

MAR 17 2004

STATE OF ILLINOIS  
Pollution Control Board

REPUBLIC BANK OF CHICAGO, as )  
Trustee of Trust #2234, ARISTOTLE HALIKIAS, )  
LENA HALIKIAS, MICHAEL HALIKIAS, )  
NIKOLAS HALIKIAS, NOULA HALIKIAS )  
and PATRICIA HALIKIAS, as beneficiaries )  
of Trust #2234, )

Complainants, )

v. )

SUNOCO, INC. (R&M), )

Respondent. )

PCB 04-69

(Citizen's Suit UST Enforcement)

**NOTICE OF FILING**

To: Dorothy Gunn, Clerk  
State of Illinois  
Pollution Control Board  
Suite 11-500  
100 W. Randolph Street  
Chicago, IL 60601

John Knittle  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794

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

Andy Perellis  
Seyfarth Shaw LLP  
55 East Monroe  
Suite 4200  
Chicago, IL 60603

Please take notice that on March 17, 2004, we have filed with the Office of the Clerk of the Illinois Pollution Control Board, an original and ten (10) copies of **RESPONDENT SUNOCO, INC.'S (R&M) ANSWER TO COMPLAINT**; a copy of which is attached hereto and hereby served upon you. **APPEARANCES** for Counsels Jeffrey C. Fort and Letissa Carver Reid are also served upon you.

Dated: March 17, 2004

Respectfully submitted,

By: 

One of the Attorneys for  
Respondent Sunoco, Inc. (R&M)

Jeffrey C. Fort  
Letissa Carver Reid  
Sonnenschein Nath & Rosenthal LLP  
8000 Sears Tower  
Chicago, Illinois 60606  
312.876.8000

**THIS FILING IS BEING SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD MAR 17 2004**

STATE OF ILLINOIS  
Pollution Control Board

REPUBLIC BANK OF CHICAGO, as )  
Trustee of Trust #2234, ARISTOTLE HALIKIAS, )  
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NIKOLAS HALIKIAS, NOULA HALIKIAS )  
and PATRICIA HALIKIAS, as beneficiaries )  
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Complainants, )

v. )

SUNOCO, INC. (R&M), )

Respondent. )

PCB 04-69

(Citizen's Suit UST Enforcement)

**APPEARANCE**

Jeffrey C. Fort, of the law firm Sonnenschein Nath & Rosenthal LLP, hereby enters an appearance as counsel for Sunoco, Inc. (R&M). Jeffrey C. Fort is designated as the lead attorney for purposes of mail and phone contact pertaining to this proceeding.

Dated: March 17, 2004

Respectfully submitted,  
SUNOCO, INC. (R&M)

By: \_\_\_\_\_

Jeffrey C. Fort

Jeffrey C. Fort  
Letissa Carver Reid  
Sonnenschein Nath & Rosenthal LLP  
8000 Sears Tower  
Chicago, Illinois 60606  
312.876.8000

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

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Pollution Control Board

REPUBLIC BANK OF CHICAGO, as )  
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PCB 04-69


(Citizen's Suit UST Enforcement)

**APPEARANCE**

Letissa Carver Reid, of the law firm Sonnenschein Nath & Rosenthal LLP, hereby enters  
this appearance as additional counsel for Respondent Sunoco, Inc. (R&M).

Dated: March 17, 2004

Respectfully submitted,  
SUNOCO, INC. (R&M)

By:   
Letissa Carver Reid

Jeffrey C. Fort  
Letissa Carver Reid  
Sonnenschein Nath & Rosenthal LLP  
8000 Sears Tower  
Chicago, Illinois 60606  
312.876.8000

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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Trustee of Trust #2234, ARISTOTLE HALIKIAS, )  
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PCB 04-69

Complainants, )

(Citizen's Suit UST Enforcement)

v. )

SUNOCO, INC. (R&M), )

Respondent. )

**RESPONDENT SUNOCO, INC.'S ANSWER TO COMPLAINT**

Respondent, SUNOCO, INC. (R&M) ("SUNOCO, INC."), for itself alone and no other party, hereby answers the Complaint of Republic Bank of Chicago, as Trustee of Trust #2234, Aristotle Halikias, Lena Halikias, Michael Halikias, Nikolas Halikias, Noula Halikias, and Patricia Halikias, as beneficiaries of Trust #2234 ("Complainants"), as follows:

**COMPLAINT:**

1. Republic Bank of Chicago, as Trustee of Trust #2234, ARISTOTLE HALIKIAS, LENA HALIKIAS, MICHAEL HALIKIAS, NIKOLAS HALIKIAS, NOULA HALIKIAS and PATRICIA HALIKIAS, as beneficiaries of Trust #2234 (collectively, the "Property Owners"), by their attorneys, Seyfarth Shaw LLP, complain as follows against SUNOCO, INC. (R&M), as successor in interest to Sun Oil Company of Pennsylvania ("Sunoco"). Property Owners bring this action for cost recovery pursuant to Section 31(d) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/31(d). Property Owners held title to real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. Releases of petroleum-related substances from underground storage tanks on the Facility have contaminated soils and groundwater, necessitating response actions by Property Owners. The releases resulted from the actions and failures to act of Sunoco. Property Owners seek to recover from Sunoco for the costs incurred and to be incurred in removing the USTs, cleaning up contaminated soils and investigating and remediating threats to groundwater.

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. SUNOCO, INC. admits that Complainants purport to bring this action for cost recovery concerning the aforementioned real estate pursuant to Section 31(d) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/31(d). SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1, and on that basis they are denied.

### **THE PARTIES**

**COMPLAINT:** 2. Republic Bank of Chicago is trustee of Land Trust #2234. Land Trust #2234 holds legal title to the property commonly known as 960 North McLean Boulevard, in Elgin, Illinois.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2, and they are on that basis denied.

**COMPLAINT:** 3. Republic Bank of Chicago is a person within the meaning of 415 ILCS 5/3.315.

**ANSWER:** Paragraph 3 states a legal conclusion to which no answer is required, and on that basis is denied.

**COMPLAINT:** 4. Aristotle Halikias, Lena Halikias, Michael Halikias, Nikolas Halikias, Noura Halikias and Patricia Halikias are the beneficial owners of Land Trust #2234.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4, and on that basis they are denied.

**COMPLAINT:** 5. Aristotle Halikias, Lena Halikias, Michael Halikias, Nikolas Halikias, Noura Halikias and Patricia Halikias are persons within the meaning of 415 ILCS 5/3.315.

**ANSWER:** Paragraph 5 states a legal conclusion to which no answer is required, and on that basis is denied.

**COMPLAINT:** 6. On information and belief, Sunoco is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. Sunoco is the successor in interest to Sun Oil Company of Pennsylvania. Sunoco is a person within the meaning of 415 ILCS 5/3.315.

**ANSWER:** SUNOCO, INC. admits that it is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. SUNOCO, INC. admits that it is the successor in interest to Sun Oil Company of Pennsylvania. The last allegation contained in paragraph 6 states a legal conclusion to which no answer is required, and on that basis is denied.

#### **COMMON ALLEGATIONS**

**COMPLAINT:** 7. Prior to April 1981, Sun Oil Company of Pennsylvania owned the property commonly known as 960 N. McLean Boulevard, Elgin, Illinois ("the Facility").

**ANSWER:** SUNOCO, INC. admits that Sun Oil Company of Pennsylvania owned the property commonly known as 960 N. McLean Boulevard, Elgin, Illinois for some period prior to April 1981.

**COMPLAINT:** 8. Prior to April 1981, the Facility was the site of a gas station containing five underground storage tanks ("USTs").

**ANSWER:** SUNOCO, INC. admits that five underground storage tanks ("USTs") were located at the property commonly known as 960 N. McLean Boulevard, Elgin, Illinois prior to April 1981. SUNOCO, INC. admits that a gas station was located at this property.

**COMPLAINT:** 9. Prior to April 1981, Sun Oil Company of Pennsylvania owned five USTs located at the Facility.

**ANSWER:** SUNOCO, INC. admits that Sun Oil Company of Pennsylvania owned five USTs located at the property commonly known as 960 N. McLean Boulevard, Elgin, Illinois prior to April 1981.

**COMPLAINT:** 10. The USTs had capacities of approximately 8,000 (1 tank), 6,000 (2 tanks), and 550 (2 tanks) gallons, respectively.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 10, and on that basis is denied.

**COMPLAINT:** 11. Prior to April 1981, the three USTs with capacities of 8,000 gallons and 6,000 were used to contain gasoline (hereinafter, the "UST system"). One 550 gallon tank was used to store used oil, and the other 550 gallon tank was used to store heating oil.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11, and on that basis they are denied.

**COMPLAINT:** 12. Prior to April 1981, Sun Oil Company of Pennsylvania leased the property to Clyde Korlaske, who operated the service station.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12, and it is on that basis denied.

**COMPLAINT:** 13. Korlaske ceased his business selling gasoline in April 1981 and subleased the property to Auto Ecology L & R, Inc.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13, and on that basis they are denied.

**COMPLAINT:** 14. Auto Ecology L & R, Inc., did not sell gasoline or operate the UST system that was present on the property. In fact, following the sublease, the UST system was no longer used or operated by anyone, including the Property Owners.

**ANSWER:** SUNOCO, INC. denies the allegations contained in paragraph 14.

**COMPLAINT:** 15. On or about June 18, 1981, Sun Oil Company of Pennsylvania deeded the real property to Korlaske.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15, and they are on that basis denied.

**COMPLAINT:** 16. After purchase, Korlaske, in October 1981, sold the real estate to Republic Bank of Chicago Trust #2234, and Auto Ecology L & R, Inc., continued to operate its muffler and brake business for a period of time before ceasing business. Since that time, the property has been vacant.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16, and on that basis they are denied.

**COMPLAINT:** 17. The UST system was in use before November 8, 1984, but was no longer in use on that date.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17, and on that basis they are denied.

**COMPLAINT:** 18. Sunoco, as successor to Sun Oil Company of Pennsylvania, owned the UST system immediately before the discontinuation of its use.

**ANSWER:** SUNOCO, INC. denies the allegations contained in paragraph 18.

**COMPLAINT:** 19. The Property Owners have conducted soil investigations of the Facility. The soil investigations indicate that the UST system leaked petroleum-related substances into the soil and groundwater at the Facility.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19, and on that basis they are denied.

**COMPLAINT:** 20. The Property Owners filed a notification of the release with the Illinois Emergency Management Agency and a 20-day certification with the Illinois Environmental Protection Agency.

**ANSWER:** SUNOCO, INC. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20, and they are on that basis denied.



**COMPLAINT:** 21. Property Owners have requested that Sunoco fulfill its legal obligations to perform corrective action regarding the USTs. Given Sunoco's failure to do so, Property Owners are proceeding to remediate the contamination caused by the leaking UST system owned and formerly owned by Sunoco.

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. SUNOCO, INC. is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 21, and on that basis they are denied.

**COUNT I**

(Violation of 415 ILCS 5/21(a))

**COMPLAINT:** 22. The allegations of paragraphs 1 to 21 above are incorporated by reference as though set forth in full.

**ANSWER:** SUNOCO, INC. realleges and incorporates by reference its answers to paragraphs 1 to 21 above as its answer to paragraph 22 of Count I.

**COMPLAINT:** 23. Section 21(a) of the Act, 415 ILCS 5/21(a), states:  
No person shall (a) Cause or allow the open dumping of any waste.

**ANSWER:** SUNOCO, INC. states that Section 21(a) of the Act, 415 ILCS 5/21(a), speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 24. Section 3.305 of the Act, 415 ILCS 5/3.305, defines "open dumping" as follows:  
The consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

**ANSWER:** SUNOCO, INC. states that Section 3.305 of the Act, 415 ILCS 5/3.305, speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 25. Section 3.185 of the Act, 415 ILCS 5/3.185 defines "disposal" as follows:

The discharge, deposit, 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 constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

**ANSWER:** SUNOCO, INC. states that Section 3.185 of the Act, 415 ILCS 5/3.185, speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 26. Section 5/3.385 of the Act, 415 ILCS 5/3.385, defines "refuse" as "waste."

**ANSWER:** SUNOCO, INC. states that Section 5/3.385 of the Act, 415 ILCS 5/3.385, speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 27. Section 3.535 of the Act, 415 ILCS 5/3.535 defines "waste" as follows:

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:** SUNOCO, INC. states that Section 3.535 of the Act, 415 ILCS 5/3.535, speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 28. Petroleum constituents became a "waste" when they were discharged from the UST system into the soils beneath the Facility, at which time the Facility became a "disposal site."

**ANSWER:** Paragraph 28 states legal conclusions to which no answers are required, and on this basis is denied.

**COMPLAINT:** 29. Sunoco owned the UST system at the time of the petroleum discharge and/or otherwise possessed sufficient control or had authority to prevent the discharges from occurring.

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. SUNOCO, INC. is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 29, and on that basis they are denied.

**COMPLAINT:** 30. Sunoco caused or allowed open dumping of a waste into the environment by allowing the USTs to leak petroleum constituents onto the soils and groundwater beneath the Facility and by allowing the petroleum constituents to remain on the property.

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. SUNOCO, INC. is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 30, and on that basis they are denied.

**COMPLAINT:** 31. The acts and omissions as stated above constitute a violation of Section 21(a) of the Act, 415 ILCS 5/21(a).

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate

commonly known as 960 North McLean Boulevard, in Elgin, Illinois. Paragraph 31 further states a legal conclusion to which no answer is required.

**PRAYER FOR RELIEF**

SUNOCO, INC. denies that Complainants are entitled to recover from SUNOCO, INC. the damages or any other relief sought in Count I of the Complaint.

**COUNT II**

(Violation of 415 ILCS 5/21(d)(2))

**COMPLAINT:** 32. The allegations of paragraphs 1 to 30 [sic] above are incorporated by reference as though set forth in full.

**ANSWER:** SUNOCO, INC. realleges and incorporates by reference its answers to paragraphs 1 to 31 above as its answer to paragraph 32 of Count II.

**COMPLAINT:** 33. Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) states:  
No person shall: . . . (d) conduct any waste-storage, waste-treatment, or waste-disposal operation . . . (2) in violation of any regulations or standards adopted by the Board under this Act.

**ANSWER:** SUNOCO, INC. states that Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2), speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 34. By allowing petroleum constituents to be released from the UST system, Sunoco conducted a waste-disposal operation at a disposal site that does not fulfill the requirements of a sanitary landfill and is in violation of regulations and standards adopted by the Board under the Act.

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. Paragraph 34 further states a legal conclusion to which no answer is required.

**COMPLAINT:** 35. Sunoco violated Section 5/21(d)(2) of the Act, 415 ILCS 5/21(d)(2).

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. SUNOCO, INC. denies the allegation contained in paragraph 35.

**PRAYER FOR RELIEF**

SUNOCO, INC. denies that Complainants are entitled to recover from SUNOCO, INC. the damages or any other relief sought in Count II of the Complaint.

**COUNT III**

(Violation of 415 ILCS 5/21(e))

**COMPLAINT:** 36. The allegations of paragraphs 1 to 35 above are incorporated by reference as though set forth in full.

**ANSWER:** SUNOCO, INC. realleges and incorporates by reference its answers to paragraphs 1 to 35 above as its answer to paragraph 36 of Count III.

**COMPLAINT:** 37. Section 21(e) of the Act, 415 ILCS 5/21(e), provides:  
No person shall: Dispose, ... or abandon any waste, ... except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

**ANSWER:** SUNOCO, INC. states that Section 21(e) of the Act, 415 ILCS 5/21(e), speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 38. Sunoco disposed of and/or abandoned wastes at the Facility.

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate

commonly known as 960 North McLean Boulevard, in Elgin, Illinois. SUNOCO, INC. denies the allegations contained in paragraph 38.

**COMPLAINT:** 39. The Facility was not a site that met the statutory and regulatory requirements for disposal or abandonment of wastes.

**ANSWER:** Paragraph 39 states a legal conclusion to which no answer is required.

**COMPLAINT:** 40. Sunoco violated Section 5/21(e) of the Act, 415 ILCS 5/21(e), by disposing and/or abandoning wastes consisting of petroleum constituents and soils contaminated with petroleum constituents at the Facility.

**ANSWER:** SUNOCO, INC. denies that it is liable for any releases of petroleum-related substances alleged to have contaminated soils and groundwater in connection with the real estate commonly known as 960 North McLean Boulevard, in Elgin, Illinois. SUNOCO, INC. denies the allegations contained in paragraph 40.

#### **PRAYER FOR RELIEF**

SUNOCO, INC. denies that Complainants are entitled to recover from SUNOCO, INC. the damages or any other relief sought in Count III of the Complaint.

#### **COUNT IV**

(Violation of 415 ILCS 5/57.1(a) and related regulations)

**COMPLAINT:** 41. The allegations of paragraphs 1 to 40 above are incorporated by reference as though set forth in full.

**ANSWER:** SUNOCO, INC. realleges and incorporates by reference its answers to paragraphs 1 to 40 above as its answer to paragraph 41 of Count IV. SUNOCO, INC. states that to the extent that the allegations contained in Count IV relate to violations of the regulations of the Office of the State Fire Marshal, such allegations require no answers as these allegations are frivolous and have been stricken by the Board.

**COMPLAINT:**

42. Section 57.1(a) of the Act, 415 ILCS 5/57.1(a) states:

An owner or operator of an underground storage tank who meets the definition of this Title [XVI: Petroleum Underground Storage Tanks] shall be required to conduct tank removal, abandonment and repair, site investigation, and corrective action in accordance with the requirements of the Leaking Underground Tank Program.

**ANSWER:** SUNOCO, INC. states that Section 57.1(a) of the Act, 415 ILCS 5/57.1(a), speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:**

43. Section 57.2 of the Act, 415 ILCS 5/57.2, states that "owner" shall have the same definition as that given in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901.

**ANSWER:** SUNOCO, INC. states that Section 57.2 of the Act, 415 ILCS 5/57.2, speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:**

44. The definition of "owner" given under RCRA, 42 U.S.C. § 6991(3)(B), is:

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

**ANSWER:** SUNOCO, INC. states that 42 U.S.C. § 6991(3)(B) speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:**

45. The Board has adopted regulations to implement Title XVI of the Act at 35 Ill. Adm. Code Part 732.

**ANSWER:** SUNOCO, INC. states that 35 Ill. Adm. Code Part 732 speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:**

46. Section 732.103 defined "owner" as:

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such

underground storage tank immediately before the discontinuation of its use. (Derived from 42 U.S.C. § 6991)

**ANSWER:** SUNOCO, INC. states that Section 732.103 speaks for itself as to its terms, and denies any allegations inconsistent therewith or any mischaracterization thereof.

**COMPLAINT:** 47. Pursuant to the state and federal RCRA definition, Sunoco is the owner of the UST System [sic] and the other USTs located on the Facility.

**ANSWER:** Paragraph 47 states a legal conclusion to which no answer is required.

**COMPLAINT:** 48. Sunoco has failed to (a) conduct tank removal, (b) abandonment and repair, (c) site investigation, and (d) corrective action, in accordance with the requirements of Title XVI of the Act and implementing regulations adopted by the Board and the Office of State Fire Marshal.

**ANSWER:** “[T]he Board lacks authority to enforce the regulations of the Office of the State Fire Marshal. Therefore, the allegations in [C]ount IV relating to violations of the Office of the State Fire Marshal are frivolous and the Board strikes those allegations.” (See December 4, 2003 Order of the Board at p. 1.) Paragraph 48 contains allegations that have been stricken by the Board to which no answers are required, and is on this basis denied.

**COMPLAINT:** 49. Sunoco has violated Sections 57.1(a), 57.5, 57.6, and 57.7 of the Act and implementing regulations adopted by the Board and the Office of State Fire Marshal.

**ANSWER:** “[T]he Board lacks authority to enforce the regulations of the Office of the State Fire Marshal. Therefore, the allegations in [C]ount IV relating to violations of the Office of the State Fire Marshal are frivolous and the Board strikes those allegations.” (See December 4, 2003 Order of the Board at p. 1.) Paragraph 49 contains allegations that have been stricken by the Board to which no answers are required, and is on this basis denied.

#### **PRAYER FOR RELIEF**

SUNOCO, INC. denies that Complainants are entitled to recover from SUNOCO, INC. the damages or any other relief sought in Count IV of the Complaint.



### **AFFIRMATIVE DEFENSES**

In addition to the foregoing denials, SUNOCO, INC. asserts the following affirmative defenses. SUNOCO, INC. reserves the right to add additional affirmative defenses warranted by the facts and applicable law.

#### **FIRST AFFIRMATIVE DEFENSE**

1. SUNOCO, INC. denies each and every allegation of the Complaint except those which SUNOCO, INC. has specifically and explicitly heretofore admitted.

#### **SECOND AFFIRMATIVE DEFENSE**

2. Neither the Complaint nor any purported causes of action contained therein allege facts sufficient to state a claim upon which relief can be granted.

#### **THIRD AFFIRMATIVE DEFENSE**

3. To the extent that the causes of action stated in Counts I, II and III are valid and SUNOCO, INC. is found liable, which liability SUNOCO, INC. denies, Complainants are also liable for non-compliance.

#### **FOURTH AFFIRMATIVE DEFENSE**

4. Complainants' claims are barred, in whole or in part, by the applicable statutes of limitations and/or the doctrine of laches.

#### **FIFTH AFFIRMATIVE DEFENSE**

5. Complainants' claims are barred, in whole or in part, by the doctrine of unclean hands.

#### **SIXTH AFFIRMATIVE DEFENSE**

6. Complainants' claims are barred by the statute of repose and/or by the doctrine of estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

7. To the extent fault is an element of any of the causes of action asserted by Complainants, the conduct of parties other than SUNOCO, INC. is the sole or proximate cause of the injuries or damages claimed by Complainants.

**EIGHTH AFFIRMATIVE DEFENSE**

8. To the extent fault is an element of any of the causes of action asserted by Complainants, the fault of all who may be added as parties should be compared and allocated to determine respective obligations of the parties for contribution.

**NINTH AFFIRMATIVE DEFENSE**

9. Complainants' right, if any, to recover damages from SUNOCO, INC. is limited to prospective injunctive relief only, and only in connection with releases of petroleum-related substances for which SUNOCO, INC. is found to be liable.

**TENTH AFFIRMATIVE DEFENSE**

10. Complainants' recovery is barred, in whole or in part, by Complainants' failure to mitigate any damages allegedly sustained.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Complainants' recovery is barred, in whole or in part, because Complainants allowed the alleged contamination to remain unremediated on the property and therefore SUNOCO, INC. is not liable for any damages associated with such contamination.

**TWELFTH AFFIRMATIVE DEFENSE**

12. SUNOCO, INC. did not own the property when the alleged releases of petroleum-related substances occurred.

WHEREFORE, SUNOCO, INC. prays for relief as follows:

- A. That Complainants take nothing by virtue of the Complaint, and that the Complaint be dismissed with prejudice;
- B. For costs of suit incurred herein; and
- C. For such other and further relief as the Board deems just and proper.

Dated: March 17, 2004

Respectfully submitted,

By 

One of the Attorneys for  
Respondent Sunoco, Inc. (R&M)

Jeffrey C. Fort (ARDC 851132)  
Letissa Carver Reid (ARDC 6255721)  
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312.876.8000

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**CERTIFICATE OF SERVICE**

I, Letissa Carver Reid, one of the attorneys for Respondent Sunoco, Inc. (R&M), certify that I have served a copy of the foregoing: (1) **NOTICE OF FILING**; (2) **APPEARANCES**; and (3) **RESPONDENT SUNOCO, INC.'S ANSWER TO COMPLAINT** upon:

Andrew H. Perelis, Esq.  
Seyfarth, Shaw LLP  
55 East Monroe Street  
Chicago, Illinois 60603  
312.346.8000

via **U.S. Mail**, postage prepaid, on this 17<sup>th</sup> day of March, 2004.

  
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Letissa Carver Reid