

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois)	
)	
Complainant,)	
)	PCB No. 11-79
v.)	
)	
INVERSE INVESTMENTS, L.L.C.,)	
an Illinois Limited Liability Company,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Kathryn A. Pamenter	Bradley P. Halloran
Assistant Attorney General	Hearing Officer
Environmental Bureau	Illinois Pollution Control Board
69 W. Washington Street, 18 th Floor	100 W. Randolph Street, Suite 11-500
Chicago, IL 60602	Chicago, IL 60601

PLEASE TAKE NOTICE that I have electronically filed today with the Office of the Clerk of the Pollution Control Board Respondent's Motion to Stay Proceedings, a copy of which is attached hereto and herewith served upon you.

Dated: September 25, 2013

INVERSE INVESTMENTS, L.L.C.

By: /s/ Jennifer T. Nijman
 Jennifer T. Nijman

Jennifer T. Nijman
NIJMAN FRANZETTI LLP
10 S. LaSalle St., Suite 3600
Chicago, IL 60603
(312) 251-5255

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RESPONDENT’S MOTION TO STAY PROCEEDINGS

Pursuant to 35 Ill. Adm. Code 101.514, Respondent, Inverse Investments, L.L.C. (“Inverse”), respectfully moves to stay this proceeding for nine (9) months while U.S. Environmental Protection Agency’s (“U.S. EPA”) remedial actions concerning the Inverse property are clarified or resolved. In support of its Motion, Inverse states as follows:

BACKGROUND

1) On May 4, 2011, Complainant filed a complaint alleging a violation of Section 12(a) of the Illinois Environmental Protection Act (415 ILCS 5/12(a)) for the alleged migration of contamination from Inverse’s property located at 3004 West Route 120 (Elm Street) in McHenry County, Illinois (the “Site”). Complainant demanded that Inverse cease and desist from actions that cause or allow contamination at the Site.

2) On March 9, 2012, Inverse answered the Complaint and asserted various defenses, including that it did not cause or allow water pollution. As outlined in Inverse’s defense, the prior Site owner had enrolled the Site in the Illinois Environmental Protection Agency (“Illinois EPA”) Site Remediation Program (“SRP”) under Section 58 of the Act, 415

ILCS 5/58, and any contaminants of concern that were the subject of the complaint were due to historic conditions.

3) On August, 9, 2012, the parties jointly requested to stay discovery as they engaged in active and extensive negotiations to settle this matter.

4) On August 19, 2013, the parties circulated a draft Stipulation and Proposal for Settlement (“Stipulation”) generally providing, among other terms, that Inverse would continue remediation of the soil and groundwater contamination at the Site through the Illinois SRP program in accordance with 35 Ill. Adm. Code Part 740, and providing for specific times for completion of SRP events.

5) Any resolution of this matter with Complainant (either by settlement or continued litigation) will, on information and belief, include a requirement that Inverse perform specific remedial activities at the Site.

6) On August 26, 2013, Inverse received a General Notice of Potential Liability Letter (“General Notice Letter”) from the U.S. EPA which stated that U.S. EPA had documented the release of hazardous substances from the Site. (Attached as Ex. 1). The hazardous substances identified by U.S. EPA are the same as the hazardous substances that form the basis of Complainant’s complaint.

7) In the General Notice Letter, U.S. EPA identified Inverse as a potentially responsible party under Section 107 of CERCLA. 42 U.S.C. §9607. U.S. EPA demanded that Inverse conduct specific investigation and remediation activities at the Site or in the alternative reimburse U.S. EPA for the remedial activities it conducts. U.S. EPA warned that it may issue a unilateral order under Section 106 of CERCLA requiring Inverse to perform specified work

should a consent order not be concluded and stated that it will not issue any further notice letters (*i.e.*, Special Notice Letter) before beginning work.

8) As of this date, the U.S. EPA has not specifically identified the remedial actions it intends to take or the actions it will demand of Inverse. It is more than likely that U.S. EPA's demands will conflict with the remediation that may be required by the Illinois EPA and proposed in the draft Stipulation.

9) The potential conflicts concerning the Site are already arising. On September 19, 2013 Inverse received a request from Illinois EPA for access to the Site so that the Illinois EPA could perform sampling and other activity. The very next day, on September 20, 2013, Inverse received a request from U.S. EPA for access to the Site so that U.S. EPA could also perform sampling and other activity.

10) During the pendency of this action and the recently initiated U.S. EPA action, Inverse has conducted remedial activities including injecting bioremediation chemicals into the soil and continuing its monitoring of the Site in accordance with the Illinois SRP. Inverse fully intends to complete the remedial actions it initiated when it entered the Illinois SRP as soon as the uncertainty created by the dual agency actions is resolved. Thus, a stay of this proceeding is justified until there is clarity on the prospective final remedial actions required.

ARGUMENT IN SUPPORT OF STAY

11) A motion to stay must have sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514. The decision to grant or deny a motion for stay is vested in the sound discretion of the Board. *See People v. State Oil Co.*, PCB 97-103 (May 15, 2003), *aff'd sub nom State Oil Co. v. PCB*, 822 N.E.2d 876 (2nd Dist. 2004). In determining whether a stay is justified the Board may consider four factors: (1) comity; (2) prevention of multiplicity, vexation, and

harassment; (3) the likelihood of obtaining complete relief in the foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the Board proceeding. *Midwest Generation EME, LLC v. IEPA*, PCB 04-216, slip op at 4 (Apr. 6, 2006).

12) Based upon the foregoing principals, the Board should stay this proceeding until U.S. EPA has come to a final determination concerning the Site. The Board has previously granted stays while a similar matter was pending with the U.S. EPA. In *U.S. Steel v. Illinois EPA*, PCB 10-23 (Feb. 2, 2012), during pendency of a CAAPP permit appeal, a third party filed an objection of the CAAPP permit with the U.S. EPA. The Board found that “the present uncertainty over the impact that the U.S. EPA proceeding could have on this appeal supports a stay.” *Id*, slip op. at 12. Similarly, in *Midwest Generation EME, LLC v. IEPA*, PCB 04-216 (Apr. 6, 2006), the Board stayed a proceeding while the U.S. EPA was conducting its own determination of a matter almost identical to the matter in front of the Board. Importantly, the Board stayed the *Midwest Generation* proceeding even though the U.S. EPA was in the initial stages of its administrative decision making.

13) Here, U.S.EPA is in the initial stages of determining the response activities for contamination in the groundwater at and around the Site. U.S. EPA has demanded that Inverse conduct response activities at the Site without identifying exactly what response activities it deems necessary. It is likely that the U.S. EPA-demanded response activities will conflict with the State of Illinois’ proposed compliance plan and/or requested remedy for the Site.

14) A stay in this matter is justified because of considerations of comity for the U.S. EPA action as well as efficiency. The recent U.S. EPA investigation creates uncertainty as to the impact of its decision and practical difficulties that might arise from conflicting remedial orders by the state and federal agencies. Both the U.S. EPA and the State of Illinois have acknowledged

to Inverse that they presently do not know how or whether the governmental agencies will coordinate their response actions or demands. They both have further acknowledged the potential for conflicting remedies. A stay would diminish the possibility for potentially conflicting remedies.

15) Granting a stay of this case will also avoid a wasteful multiplicity in response activities. It is unknown whether the response activities sought by the State of Illinois will satisfy the U.S. EPA requirements, or vice-versa. Should Inverse be required to conduct remediation at the Site before the U.S. EPA has come to a final determination on its requirements, then Inverse could be burdened with conducting duplicative investigations and remedial activities to the satisfaction of each governmental agency.

16) While U.S. EPA's investigation into the groundwater contamination may not necessarily have *res judicata* effect, U.S. EPA's determination as to the proper remedial response could constitute persuasive authority. U.S. EPA could conduct a different remediation activity that supersedes the Illinois EPA demands. Alternatively, U.S. EPA could consider the response activities Inverse intends to conduct under the Illinois EPA SRP to be satisfactory. Allowing a stay in this manner would give all parties time to consider the proper response activities required at the Site.

17) A stay in this manner is also justified because these proceedings do not involve a risk of ongoing environmental harm. In *U.S. Steel*, the Board found that the respondent's representation that it was operating under the terms and conditions of its CAAPP permit supported a stay. *U.S. Steel Corp.*, PCB 10-23, slip op. at 12. Presently, Inverse has ensured that no pollutants or contaminants of concern have been disposed, stored, discharged released at the property. The only time in which hazardous substances found at the Site were released was

approximately 40 years ago. Further, Inverse is continuing the monitoring at the Site and continuing to take due care with respect to the contamination. Inverse ultimately intends to complete the remediation at the Site under the authority of the Illinois SRP for the purpose of obtaining a No Further Remediation Letter.

18) A stay of this matter is appropriate given the substantially similar determination involving the same Site and the same investigation as to the source of the contamination in the groundwater. Granting a stay would (1) avoid the practical difficulties that might arise from conflicting remedial orders by the state and federal agencies; (2) avoid the costly and inefficient allocation of resources necessary resulting from duplicative proceedings; and (3) give the government agencies time to coordinate their response actions and decision making.

WHEREFORE, Respondent, Inverse Investments, L.L.C., respectfully requests that the Board grant Respondent's Motion to Stay for nine (9) months so that U.S. EPA's remedial actions concerning the Inverse Site are clarified or resolved.

Respectfully submitted,

INVERSE INVESTMENTS, L.L.C.

By /s/ Jennifer T. Nijman
One of Its Attorneys

Jennifer T. Nijman
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

CERTIFICATE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument and in the attached exhibits are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that it verily believes the same to be true.

Respectfully submitted,

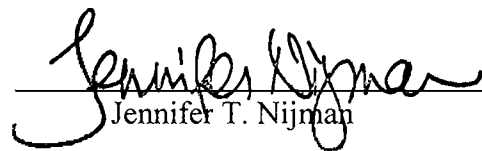

Jennifer T. Nijman

EXHIBIT 1

General Notice of Potential Liability Letter



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 22 2013

REPLY TO THE ATTENTION OF:

SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jennifer T. Nijman, Attorney
Nijman & Franzetti
10 South LaSalle Street, Suite 3600
Chicago, Illinois 60603

Re: Inverse Investment Site, Trust Number 13439
McHenry, McHenry County, Illinois 60050
Site Spill Identification Number: C5T7
General Notice of Potential Liability

Dear Ms. Nijman:

The U.S. Environmental Protection Agency has documented the release or threat of release of hazardous substances, pollutants and contaminants into the environment from the Inverse Investment Site, located at 3004 West Illinois Route 120 in McHenry, Illinois. Preliminary data indicates contamination from the property may be affecting nearby residences and EPA is planning to spend public funds to control and investigate these releases. This action will be taken by EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601-9675 unless EPA determines that such action will be done properly by a responsible party or parties. Responsible parties under CERCLA include the current and former owners and operators of the Inverse Investment Site, and persons who generated the hazardous substances or were involved in the transport, treatment or disposal of the hazardous substances at the Inverse Investment Site. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), where EPA uses public funds towards the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the Inverse Investment Site, including investigation, planning and enforcement costs.

EPA is currently planning to conduct the following actions at the Inverse Investment Site:

1. Develop and implement a Site Health and Safety Plan and a Site Work Plan outlining measures to control and dispose of all hazardous containing substances remaining on the property;
2. Conduct sampling as necessary to determine the extent of contamination
3. If necessary, abate, transport, and dispose of all hazardous substances, pollutants, or contaminants at an EPA-approved disposal facility, in accordance with the EPA's Off-Site Rule (40 CFR § 300.440);
4. Take any other necessary response actions to address any release or threatened release of a hazardous substance, pollutant, or contaminant that the EPA determines may pose an imminent and substantial endangerment to the public health or welfare or the environment.

EPA has received information that Inverse Investment Trust may have owned or operated the Inverse Investment Site or generated or transported hazardous substances that were disposed of at the Inverse Investment Site. By this letter, EPA notifies Inverse Investment of its potential liability with regard to this matter and encourages it, as a potentially responsible party, to agree to reimburse EPA for costs incurred to date and to voluntarily perform or finance the response activities that EPA has determined or will determine are required at the Inverse Investment Site. EPA is willing to discuss the entry of an appropriate administrative consent order under which Inverse Invest Trust would perform or finance response activities and reimburse EPA for its costs.

If a consent order cannot be promptly concluded, EPA may issue a unilateral order under Section 106 of CERCLA, requiring Inverse Investment Trust to perform specified work. Under Sections 106 and 107 of CERCLA, Inverse Investment Trust may be liable for reimbursement of EPA's costs, for statutory penalties and for treble damages for noncompliance with such an order. If Inverse Investment Trust is a qualified small business, enclosed is a *U.S. EPA Small Business Resources Information Sheet*, which may be helpful if it is subject to an EPA enforcement action.

Because of the conditions described above, EPA believes that response activities at the Inverse Investment Site must be initiated as quickly as possible. Therefore, EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

You should, on behalf of Inverse Investment Trust, as a potentially responsible party, notify EPA in writing within ten (10) business days of receipt of this letter of Inverse Investment Trust

willingness to perform or finance the activities described above and to reimburse EPA for its costs. The response should be sent to:

Mike R. Rafati, Enforcement Specialist
U.S. Environmental Protection Agency, Region 5
Superfund Division - Enforcement & Compliance Assurance Branch
Enforcement Services Section 2, SE-5J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

If EPA does not receive a timely response, EPA will assume that Inverse Investment Trust does not wish to negotiate a resolution of its potential responsibility in connection with the Inverse Investment Site and that it has declined any involvement in performing the response activities.

Your response should indicate the appropriate name, address and telephone number for further contact with Inverse Investment Trust. If it is already involved in discussions with state or local authorities, engaged in a voluntary cleanup action or involved in a lawsuit regarding this site, activities should continue as it sees fit. This letter is not intended to advise Inverse Investment Trust or direct it to restrict or discontinue any such activities already underway; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

If you need further information regarding this letter, you may contact Mr. Larry Johnson of the EPA Office of Regional Counsel at (312) 886-6609.

Due to the nature of the problem at this facility and the attendant legal ramifications, EPA strongly encourages you to submit a written response on behalf of Inverse Investment Trust within the time frame specified herein. We hope you will give this matter your immediate attention.

Sincerely,



Samuel Borries, Chief
Emergency Response Branch 2

Enclosure

U.S. EPA Small Business Resources Information Sheet



U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

EPA's Small Business Websites

Small Business Environmental Homepage - www.smallbiz-enviroweb.org

Small Business Gateway - www.epa.gov/smallbusiness

EPA's Small Business Ombudsman - www.epa.gov/sbo or 1-800-368-5888

EPA's Compliance Assistance Homepage

www.epa.gov/compliance/assistance/business.html

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org or 1-734-995-4911

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Metal Finishing

www.nmfrc.org

Paints and Coatings

www.paintcenter.org

Printed Wiring Board Manufacturing

www.pwbrc.org

Printing

www.pneac.org

Ports

www.portcompliance.org

U.S. Border Compliance and

Import/Export Issues

www.bordercenter.org

Hotlines, Helplines and

Clearinghouses

www.epa.gov/epahome/hotline.htm

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Antimicrobial Information Hotline

info-antimicrobial@epa.gov or
1-703-308-6411

Clean Air Technology Center (CATC)

Info-line

www.epa.gov/ttn/catc or 1-919-541-0800

Emergency Planning and Community Right-To-Know Act

www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or
734-214-4100

National Pesticide Information Center

www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline -

to report oil and hazardous substance spills
www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

www.epa.gov/opptintr/ppic or
1-202-566-0799

Safe Drinking Water Hotline

www.epa.gov/safewater/hotline/index.html or 1-800-426-4791

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone or 1-800-296-1996

U. S. EPA Small Business Resources

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Wetlands Information Helpline

www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828

State and Tribal Web-Based Resources

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.smallbiz-enviroweb.org

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

EPA's Tribal Compliance Assistance Center

www.epa.gov/tribalcompliance/index.html

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www.epa.gov/compliance/incentives/smallbusiness/index.html

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www.epa.gov/compliance/incentives/auditing/auditpolicy.html

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at www.sba.gov/ombudsman.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 25th day of September, 2013, she caused to be served electronically the attached Respondent's Motion to Stay Proceedings upon the following person:

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

and by U.S. Mail, first class postage prepaid, to the following persons:

Kathryn A. Pamenter
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

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

/s/ Jennifer T. Nijman
Jennifer T. Nijman