operated on the property. Respondent denies the allegations of Paragraph 7 except as herein admitted.

(8) Respondent admits that it owned the property and operated it as an outdoor gun shooting range. Respondent denies the allegations of Paragraph 8 except as herein admitted.

(9) Respondent admits that during the period of time the property was owned and operated by Respondent, lead shot and broken clay targets came to be placed upon the property as a result of the normal activities of an outdoor gun shooting range. Respondent denies the allegations of Paragraph 9 except as herein admitted.

(10) Respondent admits that prior to September 1998, Respondent had been considering selling the property. Respondent denies the allegations of Paragraph 10 except as herein admitted.

(11) Respondent admits that certain portions of the property were tilled from time to time. Respondent denies the allegations of Paragraph 11 except as herein admitted.

(12) Respondent admits that in September 1998 it retained an environmental consultant and that consultant prepared a Phase I environmental assessment which reported that there was no "recognized environmental condition," although the report also stated that the presence of lead shot was certain and identified the presence of target debris. Respondent denies the allegations of Paragraph 12 except as herein admitted.

(13) Respondent admits that at some time a report of the Phase I environmental assessment was received by principals of Panther Creek Office Park, a predecessor in interest to Mather. Respondent denies the allegations of Paragraph 13 except as herein admitted.

(14) Respondent admits that Mather Investment Properties, L.L.C. purchased the property. Respondent denies the allegations of Paragraph 14 except as herein admitted.

(15) Respondent admits that on August 17, 2001, the Illinois Environmental Protection Agency sent a letter to Mather Investment Properties, L.L.C., which speaks for itself as to its meaning and effect. Respondent denies the allegations of Paragraph 15 except as herein admitted.

(16) Respondent admits that Complainant has from time to time retained environmental consultants to address the property. Respondent denies the allegations of Paragraph 16 except as herein admitted.

(17) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and so denies the same.

(18) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and so denies the same.

(19) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19, and so denies the same.

(20) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20, and so denies the same.

## **RESPONSE TO COUNT I**

(1)-(20) Respondent incorporates by reference as if fully set out here its responses to the allegations of Paragraph 1-20 of the General Allegations.

(21) Respondent admits that the Act contains the language cited.

(22) Respondent admits that the Act once contained the language cited, but affirmatively states that the definition of “waste” has been amended and currently is set forth in 415 ILCS 5/3.535.

(23) Respondent denies the allegations of Paragraph 23.

(24) Respondent admits that the Act contains the language cited, but denies the relevancy of the provision to the stated claim.

(25) Respondent objects to the materiality of the allegation in Paragraph 25 and Respondent denies the allegations of the same.

(26) Respondent admits the Act contains the language cited.

(27) Respondent denies the allegations of Paragraph 27.

(28) Respondent denies the allegations of Paragraph 28.

(29) Respondent specifically denies it abandoned or disposed of waste at the property and denies that it was required to obtain a permit as a waste disposal treatment or storage site; Respondent thus denies that it failed to comply with any requirements of the Environmental Protection Act or regulations or standards promulgated thereunder. Respondent denies the remaining allegations of Paragraph 29.

## **RESPONSE TO COUNT II**

(1)-(20) Respondent incorporates by reference as if fully set out here its responses to the allegations of Paragraph 1-20 of the General Allegations.

(21) Respondent admits that the Act contains the language cited.

(22) Respondent admits that the Board regulations contain the language cited, but deny that the entire provision is set forth.

(23) Respondent admits that the Board regulations contain the language cited.

(24) Respondent admits that the Board regulations contain the language cited.

(25) Respondent admits that the Board regulations contain the language cited, but deny that the entire provision is set forth.

(26) Respondent admits that the Board regulations contain the language cited.

(27) Respondent admits that the Board regulations contain the language cited.

(28) Respondent admits that the Board regulations contain the language cited.

(29) Respondent admits that the Board regulations contain the language cited.

(30) Respondent admits that the Board regulations contain the language cited.

(31) Respondent denies the allegations of Paragraph 31.

(32) Respondent denies the allegations of Paragraph 32.

(33) Since Trapshooters did not dispose of lead and target fragments on the property, none of these methods of disposal is applicable and only in this contest does Respondent admit the allegations of Paragraph 33.

(34) Respondent denies the allegations of Paragraph 34.

(35) Respondent denies the allegations of Paragraph 35.



(36) Respondent denies the legal presumptions in Paragraph 36 are a correct statement of the law. Facilities required to file reports are waste-disposal operations listed in 415 ILCS 5/21(d)(3) and since Trapshooters operated a gun club and not a waste-disposal operation, the referenced provisions are inapplicable and Respondent denies any violation of the referenced regulations.

(37) Respondent denies the legal presumptions in Paragraph 37 are a correct statement of the law. Facilities required to obtain a permit under 415 ILCS 5/21(d) are waste-disposal operations and since Trapshooters operated a gun club and not a waste-disposal operation, the referenced provisions are inapplicable and Respondent denies any violation of the referenced regulations.

### **RESPONSE TO COUNT III**

(1)-(20) Respondent incorporates by reference as if fully set out here its responses to the allegations of Paragraph 1-20 of the General Allegations.

(21) Respondent admits that the Act contains the language cited, but deny that the entire provision is set forth.

(22) Respondent denies the allegations of Paragraph 22.

(23) Respondent denies the allegations of Paragraph 22.

(24) Respondent specifically denies it abandoned, discarded or otherwise placed contaminated debris at the property and denies that it was required to obtain a permit to conduct a waste-disposal operation at the property. Respondent denies the remaining allegations of Paragraph 24.

(25) Respondent specifically denies that it disposed of waste and denies that it was required to give notice of a waste-disposal operation to the Agency. Respondent denies the remaining allegations of Paragraph 25.

(26) Respondent specifically denies that it conducted a waste-disposal operation at the property and denies that it was required to give notice of a waste-disposal operation to the Agency. Respondent denies the remaining allegations of Paragraph 26.

(27) Respondent specifically denies that it conducted a waste-disposal operation at the property and denies that it was required to give notice of a waste-disposal operation to the Agency. Respondent denies the remaining allegations of Paragraph 27.

#### **RESPONSE TO COUNT IV**

(1)-(20) Respondent incorporates by reference as if fully set out here its responses to the allegations of Paragraph 1-20 of the General Allegations.

(21) Respondent admits that the Act contains the language cited.

(22) Respondent admits that the Act contains the language cited.

(23) Respondent denies the existence of any “contamination” on the property prior to the time of transfer of the property as that term is defined by the Illinois Environmental Protection Act at 415 ILCS 5/3.170, denies that the term “contaminant” is not vague without reference to the subject water pollution standard, denies that Respondent “deposit[ed]” lead fragments or broken clay targets upon the land, denies Respondent created a water pollution hazard and to the extent that this allegation simply asserts that lead and broken clay targets are solid matter, Respondent admits this limited allegation.

(24) Respondent denies the allegations of Paragraph 24.

(25) Respondent denies the allegations of Paragraph 25.

### **AFFIRMATIVE DEFENSES**

By way of further answer to the Complaint in this proceeding, Respondent affirmatively states as follows:

(1) The Board is without statutory authority to enter a cease and desist order for a wholly past violation.

(2) The Board is without statutory authority to enter a mandatory injunction at the request of a private party.

(3) The Board is without statutory authority to enter an order for reimbursement of cleanup costs, or in the alternative, reimbursement of future cleanup costs.

(4) On September 20, 2006, the Circuit Court of Sangamon County, Illinois entered a judgment in favor of Trapshooters and against Mather concerning the alleged contamination of the property. Mather is thereby barred by *res judicata* from asserting claims upon which it failed to prevail, every matter that was offered in support its claims, and every other matter which might have been offered for that purpose.

(5) On September 20, 2006, the Circuit Court of Sangamon County, Illinois entered a judgment in favor of Trapshooters and against Mather concerning the alleged contamination of the property. Mather is thereby barred by collateral estoppel from seeking adjudication of questions of fact or law that were litigated and determined in that proceeding.

(6) By entering into a purchase contract which specifically bargained for the handling of any spent lead shot on the property, Mather had an adequate remedy at law.

(7) Mather waived the alleged deposition of lead shot and broken clay by expressly bargaining for the right to mine it for beneficial reuse.

(8) Mather knowingly assumed the risk of any alleged contamination by expressly bargaining for the right to mine lead shot for beneficial reuse.

(9) Under the doctrine of unclean hands, Mather is barred from seeking relief from its own conduct, namely purchasing property with knowledge of the presence of spent lead shot, bargaining to mine the spent lead shot for its own profit, failing to mine the spent lead shot and instead plowing the spent lead shot into the soil so as prevent normal and customary removal for beneficial reuse.

(10) Mather is estopped by its own conduct of allowing lead shot and broken clay targets in the shotfall zone to be plowed into the soil so as to prevent normal and customary removal of lead for beneficial reuse.

(11) Mather failed to mitigate its damages by allowing lead shot and broken clay targets in the shotfall zone to be plowed into the soil so as to prevent normal and customary removal of lead for beneficial reuse at a profit to Mather.

(12) Mather is barred by laches from complaining about a water pollution hazard, the material facts of which it knew or had reason to know over eight years ago, subsequent to which the property was sold, remediation undertaken and key witnesses have become unavailable.

(13) Awarding Mather the relief sought in this action would unjustly enrich Mather, because it would have the benefit of the appreciation in value of the property resulting from performance of the remediation that it asks that Respondent be ordered to the perform, and it would be unjust for Mather to receive that benefit because it purchased the property knowing of the presence of spent lead shot and target debris thereon.

WHEREFORE, having fully answered, Respondent prays that the Complaint be dismissed, and that it have its costs incurred in this action.

## COUNTER-COMPLAINT

NOW COMES Counter-Complainant, Illinois State Trapshooters Association, Inc. (hereinafter “Trapshooters”), by and through its undersigned attorneys, and for its Counter-Complaint against Counter-Respondent Mather Investment Properties, L.L.C. (hereinafter “Mather”), states as follows:

1. On or about September 28, 2000, Mather took title to certain property in Sangamon County, further described in paragraph 4 of the First Amended Complaint herein.

2. Mather took possession of the property in full knowledge of the presence of lead shot on the property. Mather had had access to and exercised control over the property from and after October, 1998, when the parties entered a contract for sale of the property from Respondent to Mather’s predecessor in interest.

3. Thereafter, Mather allowed its tenant to plow said materials into the ground in the shotfall zone.

4. Prior to the conduct alleged in paragraph 4 herein, by reason and belief, the shotfall zone had not been plowed.

5. The plowing of the shotfall zone prevented normal and customary removal of the lead for beneficial reuse.

6. Mather alleges that there has been any abandonment and disposal of waste at the Site. Respondent denies there has been any abandonment and disposal of waste at the Site. Respondent specifically denies that that trapshooting activities, or any other activities or conduct engaged in by Respondent, constitute acts giving rise to liability to Mather in this action. Pleading hypothetically and in the alternative, however, Respondent states that if there have been

acts constituting the disposal or abandonment of waste as the Site, they are the acts of Mather in permitting the plowing of the shotfall zone.

7. Pursuant to Section 21(e) of the Act, no person shall “dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act of regulations and standards thereunder.” (415 ILCS 5/21(e))

8. Pleading hypothetically and in the alternative, Respondent states that to the extent there has been any disposal or abandonment of waste at the subject property, the plowing of lead shot into the ground in a manner that prevented normal and customary means of removal for beneficial reuse constituted “disposal” of waste.

WHEREFORE, Trapshooters, prays for an order as follows:

(a) That Mather violated Section 21(e) of the Illinois Environmental Protection Act (415 ILCS 5/21(e));

(b) That Mather pay a civil penalty of \$50,000 for each violation and an additional penalty of \$10,000 per day during which such violation continued (415 ILCS 5/42(a));

(c) That Mather be ordered to notify the Illinois Environmental Protection Agency of the dates on which lead shot was plowed into the soil, the location of the property and the efforts taken to date to remove lead shot and any associated contamination;

(d) That Mather be ordered to cease and desist from plowing lead shot into the ground;

(e) That Mather be ordered to remediate any lead or lead contamination on the property; and

(f) That the Board grant such other and further relief as deemed meet and just.



Respectfully Submitted by,

ILLINOIS STATE TRAPSHOOTERS ASSOCIATION,

INC., Respondent/Counter-Complainant,

**By: MOHAN, ALEWELT, PRILLAMAN & ADAMI**

By:



Patrick D. Shaw  
1 North Old Capitol Plaza, Suite 325  
Springfield, Illinois 62701-1323  
(217) 528-2517 (phone)  
(217) 528-2553 (facsimile)

and

**LEWIS, RICE & FINGERSH, L.C.**

Richard A. Ahrens  
500 North Broadway, Suite 2000  
St. Louis, Missouri 63102  
(314) 444-7691 (phone)  
(314) 612-7691 (facsimile)

Attorneys for Respondent Illinois Trapshooters  
Association, Inc.