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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 2, 2007

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

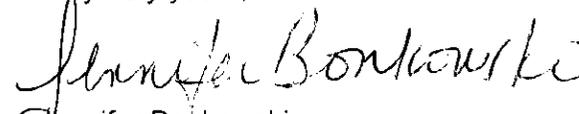
Re: ***People v. Environmental Reclamation Company***
PCB No. 07-42

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing and Complainant's Reply to Respondent's Affirmative Defenses in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,


Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
ENVIRONMENTAL RECLAMATION)
COMPANY, an Illinois corporation,)
)
Respondent.)

PCB No. 07-42
(Enforcement)

NOTICE OF FILING

To: Brian Konzen
Lueders, Robertson & Konzen LLC
1939 Delmar Avenue
P.O. Box 735
Granite City, IL 62040-0735

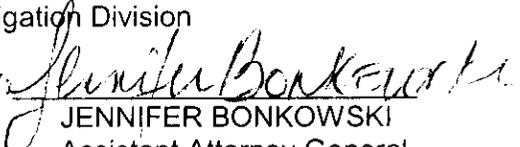
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S REPLY TO RESPONDENT'S AFFIRMATIVE DEFENSES, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that I did on February 2, 2007, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and COMPLAINANT'S REPLY TO RESPONDENT'S AFFIRMATIVE DEFENSES

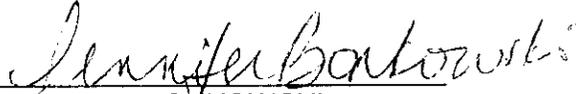
To: Brian Konzen
Lueders, Robertson & Konzen LLC
1939 Delmar Avenue
P.O. Box 735
Granite City, IL 62040-0735

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


JENNIFER BONKOWSKI
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
ENVIRONMENTAL RECLAMATION)
COMPANY, an Illinois corporation,)
)
Respondent.)

PCB No. 07- 42
(Enforcement)

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Pollution Control Board

**COMPLAINANT'S REPLY TO RESPONDENT'S
AFFIRMATIVE DEFENSES**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, hereby responds to the Affirmative Defenses filed by the Respondent, ENVIRONMENTAL RECLAMATION COMPANY, and states as follows:

1. Section 103.204(d) of the Pollution Control Board's Procedural Rules provides that "Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or supplemental answer, unless the affirmative defense could not have been known before hearing." Estoppel is an affirmative defense and facts asserting it must be pleaded and proved by the party relying on it by clear, precise and unequivocal evidence. *Forest Inv. Corp. v. Chaplin*, 55 Ill. App. 2d 429, 205 N.E.2d 51 (4th Dist. 1965). The Respondent does not assert facts and merely states a legal conclusion.

The Complainant denies that any of the facts pleaded or claims asserted are barred. A statute of limitations is not applicable to claims prosecuted pursuant to Section 31 of the Act, 415 ILCS 5/31.

2. The Respondent does not assert facts and merely states a legal conclusion. The Complainant denies that it is reasserting the resolved Administrative Citations to prosecute a second time, or that it is proffering that background to prove a prima facie case against the Respondent. The People included this background merely for penalty determination purposes.

Therefore, Complainant, People of the State of Illinois, respectfully requests that the Board DENY the Respondent's prayer that both counts of the Complaint be dismissed.

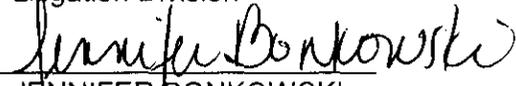
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

ex rel. LISA MADIGAN,
Attorney General of the State of Illinois

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

BY:


JENNIFER BONKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 2, 2007