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SEP 28 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN, Attorney General  
State of Illinois,

Complainant,

vs.

SMITHFIELD PROPERTIES, L.L.C.  
an Illinois limited liability  
company, WOOTON CONSTRUCTION,  
LTD., an Illinois corporation, and  
CHICAGO SUN-TIMES, INC., a Delaware  
corporation,

Respondents.

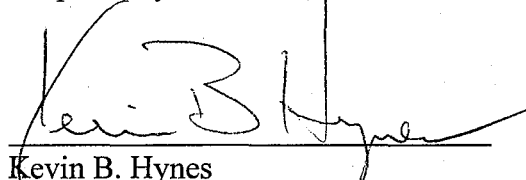
No. PCB No. 04-192  
(Enforcement – Land &  
Water)

**NOTICE OF FILING**

TAKE NOTICE that today I filed with the Clerk of the Illinois Pollution Control Board the attached Appearance and Answer, copies of which are hereby served upon you.

Dated: September 28, 2004

Respectfully submitted,



Kevin B. Hynes  
O'KEEFE, LYONS & HYNES, LLC  
30 N. LaSalle Street, Suite 4100  
Chicago, Illinois 60602  
(312) 621-0400

ATTORNEY FOR RESPONDENT  
WOOTON CONSTRUCTION, LTD.

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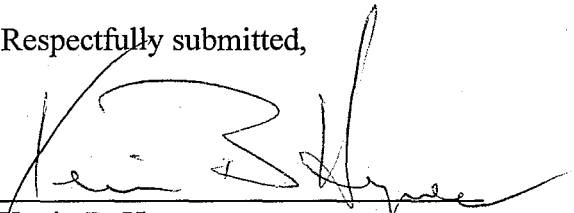
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(Enforcement – Land &  
Water)

APPEARANCE

I hereby file my appearance in this matter on behalf of the Respondent, Smithfield  
Properties IV, LLC.

Respectfully submitted,

  
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O'KEEFE, LYONS & HYNES, LLC  
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No. PCB No. 04-192  
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**ANSWER OF WOOTON CONSTRUCTION, LTD.**

NOW COMES the Respondent, Wooton Construction, Ltd. ("Wooton"), and answers the State's complaint as follows:

**I. VIOLATIONS BY SMITHFIELD AND WOOTON**

**COUNT I**

**FAILURE TO PERFORM SITE EVALUATION AND CLASSIFICATION**

1. This Complaint is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, Attorney General of the State of Illinois, 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 (2002).

**ANSWER:** The allegations set forth in this paragraph contain legal conclusions to which no response is required.

2. At all times relevant to this Complaint, Smithfield Properties, L.L.C. ("Smithfield") was and is an Illinois limited liability company.

**ANSWER:** The allegations set forth in this paragraph apply to a respondent other than Wooton. Wooton lacks sufficient knowledge to either admit or deny this paragraph.

3. At all times relevant to this Complaint, Wooton Construction, Ltd. ("Wooton") was and is an Illinois corporation.

**ANSWER: Admit.**

4. At all times relevant to this Complaint, the piece of land where the alleged violations occurred is located at 222 South Racine Avenue, Chicago, Illinois ("Site"). The Site used to be an industrial area which has now been developed into 42 town home units. For a number of years the Chicago Sun-Times, Inc., a Delaware corporation, ("Sun-Times") used the Site as a home for its Daily News fleet maintenance garage.

**ANSWER: Wooton admits that the property is located at 222 S. Racine Avenue, Chicago, Illinois. Wooton denies that any violations of the Act occurred at the Site.**

5. Historically, the Site has had several petroleum underground storage tanks ("USTs"). Some of the USTs were installed as far back as the 1950's. Some of the USTs have been removed and some still remain abandoned in place at the Site.

**ANSWER: Wooton admits that USTs were located at the Site. Wooton admits that some of the USTs have been removed from the Site or abandoned in place. Wooton lacks sufficient knowledge to admit or deny the time period during which all the tanks were installed at the Site.**

6. From Sometime prior to 1917 until it sold the property to Smithfield in October 1999, the Sun-Times was the owner of the Site and all of the USTs which were installed at the Site.

**ANSWER: Wooton admits that the Sun-Times was a prior owner of the Site. Wooton lacks sufficient knowledge to either admit or deny the remaining allegations set forth in this paragraph.**

7. On August 2, 1991, the Illinois State Fire Marshal received from the Sun-Times a Notification for Underground Storage Tanks which notified the State Fire Marshal that the Sun-Times was the owner and operator of eight (8) USTs at the Site.

**ANSWER: Wooton lacks sufficient knowledge to either admit or deny the allegations set forth in this paragraph.**

8. The Sun-Times used the USTs to store fuel for its fleet maintenance garage located at the Site.

**ANSWER: Wooton admits that the Sun-Times stored fuel at the Site.**

9. On April 23, 1999, the Sun-Times, after informing the Office of the State Fire Marshal ("OSFM"), removed one active 10,000 gallon unleaded gasoline UST from the Site. During removal, the Sun-Times discovered that a release of petroleum products had occurred in the vicinity of the 10,000 gallon unleaded gasoline UST at some undetermined time. The Sun-Times reported the release incident to the Illinois EPA which cataloged it as LUST Incident No. 99103. Sun-Times then performed remediation of the soil contaminated with gasoline at the vicinity where the 10,000 gallon unleaded gasoline tank was removed.

**ANSWER: Wooton lacks sufficient knowledge to either admit or deny the allegations set forth in this paragraph.**

10. On October 26, 1999, the Illinois EPA issued a No Further Remediation letter to the Sun-Times for LUST Incident No. 991013 based upon the 45 day/Corrective Action Completion Report submitted to the Illinois EPA by Sun-Times.

**ANSWER: Wooton admits that the Illinois EPA issued a No Further Remediation Letter for Incident No. 991013.**

11. Respondent Sun-Times did not perform a groundwater investigation to determine the extent of groundwater contamination at the time it removed the 10,000 gallon unleaded gasoline UST.

**ANSWER: Wooton lacks sufficient knowledge to either admit or deny the allegations set forth in this paragraph.**

12. On December 3, 1998, the Sun-Times entered into an agreement to sell the property to Kenard Investments, Inc. ("Kenard") and on October 27, 1999, Kenard assigned its interest to Smithfield. On June 6, 2002, almost four years after the sale, Sun-Times informed the OSFM that it had sold the property to Kenard.

**ANSWER: Wooton lacks sufficient knowledge to either admit or deny the allegations set forth in this paragraph.**

13. Prior to the sale of the Site, Sun-Times did not remediate the soil at the Site, with the exception of the small area impacted with gasoline under LUST Incident No. 991013. Sun-Times left in-place soil contaminated with either gasoline and/or diesel fuel from either leaking USTs and/or surface spills when Sun-Times was using the Site for a number of years as a fleet vehicle maintenance and refueling facility.

**ANSWER: Wooton lacks sufficient knowledge to either admit or deny whether the Sun-Times conducted remediation at the Site in addition to that in response to Incident No. 991013. Wooton admits that any contamination found at the Site was not caused or allowed by Wooton.**

14. At an unspecified date, Smithfield and Wooton began constructing a town house complex on the Site purchased from Sun-Times. Several of the town houses were constructed on top of the contaminated soil.

**ANSWER: Wooton admits that it contracted with Smithfield for the construction of town houses at the Site. Wooton denies the remaining allegations contained in this paragraph.**

15. In November 1999, Wooton removed an active 10,000 gallon diesel UST from the site. Wooton removed the UST without permission from the OSFM or a permit from the City of Chicago Department of the Environment.

**ANSWER: Wooton admits that in November 1999 Wooton contracted for the removal of a 10,000-gallon UST from the Site. Wooton denies any remaining allegations contained**

**in this paragraph.**

16. In the Spring of 2001, while Respondents Smithfield and Wooton were conducting construction related activities at the Site, an on-site drinking water main ruptured. Shortly after the rupture of the drinking water main, a resident of the new town homes at the Site reported a petroleum taste in his drinking water.

**ANSWER: Admit.**

17. When consultants hired by Wooton were investigating the petroleum tasting water complaint, they discovered that the soil in the area where the water main ruptured was contaminated with diesel fuel.

**ANSWER: Admit.**

18. Upon information and belief, Complainant alleges that the source of the soil contamination in the area where the water main ruptured was from one or more of the USTs owned and operated by Sun-Times and/or surface spills of petroleum products over a number of years when Sun-Times used the Site as a fleet vehicle maintenance and refueling facility.

**ANSWER: Wooton lacks sufficient knowledge to either admit or deny the allegations set forth in the paragraph. Wooton denies that it caused or allowed any contamination at the Site.**

19. In April 2001, Wooton retained an engineering firm to conduct subsurface investigation and remediation activities.

**ANSWER: Admit.**

20. On May 24, 2001, the engineering firm retained by Wooton submitted to the Illinois EPA LUST Section its remedial action completion report. The remediation consisted of removing 425 tons of diesel contaminated soil to a depth of 3 to 4 feet and backfilling the area with clean clay soil. Contaminated soil was removed from areas in the open courtyard in front of town home units numbers 23 through 42.

**ANSWER: Wooton admits that Wooton's consultant submitted a remedial action completion report to the Illinois EPA. Wooton further admits that the report described the removal of soil containing constituents indicative of diesel fuel.**

21. On July 27, 2001, the Illinois EPA rejected the remedial action completion report because contamination still remains at the site. Since groundwater was encountered at the Site, a full groundwater investigation should have been conducted to determine the extent of groundwater contamination.

**ANSWER: Wooton admits that the Illinois EPA rejected the remedial action completion report. Wooton denies the remaining allegations set forth in this paragraph.**

22. On January 28, 2002, the Illinois EPA received a groundwater classification study and Tier 2 evaluation submitted by Smithfield. On March 20, 2002, the Illinois EPA rejected the study because groundwater contaminant analysis was not conducted.

**ANSWER:** Wooton admits that Smithfield IV submitted a groundwater classification study and Tier 2 evaluation to the Illinois EPA. Wooton further admits that the Illinois EPA rejected the study. Wooton denies the remaining allegations set forth in this paragraph.

23. Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2002), titled, Underground storage tanks; early action, provides as follows:

- (a) Owners and operators of underground storage tanks shall, in response to all confirmed releases, comply with all applicable statutory and regulatory reporting and response requirements.

**ANSWER:** Wooton admits that the State has accurately quoted a portion of the Board's regulations.

24. Section 732.103 of the Illinois Pollution Control Board ("Board") Waste Disposal Regulations, 35 Ill. Adm. Code, 732.103 titled, Definitions, provides the following pertinent definitions:

"CORRECTIVE ACTION" means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act. (Section 57.2 of the Act.)

"RESIDENTIAL UNIT" means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives or dormitories.

"SITE" means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way. (Section 3.61 of the Act)

"UNDERGROUND STORAGE TANK" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto.

"UST SYSTEM" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"OCCURRENCE" means any release from an underground storage tank, including any additional release from that underground storage tank at the site identified in the course of performing corrective action in response to the initial release. (Section 57.2 of the Act)

"OSFM" means the Office of the State Fire Marshal.

"OPERATOR" means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (42 U.S.C. Section 6991)

"OWNER" in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances;

"PERSON" means, for the purposes of interpreting the definitions of the terms "owner" or "operator," an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body and shall include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 U.S.C. Section 6991)

"PETROLEUM" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 F and 14.7 pounds per square inch absolute). . (Derived from 42 U.S.C. Section 6991)

"PHYSICAL SOIL CLASSIFICATION" means verification of geological conditions consistent with regulations for identifying and protecting potable resource groundwater or verification that subsurface strata are as generally mapped in the publication Illinois Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," by Berg, Richard C., et al. Such classification may include review of soil borings, well logs, physical soil analysis, regional geologic maps, or other scientific publications (Section 57.2 of the Act).

"RELEASE" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils. (Section 57.2 of the Act)

**ANSWER:** Wooton admits that the State has accurately quoted a portion of the Board's regulations.

25. Pursuant to the definition of 35 Ill. Adm. Code 732.103, Respondents are owners of the USTs at the Site because the USTs were in use on November 8, 1984, or brought into use after that date.

**ANSWER:** The allegations set forth in this paragraph contain legal conclusions to which no response is required.

26. The USTs at the Site and their associated underground equipment are UST systems as that term is defined by 35 Ill. Adm. Code 731.103.

**ANSWER:** The allegations set forth in this paragraph contain legal conclusions to which no response is required.

27. There was a release of petroleum products on the Site on or before November 1999, as the term "release" is defined by 35 Ill. Adm. Code 722.103.

**ANSWER:** The allegations set forth in this paragraph contain legal conclusions to which no response is required.



28. Section 732.300(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.300(a), titled, General, provides as follows:

- (a) Except as provided in subsection (b) below, the owner or operator of any site subject to this Part shall evaluate and classify the site in accordance with the requirements of this Subpart C. All such sites shall be classified as "No Further Action," "Low Priority" or "High Priority". Site classifications shall be based on the results of the site evaluation, including, but not limited to, the physical soil classification and the groundwater investigation, if applicable.

**ANSWER:** Wooton admits that the State has accurately quoted a portion of the Board's regulations.

29. Section 732.307(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.307(a), titled, Site Evaluation, provides as follows:

- (a) Except as provided in Section 732.200(b), the owner or operator of any site for which a release of petroleum has been confirmed in accordance with regulations promulgated by the OSFM and reported to IEMA shall arrange for site evaluation and classification in accordance with the requirements of this Section. A Licensed Professional Engineer (or, where appropriate, persons working under the direction of a Licensed Professional Engineer) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified as required by the supervising Licensed Professional Engineer.

**ANSWER:** Wooton denies that the State has accurately quoted this section of the Board's regulations.

30. Section 732.100(c) of the Board Waste Disposal Regulations, titled, Availibility, provides as follows:

\* \* \*

- (c) Owners or operators subject to this Part by law or by election shall proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the "No Further Remediation" letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 732.105 of this Part to expedite investigative, preventive or corrective action by an owner or operator or to initiate such action.

**ANSWER:** Wooton admits that the State has accurately quoted a portion of the Board's regulations.

31. Respondents, Smithfield and Wooton as owners and/or operators of the Site where a release of petroleum products occurred did not perform a site evaluation and

classification in accordance with the requirements of 35 Ill. Adm. Code 732.300(a) and 732.307(a).

**ANSWER: The allegations set forth in this paragraph contain legal conclusions to which no response is required. To the extent that this paragraph contains any factual allegations, they are denied.**

32. By failing to perform site evaluation and classification in accordance with 35 Ill. Adm. Code 732.300(a) and 732.307(a), Respondents Smithfield and Wooton violated Section 732.100(c) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.100(c) and, thereby violated Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2002).

**ANSWER: Denied.**

## **COUNT II**

### **FAILURE TO COMPLY WITH REPORTING AND RESPONSE REQUIREMENTS**

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count II.

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

28. Section 732.200 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.200, titled, General provides as follows:

Owners and operators of underground storage tanks shall, in response to all confirmed releases of petroleum, comply with all applicable statutory and regulatory reporting and response requirements. (Section 57.6(a) of the Act) No work plan shall be required for conducting early action activities.

**ANSWER: Wooton admits that the State has accurately quoted a portion of the Board's regulations.**

29. Respondents Smithfield and Wooton failed to report the confirmed release of petroleum products at the Site in accordance with the requirement of 35 Ill. Adm. Code 732.200.

**ANSWER: Denied.**

30. By failing to report the confirmed release of petroleum products at the Site, Respondents Smithfield and Wooton violated Section 732.200 of the Board Waste Disposal Regulations, thereby violating Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2002).

**ANSWER: Denied.**

### COUNT III

#### FAILURE TO PERFORM INITIAL RESPONSE ACTIONS

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count III.

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

28. Section 732.203(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.202(a), titled, Early Action, provides as follows:

- a) Upon confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, shall perform the following initial response actions within 24 hours after the release:
  - 1) Report the release to IEMA (e.g., by telephone or electronic mail)
  - 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
  - 3) Identify and mitigate fire, explosion and vapor hazards.

**ANSWER:** Wooton admits that the State has accurately quoted a portion of the Board's regulations.

29. Respondents Smithfield and Wooton did not perform initial response actions within 24 hours after confirmation of the release of petroleum from the Site as required by 35 Ill. Adm. Code 732.203(a).

**ANSWER:** Denied.

30. By failing to perform initial response actions within 24 hours after the confirmed release of petroleum, Respondents Smithfield and Wooton violated Section 732.202 (a) of the Board Waste Disposal Regulations, thereby violating Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2002).

**ANSWER:** Denied.

### COUNT IV

#### FAILURE TO PERFORM INITIAL ABATEMENT MEASURES

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count IV.

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

28. Section 732.202(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.202(b), titled, **Early Action**, provides as follows:

- (b) Upon confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator shall perform the following initial abatement measures:
- 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
  - 2) visually inspect any above ground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;
  - 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
  - 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator shall comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;
  - 5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and
  - 6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 732.203 below.

**ANSWER: Wooton denies that the State has accurately quoted this section of the Board's regulations.**

29. Respondents Smithfield and Wooton did not adequately perform initial abatement measures after confirmation of the release of petroleum products.

**ANSWER: Denied.**

30. By failing to adequately perform initial abatement measures after confirmation of release, Respondents Smithfield and Wooten violated 35 Ill. Adm. Code 732.202(b) and thereby violated Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2002).

**ANSWER: Denied.**

## **COUNT V**

### **FAILURE TO ASSEMBLE INFORMATION ABOUT THE SITE**

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count V.

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

28. Section 732.202(d) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.202(d), titled, Early Action, provides as follows:

- d) Owners or operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) above. This information must include, but is not limited to, the following:
  - 1) Data on the nature and estimated quantity of release;
  - 2) Data from available sources or site investigations concerning the following factories: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
  - 3) Results of the site check required at subsection (b) (5) of this Section;
  - 4) Results of the free product investigations required at subsection (b) (6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 732.203.

**ANSWER: Wooton denies that the State has accurately quoted this section of the Board's regulations.**

29. Respondents Smithfield and Wooton as owners and/or operators of the Site where a release occurred did not assemble information about the Site and the nature of the release after confirmation of the release.

**ANSWER: Denied.**

30. By failing to assemble information about the Site and the nature of the release after confirmation of the release, Respondents Smithfield and Wooton violated 35 Ill. Adm. Code 732.202(d), thereby violating Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2002).

**ANSWER: Denied.**

## **COUNT VI**

### **FAILURE TO SUBMIT PHYSICAL SOIL CLASSIFICATION AND GROUNDWATER INVESTIGATION PLAN**

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count VI.

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

28. Section 57.7(a) (1) of the Act, 415 ILCS 5/57.7(a) (1) (2002), titled, Leaking Underground Storage Tanks; Site Investigation, and Corrective Action, provides as follows:

(a) Site Investigation.

- (1) For any site investigation activities required by statute or rule, the owner or operator shall submit to the Agency for approval a site investigation plan designed to determine the nature, concentration, direction of movement, rate of movement, and extent of the contamination as well as the significant physical features of the site and surrounding area that may affect contaminant transport and risk to human health and safety and the environment.

**ANSWER: Wooton admits that the State has accurately quoted this section of the Act.**

29. Respondents Smithfield and Wooton, as owners and operators of the Site where a release of petroleum products occurred, failed to submit to the Illinois EPA a site investigation plan in accordance with the requirements of Section 57.7(A) (1) of the Act, 415 ILCS 5/57.7(a) (1) (2002).

**ANSWER: Denied.**

30. By failing to submit to the Illinois EPA a site investigation plan in accordance with the requirements of Section 57.7(a) (1), Respondents Smithfield and Wooton violated Section 57.7(a) (1) of the Act, 415 ILCS 5/57.7(a) (1) (2002).

**ANSWER: Denied.**

## COUNT VII

### CAUSING OR TENDING TO CAUSE WATER POLLUTION

1-22. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count VII.

**ANSWER:** Wooton incorporates its answers to paragraphs 1 through 22 of Count I as its answers to paragraphs 1 through 22 of this Count VII.

23. Section 12(a) of the Act, 415 ILCS 5/12 (a) (2002) provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of a contaminant 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.

**ANSWER:** Wooton admits that the State has accurately quoted Section 12(a) of the Act.

24. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines person 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:** Wooton admits that the State has accurately quoted this section of the Board's regulations.

25. Respondents Smithfield and Wooton are each a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

**ANSWER:** Admit.

26. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines contaminant as “any solid, liquid or gaseous matter, any odor, or any form of energy, from whatever source.”

**ANSWER:** Admit.

27. Diesel or gasoline fuel which was released from one or more USTs in waters of the State is a contaminant (sic) as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

**ANSWER:** Wooton admits that diesel fuel and gasoline are “contaminants” as that term is defined in Section 3.165 of the Act. Smithfield IV denies the remaining allegations contained in this paragraph.

28. Section 3.545 of the Act, 415 ILCS 53.545 (2002), defines water pollution:

"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 contamination 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: Wooton admits that the State has accurately quoted Section 3.545 of the Act.**

29. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), defines "Waters of the State" 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: Wooton admits that the State has accurately quoted Section 3.550 of the Act.**

30. The underground water at the Site which was contaminated by the release of diesel and/or gasoline fuel from one or more of the USTs and/or surface spills is a water of the State as the term "water" is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2002); (sic)

**ANSWER: The allegations set forth in this paragraph contain legal conclusions to which no response is required. To the extent that this paragraph contains any factual allegations, they are denied.**

31. From sometime prior to November 1999, until the date of filing of this Complaint, the groundwater at the site remains contaminated with diesel and/or gasoline fuel released from one or more USTs and/or from surface spill of petroleum products during Sun-Time's long usage of the Site as a garage and refueling station for its fleet vehicles.

**ANSWER: Denied.**

32. Respondents Smithfield and Wooton took no action to remediate the groundwater contamination at the Site; (sic)

**ANSWER: Denied.**

33. Respondents Smithfield and Wooton by their actions and/or inactions caused, threatened, or allowed the discharge of contaminants, into the environment so as to cause or tend to cause water pollution in Illinois.

**ANSWER: Denied.**



## COUNT VIII

### FAILURE TO SUBMIT A 45-DAY REPORT

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count VIII.

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

28. Section 732.202(e) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 732.202(e) titled, Early Action, provides as follows:

- (e) Within 45 days after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, owners or operators shall submit to the Agency the information collected in compliance with subsection (d) above in a manner that demonstrates its applicability and technical adequacy. The information shall be submitted on forms prescribed by the Agency or in a similar format containing the same information.

**ANSWER:** Wooton denies the State has accurately quoted this portion of the Board's regulations.

29. In November 1999, when Smithfield and Wooton removed the active 10,000 gallon diesel UST from the Site, they were the owners and/or operators of the UST.

**ANSWER:** The allegations set forth in this paragraph contain legal conclusions to which no response is required. To the extent that this paragraph contains any factual allegations, they are denied.

30. Respondents Smithfield and Wooton as owners and/or operators of the UST system and/or Site where the release of petroleum products occurred, did not submit a report summarizing information about the Site and nature of the release within 45 days after confirmation of the release.

**ANSWER:** The allegations set forth in this paragraph contain legal conclusions to which no response is required. To the extent that this paragraph contains any factual allegations, they are denied.

31. By failing to submit a report summarizing information about the Site and nature of the release within 45 days after confirmation of the release, Respondents Smithfield and Wooton violated 35 Ill. Adm. Code 732.202(e) and thereby, also violated Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2002).

**ANSWER:** Denied.

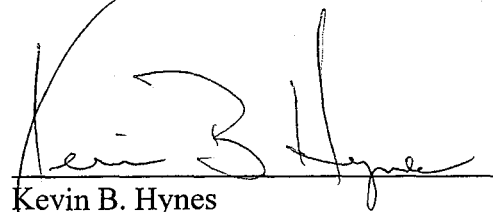
**II. VIOLATIONS BY CHICAGO SUN-TIMES**

**COUNT IX-COUNT XI**

**ANSWER:** The allegations set forth in Counts IX through Count XI pertain to a Respondent other than Wooton. Accordingly, no answer is required.

WHEREFORE Wooton requests that the Board enter an order dismissing the State's complaint and awarding Wooton its costs and fees incurred in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin B. Hynes", is written over a horizontal line.

Kevin B. Hynes  
O'KEEFE, LYONS & HYNES, LLC  
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ATTORNEYS FOR WOOTON

**CERTIFICATE OF SERVICE**

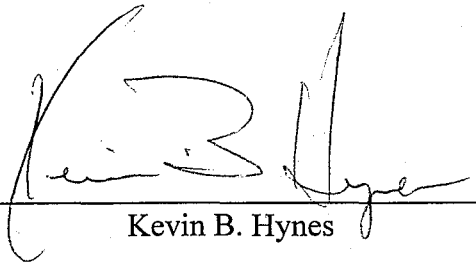
I, Kevin B. Hynes, an attorney, certify that on September 28, 2004, I caused the foregoing Notice of Filing, Appearance, and Answer to be served by First Class, postage prepaid,

U.S. Mail on the following:

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Kevin B. Hynes