

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
	)	
v.	)	
	)	PCB No. 17 – 45
MAGNA TAX SERVICE CO., INC.,	)	(Enforcement – Land)
Respondent.	)	
	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Answer and Affirmative Defenses of Respondent. Copies of these documents are hereby served upon you.

To: Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218  
(via electronic filing)

Rachel Medina  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(Via Email: rmedina@atg.state.il.us)

Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
(Via Email: carol.webb@illinois.gov)

Respectfully submitted,  
**MAGNA TAX SERVICE CO., INC.**

Dated: April 7, 2017

By: /s/William D. Ingersoll  
One of its Attorneys

**BROWN, HAY & STEPHENS, LLP**

William D. Ingersoll  
Registration No. 6186363  
wingersoll@bhslaw.com  
Claire A. Manning  
Registration No. 3124724  
cmanning@bhslaw.com  
205 S. Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, IL 62705-2459  
(217) 544-8491

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**ANSWER TO COMPLAINT**  
**AND AFFIRMATIVE DEFENSES**

Respondent, MAGNA TAX SERVICE CO., INC., by its attorneys Brown, Hay & Stephens, LLP, hereby answers the Complaint in this matter and submits certain Affirmative Defenses, as follows:

**COUNT I**  
**OPEN DUMPING VIOLATIONS**

1. This Count is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2014).

**ANSWER:** Respondent admits that the Attorney General has brought this count but denies any and all remaining allegations of this paragraph.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

**ANSWER:** Respondent admits the allegations of this paragraph.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014), after providing Respondent, MAGNA TAX SERVICE CO., INC. ("Magna Tax"), with notice and the opportunity for a meeting with the Illinois EPA.

**ANSWER: Respondent denies the allegations of this paragraph.**

4. The Respondent, Magna Tax, is an active Illinois corporation in good standing as of the date of this filing. The president, secretary and registered agent of Magna Tax is Dennis D. Ballinger. The address for the registered agent is 119 W. Williams St., Suite 300, Decatur, IL 62523.

**ANSWER: Respondent admits the allegations of this paragraph.**

5. The Respondent owns the former Young Radiator factory property, located at 120 North 14<sup>th</sup> Street, Mattoon, Coles County, Illinois ("the Site").

**ANSWER: Respondent admits the allegations of this paragraph.**

6. On October 5, 2011, the Illinois EPA inspected the Site. Along the west half of the northern edge of the Site, a dark stain was located on the north end of a concrete pad and an area of dark liquid was located on the surface of the soil adjacent to the concrete pad ("Contaminated Area"). The Contaminated Area comprised approximately a few square feet.

**ANSWER: Respondent admits only that an employee of the Illinois EPA visited the property located at 120 North 14<sup>th</sup> Street, Mattoon, Coles County, Illinois on the alleged date; but. Respondent states that it has insufficient knowledge to form a belief as to the truth of the remaining allegations of this paragraph and therefore denies each and every such allegation of this paragraph.**

7. On November 15, 2011, the Illinois EPA took a soil sample from the Contaminated Area ("Sample SV01"). While taking the soil sample at a depth of approximately one foot, a dark liquid was discharging from the surrounding soil into the

bottom of the sampling hole. An unknown object existed at a depth of approximately one foot, which prevented the Illinois EPA inspector from sampling at depths greater than one foot. The soil in the Contaminated Area was saturated with a dark liquid.

**ANSWER:** Respondent admits only that an employee of the Illinois EPA visited the property located at 120 North 14<sup>th</sup> Street, Mattoon, Coles County, Illinois on the alleged date; but. Respondent states that it has insufficient knowledge to form a belief as to the truth of the remaining allegations of this paragraph and therefore denies each and every such allegation of this paragraph.

8. A laboratory analysis of Sample SV01 identified several semi-volatile compounds, metals, and volatile organic compounds in the sample. The following table provides a summary of the contaminants detected in the sample:

<b>Chemical Name</b>	<b>Result</b>
<b>Semivolatiles by GC/MS</b>	<b>ug/kg</b>
4-Methylphenol	3,200
Naphthalene	180,000
2-Metyhlnaphthalene	1,400,000
Acenaphthylene	38,000
Acenaphthene	85,000
Dibenzofuran	80,000
Fluorene	180,000
Phenanthrene	540,000
Anthracene	49,000
Carbazole	8,000
Fluoranthene	16,000
Pyrene	140,000
Benzo(a)anthracene	36,000
Chrysene	51,000
Benzo(b)fluoranthene	9,500
Benzo(k)fluoranthene	3,300
Benzo(a)pyrene	22,000
Benzo(ghi)perylene	8,900
<b>Metals</b>	<b>mg/kg</b>
Cyanide	0.30
Mercury	0.13

Aluminum	5,640
Arsenic	19.6
Barium	184
Boron	16.4
Cadmium	5.44
Calcium	28,300
Chromium	51.3
Cobalt	5.55
Copper	399
Iron	27,100
Lead	779
Magnesium	11,900
Manganese	200
Nickel	28.4
Potassium	830
Sodium	277
Strontium	36.1
Vanadium	57.3
Zinc	4,080
Selenium	4.70
<i>Laboratory pH</i>	6.7
<b><i>TCLP Metals</i></b>	<b><i>mg/L</i></b>
Barium	0.64
Beryllium	0.001
Cadmium	0.04
Chromium	0.06
Lead	2.12
Nickel	0.10
Selenium	0.06
Silver	0.004
Vanadium	0.04
Zinc	77.4
<b><i>Volatile Organics</i></b>	<b><i>ug/kg</i></b>
Trichloroethene	640
Toluene	1,700
Ethylbenzene	3,900
Isopropylbenzene	1,500
Xylenes, total	27,000

**ANSWER:** Respondent states that it has insufficient knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies

**each and every allegation of this paragraph.**

9. On May 2, 2012, the Illinois EPA issued Violation Notice L-2012-01027 to Respondent, by serving Dennis Ballinger as registered agent, at 119 W. William St., Suite 300, Decatur, IL 62523. The Violation Notice instructed that the Respondent enroll the site into the Illinois EPA's Site Remediation Program by July 1, 2012 to obtain review and approval to remediate the site and document the remediation.

**ANSWER: Respondent admits that a document purporting to be Violation Notice L-2012-01027 was mailed by the Illinois EPA and addressed to Mr. Ballinger as agent for Respondent, but denies any and all remaining allegations of this paragraph.**

10. On August 23, 2012, the Respondent conducted an investigative dig at the Site along a 6-inch metal pipe in the Contaminated Area. During the dig, soil and media uncovered next to the pipe were saturated with dark liquid material. Neither the extent of the full contamination nor the source of the contamination were defined on this date.

**ANSWER: Respondent admits that a contractor retained by Respondent performed certain investigative activities at the site on August 23, 2012 and denies any and all remaining allegations of this paragraph.**

11. On September 5, 2012, the Respondent conducted another investigative dig of the Site near the 6-inch metal pipe in the Contaminated Area. During the dig, several pipes were identified below the groundwater level adjacent to the Contaminated Area. At least one of the pipes leaked dark liquid into the soil during the dig.

**ANSWER: Respondent admits that a contractor retained by Respondent performed certain investigative activities at the site on September 5, 2012 and denies any and all remaining allegations of this paragraph.**

12. On September 5, 2012, the Illinois EPA took a soil sample from the Site (Sample X101). A laboratory analysis of Sample X101 identified several contaminants,

including metals, in the soil sample. The following table provides a summary of the contaminants detected in the sample:

<b>Chemical Name</b>	<b>Result</b>
<b><i>Metals</i></b>	<b>mg/kg</b>
Cyanide	.07
Mercury	.23
Aluminum	5560
Arsenic	45.2
Barium	207
Beryllium	1.10
Boron	27.0
Cadmium	16.6
Calcium	11400
Chromium	119
Cobalt	9.53
Copper	962
Iron	39400
Lead	2030
Magnesium	4980
Manganese	242
Nickel	25.2
Potassium	626
Sodium	493
Strontium	33.4
Vanadium	37.6
Zinc	10600
Antimony	10.5
<i>Laboratory pH</i>	7.0
<b><i>TCLP Metals</i></b>	<b>mg/L</b>
Arsenic	0.04
Barium	0.76
Cadmium	0.03
Chromium	0.02
Lead	2.96
Nickel	0.02
Selenium	0.04
Zinc	53.3

**ANSWER:** Respondent admits only that an employee of the Illinois EPA visited the property located at 120 North 14<sup>th</sup> Street, Mattoon, Coles County,

**Illinois on the alleged date; but. Respondent states that it has insufficient knowledge to form a belief as to the truth of the remaining allegations of this paragraph and therefore denies each and every such allegation of this paragraph.**

13. The following calendar year, on September 13, 2013, Respondent conducted another exploratory dig of the Site and located an underground storage tank ("UST"). Field observations indicated the UST had a release. The release was reported to Illinois Emergency Management Agency and assigned IEMA Incident #H2013-1007.

**ANSWER: Respondent admits that a contractor retained by Respondent performed certain investigative activities at the site on September 13, 2013 and that contractor reported a release, which was assigned IEMA Incident #H2013-1007, but denies any and all remaining allegations of this paragraph.**

14. On September 17, 2013, the UST was registered with the Office of the State Fire Marshal ("OSFM.")

**ANSWER: Respondent admits only that it registered an underground storage tank located at the site with the Office of the State Fire Marshal**

15. On October 16 - 17, 2013, Respondent excavated and removed one (1) 1,500 gallon heating oil UST from the Site. Visible contamination was identified in the soil.

**ANSWER: Respondent admits that on October 16-17, 2013 a contractor retained by Respondent removed an underground storage tank at the site., but denies the remaining allegations of this paragraph.**

16. On or about October 31, 2013, Respondent submitted a Leaking Underground Storage Tank Fund Eligibility and Deductible Application ("Application") in relation to the UST. The Application noted that the UST piping had leaked.

**ANSWER: Respondent admits the allegations of this paragraph.**

17. Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2014), provide as



follows;

No person shall;

- (a) Cause or allow the open dumping of any waste.

\*\*\*

- (e) 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 the Act and of regulations and standards thereunder.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

18. Section 3.305 of the Act, 415 ILCS 5/3.305 (2014), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

19. Section 3.385 of the Act, 415 ILCS 5/3.385 (2014), provides as follows:

"Refuse" means waste.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

20. Section 3.535 of the Act, 415 ILCS 5/3.535 (2014), provides as follows:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities...

\*\*\*

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

21. Section 3.445 of the Act, 415 ILCS 5/3.445 (2014), provides, in pertinent part

as follows:

"Sanitary Landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder. . .

\*\*\*

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

22. Section 3.185 of the Act, 415 ILCS 5/3.185 (2014), provides as follows:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

23. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

24. The Respondent, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2014).

**ANSWER:** Respondent admits the allegations of this paragraph.

25. The dark liquid identified in the Contaminated Area and surrounding the UST, is a waste, pursuant to Section 3.535 of the Act, 415 ILCS 5/3.535 (2014).

**ANSWER:** Respondent denies the allegations of this paragraph.

26. By causing or allowing the dark liquid to enter the environment, the Respondent

allowed this waste material to be disposed at the Site.

**ANSWER:** Respondent denies the allegations of this paragraph.

27. The Site is not a sanitary landfill or otherwise permitted for the disposal of waste such as the dark liquid.

**ANSWER:** Respondent admits the allegations of this paragraph.

28. By causing or allowing the dark liquid to be consolidated at the Site, the Respondent violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2014).

**ANSWER:** Respondent denies the allegations of this paragraph.

29. By causing or allowing the UST to discharge, deposit, spill or leak waste material into the environment, the Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2014).

**ANSWER:** Respondent denies the allegations of this paragraph.

**COUNT II**  
**FAILURE TO PERFORM WASTE DETERMINATION**

1-27. The Plaintiff realleges and incorporates by reference paragraphs 1 through 26 of Count I as if fully set forth herein as paragraphs 1 through 27 of this Count II.

**ANSWER:** Respondent here incorporates its answers to paragraphs 1 through 27 of Count I as its answers to paragraphs 1 through 27 of this Count.

28. At all times during its ownership of the Site, the Respondent did not have a permit issued by the Illinois EPA to operate a sanitary landfill on the Site.

**ANSWER:** Respondent admits the allegations of this paragraph.

29. At all times prior to the removal of the UST, the Respondent failed to make a determination as to whether the dark liquid in the Contamination Area and surrounding

the UST was a hazardous waste or a special waste.

**ANSWER:** Respondent denies the allegations of this paragraph.

30. Sections 21(d)(1)-(2) of the Act, 415 ILCS 5/21(d)(1)-(2) (2014), provides, in pertinent part, as follows:

No person shall:

\*\*\*

- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
  - (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder or
  - (2) in violation of any regulations or standards adopted by the Board under this Act;

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

31. Section 722.111 of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 722.111, states as follows:

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste using the following method:

- a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.
- b) The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.

BOARD NOTE: Even if a waste is listed as a hazardous waste, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to

demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, the generator must then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721 by either of the following methods:
  - (1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
  - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.
- d) If the generator determines that the waste is hazardous, the generator must refer to 35 Ill. Adm. Code 721, 724 through 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

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**ANSWER:** Respondent admits that this paragraph accurately portrays the cited regulatory provisions.

32. Section 808.110 of the Board's Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 808.110, states as follows:

"Special waste" means any hazardous waste, and any industrial process waste or pollution control waste which has not been declassified pursuant to Section 808.245. (Section 3.45 of the Act.)

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited regulatory provisions.

33. By allowing the release of the dark liquid from the UST, the Respondent generated a solid waste.

**ANSWER:** Respondent denies the allegations of this paragraph.

34. By failing to determine whether the waste released from the UST was a

hazardous waste or a special waste, the Respondent violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2)(2014), and 35 Ill. Adm. Code 722.111.

**ANSWER:** Respondent denies the allegations of this paragraph.

**COUNT III**  
**UNPERMITTED WASTE STORAGE OR DISPOSAL**

1-33. The Plaintiff realleges and incorporates by reference paragraphs 1 through 27 of Count I, and paragraphs 28-33 of Count II, as if fully set forth herein as paragraphs 1 through 33 of this Count III.

**ANSWER:** Respondent here incorporates its answers to paragraphs 1 through 27 of Count I as its answers to paragraphs 1 through 27 of this Count; and, Respondent here incorporates its answers to paragraphs 28 through 33 of Count II as its answers to paragraphs 28 through 33 of this Count.

34. At all times relevant to the facts in this Complaint, the Respondent failed to apply for and maintain a waste disposal permit for the Site.

**ANSWER:** Respondent denies the allegations of this paragraph.

35. Section 812.101(a) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 812.101(a), states as follows:

- a) All persons, except those specifically exempted by Section 21 (d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111½, par. 1021(d)) shall submit to the Agency an application for a permit to develop and operate a landfill. The application must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited regulatory provisions.

36. By failing to apply for a waste disposal permit for the Site, the Respondent violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2014), and 35 Ill. Adm. Code

812.101(a).

**ANSWER:** Respondent denies the allegations of this paragraph.

37. By failing to maintain a waste disposal permit for the Site, the Respondent violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2014).

**ANSWER:** Respondent denies the allegations of this paragraph.

**COUNT IV**  
**WATER POLLUTION**

1-27. The Plaintiff realleges and incorporates by reference paragraphs 1 through 27 of Count I as if fully set forth herein as paragraphs 1 through 27 of this Count IV.

**ANSWER:** Respondent here incorporates its answers to paragraphs 1 through 27 of Count I as its answers to paragraphs 1 through 27 of this Count.

28. Groundwater at the subject Site is located at a depth of approximately 4 feet below ground surface (bgs).

**ANSWER:** Respondent states that it has insufficient knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies each and every allegation of this paragraph.

29. Groundwater beneath the Site is a Class I groundwater.

**ANSWER:** Respondent admits the allegations of this paragraph.

30. Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

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**ANSWER:** Respondent admits that this paragraph accurately portrays the cited

**statutory provisions.**

31. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), provides as follows:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

32. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides as follows:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

33. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), provides as follows:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

34. The groundwater beneath the Site is a "water" as that term is defined under Section 3.550 of the Act, 415 ILCS 5/3.550 (2014).

**ANSWER:** Respondent admits the allegations of this paragraph.

35. The dark liquid identified at the Site by Illinois EPA sampling conducted in 2011 and 2012 and by Respondent's investigations in 2012 and 2013, including the material which leaked from the UST, is a contaminant as defined in Section 3.165 of the Act.



**ANSWER:** Respondent denies the allegations of this paragraph as to any activities alleged to have been done by IEPA, but admits the allegations as to investigations performed by the contractor retained by Respondent.

36. The dark liquid and its constituent compounds, released on-site and in close proximity to groundwater causes, or tends to cause "water pollution," as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), in that its discharge will or is likely to create a nuisance or render groundwater harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**ANSWER:** Respondent denies the allegations of this paragraph.

37. From at least October 5, 2011 to October 17, 2013, Respondent caused, threatened, or allowed a discharge of contaminants in close proximity to groundwater.

**ANSWER:** Respondent denies the allegations of this paragraph.

38. By so causing, threatening, or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

**ANSWER:** Respondent denies the allegations of this paragraph.

**COUNT V**  
**WATER POLLUTION HAZARD**

1-35. The Plaintiff realleges and incorporates by reference paragraphs 1 through 27 of Count I, and paragraphs 28-35 of Count IV, as if fully set forth herein as paragraphs 1 through 35 of this Count V.

**ANSWER:** Respondent here incorporates its answers to paragraphs 1 through 27 of Count I as its answers to paragraphs 1 through 27 of this Count; and, Respondent here incorporates its answers to

**paragraphs 28 through 35 of Count IV as its answers to paragraphs 28 through 33 of this Count.**

36. Sections 12(d) of the Act, 415 ILCS 5/12(d) (2014) provides as follows:

No person shall:

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

**ANSWER:** Respondent admits that this paragraph accurately portrays the cited statutory provisions.

37. By allowing contaminants to leak from the UST and associated piping and remain in and on the soil, the Respondent deposited contaminants on the Site.

**ANSWER:** Respondent denies the allegations of this paragraph.

38. By allowing contaminants to be deposited on the Site in close proximity to groundwater, Respondent created a water pollution hazard.

**ANSWER:** Respondent denies the allegations of this paragraph.

39. By depositing contaminants on the Site in such place and manner so as to create a water pollution hazard, Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

**ANSWER:** Respondent denies the allegations of this paragraph.

**AFFIRMATIVE DEFENSE I**  
**LIMITATION OF LIABILITY PURSUANT TO SECTION 58.9**

1. The former Young Radiator Property, which is the “Site” as the term is used in the Complaint, has been, at all times relevant to this matter, assigned Illinois Environmental Protection Agency (“Illinois EPA” or “IEPA”) Bureau of Land Identification Number 0290255010.

2. The Site entered the Site Remediation Program (“SRP”) in 1998 consistent with Section 58.1(b) of the Act. The IEPA issued a “No Further Remediation Letter” (“NFR”) regarding the Site on September 9, 2008 pursuant to Title XVII of the Act and related SRP regulations. 415 ILCS 5/Title XVII (Sections 58 – 58.17) and 35 Ill. Adm. Code 740. The NFR was recorded in the Coles County Recorder’s Office on September 24, 2008. The recorded NFR was then submitted to IEPA on September 30, 2008 and received on October 3, 2008 by “IEPA/BOL” as shown by the received date stamp on the document in Illinois EPA files.

3. Section 58.9 of the Act provides in pertinent part:

Sec. 58.9. Liability.

(a) Cost assignment.

- (1) 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.
- (2) Notwithstanding any provisions in this Act to the contrary, including subsection (f) of Section 22.2, in no event may the State of Illinois or any person require the performance of remedial action pursuant to this Act against any of the following:
  - (A) A person who neither caused nor contributed to in any material respect a release of regulated substances on, in, or under the site that was identified and addressed by the remedial action taken pursuant to this Title.

4. IEPA records, as available on its website, pertaining to both the Site Remediation Program NFR issued in 2008 and the pending Leaking Underground Storage Tank Program review of Incident #H-2013-1007 show that the Site has not been actively operated in any manner relating to the complained of chemical constituents since 1985 or before. This was prior

to any ownership by Respondent.

5. Chemical constituents alleged in the Complaint, at paragraphs 8 and 12, as being at or on the Site did not first come to be located at the Site at any time the Site was owned by Respondent, nor as a result of any activities by Respondent. Therefore, Respondent was not a proximate cause of a release or threatened release of any of the chemical constituents alleged in the Complaint to be at or on the Site.

6. Each of the Complaint's five counts are generally based on the alleged existence of these chemical constituents at or on the Site. Each count requests a "cease and desist" order. Except for the impossible option of obtaining a landfill permit (Count III), an order to cease and desist would require the removal and proper disposal of the chemical constituents alleged to be at or on the Site. Since Respondent was not and is not the proximate cause of these chemical constituents being located at or on the Site, such relief should be barred through the application of the limitations on liability in Section 58.9.

**AFFIRMATIVE DEFENSE II**  
**COUNTS IV AND V**

1 – 2. Respondent realleges and incorporates by reference paragraphs 1 and 2 of Affirmative Defense I as if fully set forth herein as paragraphs 1 and 2 of this Affirmative Defense II.

3. Section 58.10 of the Act provides in pertinent part:

Sec. 58.10. Effect of completed remediation; liability releases.

(a) The Agency's issuance of the No Further Remediation Letter signifies a release from further responsibilities under this Act in performing the approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under this Act, so long as the site is utilized in accordance with the terms of the No Further Remediation Letter.

4. Counts IV and V of the Complaint particularly allege the existence of these chemical constituents at or on the Site as causing some kind of environmental risk, either water pollution or water pollution hazard. Since the Site was issued an NFR Letter, Section 58.10 of the Act allows the prima facie conclusion that the Site “does not constitute a threat to human health and the environment and does not require further remediation under this Act.” The Complaint makes no allegations of rebutting this conclusion. The Complaint’s request in both Counts IV and V for an order requiring Respondent to perform new response action is not authorized by the Act pursuant to Section 58.10.

WHEREFORE, Respondent respectfully requests that the Board deny Complainant any relief that would require any performance of a response action or expend any money in furtherance of any response action or other removal of materials from the Site.

Respectfully submitted,  
**MAGNA TAX SERVICE CO., INC.**

Dated: April 7, 2017

By: /s/William D. Ingersoll  
One of its Attorneys

**BROWN, HAY & STEPHENS, LLP**

William D. Ingersoll  
Registration No. 6186363  
wingersoll@bhslaw.com  
Claire A. Manning  
Registration No. 3124724  
cmanning@bhslaw.com  
205 S. Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, IL 62705-2459  
(217) 544-8491

**AFFIDAVIT**

STATE OF ILLINOIS                     )  
  )     SS.  
COUNTY OF SANGAMON)

I, William D. Ingersoll, being first duly sworn, states as follows:

1.     I am an attorney duly licensed to practice law in the State of Illinois and am one of the attorneys with Brown, Hay & Stephens, LLP representing Magna Tax Service Co., Inc. on whose behalf the attached answer was prepared.
2.     That this answer contains certain statements of insufficient knowledge on which to base a belief as to the truth or falsity of the allegations contained in this complaint.
3.     That those allegations of insufficient knowledge are true and correct.

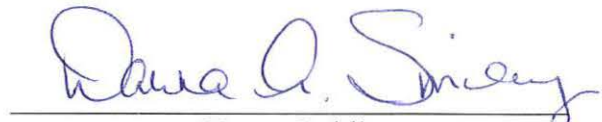
**FURTHER AFFIANT SAYETH NOT.**



**William D. Ingersoll, Affiant**

Subscribed and Sworn to me this 7th day of April, 2017.



  
Notary Public

CERTIFICATE OF E-MAIL SERVICE

I, William D. Ingersoll, certify that I have this date served the attached Notice of Filing and Answers and Affirmative Defenses by e-mail as described below and from my e-mail address as indicated below, upon the following persons:

To: Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
carol.webb@illinois.gov

Rachel Medina  
Assistant Attorney General  
Environmental Bureau  
rmedina@atg.state.il.us

The number of pages in this e-mail transmission is twenty-three (23).

Dated: April 7, 2017

**BROWN, HAY & STEPHENS, LLP**

William D. Ingersoll  
Registration No. 6186363  
wingersoll@bhslaw.com  
205 S. Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, IL 62705-2459  
(217) 544-8491

By: /s/William D. Ingersoll  
William D. Ingersoll