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MAY 17 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD

GRAND PIER CENTER LLC)
AMERICAN INTERNATIONAL)
SPECIALTY LINES INSURANCE CO.)
as subrogee of Grand Pier Center LLC)
Complainants)
v.)
RIVER EAST LLC)
CHICAGO DOCK AND CANAL TRUST)
CHICAGO DOCK AND CANAL COMPANY)
KERR-MCGEE CHEMICAL LLC)
Respondents)

PCB 05-157
(Enforcement)

COMPLAINANTS' OPPOSITION TO MOTION TO FILE REPLY,
OR ALTERNATIVELY, MOTION TO FILE SURREPLY

Complainants Grand Pier Center LLC and American International Specialty Lines Insurance Co. (collectively "Grand Pier") respectfully oppose Kerr-McGee's motion to file a Reply. However, should the Board allow Kerr-McGee's Reply, Grand Pier requests leave to file the Surreply tendered herewith, *instanter*.

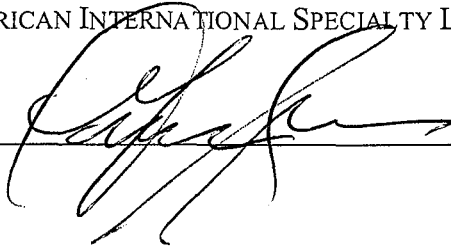
The Reply tendered by Kerr-McGee mischaracterizes Grand Pier's Complaint filed with the Board, it mischaracterizes Grand Pier's Second Amended Complaint pending before the federal district court, and it mischaracterizes Grand Pier's position taken in opposition to Kerr-McGee's motion to dismiss.

WHEREFORE, Grand Pier prays Kerr-McGee's motion to file a Reply be denied, or alternatively, leave be granted to Grand Pier to file a Surreply, tendered herewith.

Respectfully submitted this 17th day of May 2005

GRAND PIER CENTER LLC
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE CO.

By _____



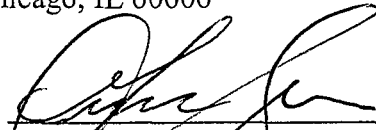
Frederick S. Mueller
Daniel C. Murray
Garrett L. Boehm, Jr.
JOHNSON & BELL, LTD.
Suite 4100
55 East Monroe Street
Chicago, Illinois 60603-5803
Tel. 312 372 0770

CERTIFICATE OF SERVICE

I, the undersigned, on oath, state that I have served on the date of May 17, 2005, the attached **Complainants' Opposition to Motion to file Reply, or alternatively, Motion to file Surreply** by Certified mail, upon the following persons:

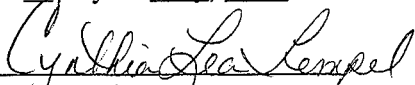
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Suite 1200
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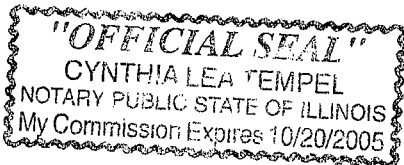


Garrett L. Boehm, Jr.
JOHNSON & BELL, LTD.
55 East Monroe Street, Suite 4100
Chicago, IL 60603
(312) 372-0770

Subscribed to and sworn before me
This 17 day of May, 2005.


Notary Public

My commission expires: Oct. 20, 2005



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KERR-MCGEE CHEMICAL LLC)
Respondents)

PCB 05-157
(Enforcement)

COMPLAINANTS' SURREPLY IN OPPOSITION TO MOTION TO DISMISS

Complainants Grand Pier Center LLC and American International Specialty Lines Insurance Co. (collectively "Grand Pier") submit this Surreply in opposition to Kerr-McGee's motion to dismiss.

I. Board Precedent Shows This Complaint Is Not Duplicative.

In an attempt to salvage its argument that the complaint before the Board is duplicative of the Second Amended Complaint pending in federal court, Kerr-McGee points to a single paragraph in the 13-page Second Amended Complaint, but omits to point out to the Board that the cited paragraph is part of a supplemental state law claim under the Illinois Joint Tortfeasors Contribution Act, 740 ILCS 100 / 2. See Kerr-McGee's Ex. A, pages 11-12. Simply put, that the same acts committed by Kerr-McGee may give rise to two separate and distinct claims – one under the Illinois Contribution Act, and the other under the Illinois Environmental Protection Act – perforce establishes the claims are not duplicative.

As already demonstrated in Grand Pier's Memorandum in Opposition, the federal district courts have refused to entertain the type of IEPA claims which Grand Pier has pled in its Complaint before the Board, and Kerr-McGee does not assert the Board would accept a claim pled under the Illinois Contribution Act. Clearly, the claims are separate, and neither does Kerr-McGee reply to Grand Pier's argument at page 2 of Grand Pier's Memorandum in Opposition that the law does not require Complainants to choose between asserting their rights in federal court or before the Board, when the law plainly provides that Complainants possess IEPA claims the federal court will not accept, and Complainants also possess Illinois Contribution Act claims that this Board would not accept. Thus, to buy into Kerr-McGee's position would be to immediately foreclose one or another of the statutory rights granted to Grand Pier by the Illinois legislature which passed these two separate regimes. Kerr-McGee cites no authority for its position that Grand Pier must be put to an election of its separate rights provided to it by law.

The American Heritage Dictionary of the English Language, Fourth Edition (2000), defines duplicate as "an identical copy" and "one that corresponds exactly to another." For the very reason that Grand Pier's claims under the two statutes (IEPA and Contribution Act) must be brought in separate fora, a point Kerr-McGee does not dispute, perforce shows the two claims are not "identical," nor do they "correspond exactly," and hence, are not duplicative.

Kerr-McGee also argues that because Grand Pier has not asked the Board to impose civil penalties on it, the Complaint is duplicative of the Second Amended Complaint. If this be the determinative factor on whether the two complaints are duplicative, then Grand Pier will seek civil penalties in an Amended Complaint before the Board.

II. The Board Has Authority to Require Reimbursement of Clean-Up Costs.

Kerr-McGee in its Reply apparently drops its earlier challenge to the Board's authority to order the reimbursement of clean-up costs, but says now that this is not an "appropriate" case for the Board to hear. Reply p. 4. While Grand Pier is confident the Board will not now graft on to its review process a new "appropriateness" standard (whatever that may mean), Grand Pier believes that radioactive thorium-contaminated soil and groundwater in Chicago's Streeterville neighborhood is "appropriate" for redress in all fora that are available to those who are damaged or injured thereby, now and in the future. Kerr-McGee also trots out the familiar parade of horrors, opining that if the Board "were to accept Grand Pier's theory of the merits, it may open itself to a wide array of new private-party petitions seeking overlapping relief on matters . . . addressed by CERCLA." Reply p. 3. Kerr-McGee cites to absolutely nothing in support of this utterly self-serving averment.

III. The Act Governs the Claims.

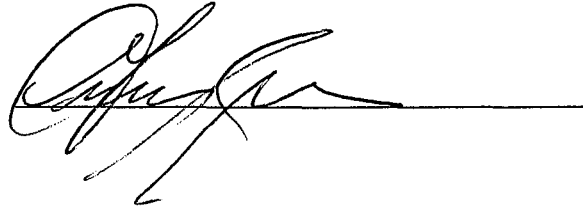
Kerr-McGee in its Reply wrongly states Grand Pier "is not seeking retroactive application of the Act." Reply p. 3. On the contrary, Grand Pier asserts all its rights under the Act, including its retroactive application discussed in the 2004 case of *State Oil Co. v. Pollution Control Board*, 822 N.E.2d 876 (2d Dist. 2004), which Grand Pier cited at page 4 of its Memorandum in Opposition, which Kerr-McGee omits to even mention in its Reply. As for Kerr-McGee's "acts," the simple truth is Kerr-McGee's predecessors dumped the radioactive material in an urban area, and Grand Pier thereafter became entangled with the property, with Grand Pier incurring costs of removal of Kerr-McGee's waste, for which Grand Pier now seeks cost recovery. The Complaint alleges not only that Kerr-McGee dumped the waste, but that it failed to remove the waste when removal began in the year 2000.

For all the foregoing reasons, Kerr-McGee's Motion to Dismiss is without merit. Complainants request the Board to deny the motion, finding the Complaint neither duplicitous nor frivolous. Alternatively, Grand Pier requests leave to file an Amended Complaint, and prays for such other relief as is just.

Respectfully submitted this 17th day of May 2005

GRAND PIER CENTER LLC
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE CO.

By:

A handwritten signature in black ink, appearing to read 'F. Mueller', is written over a solid horizontal line.

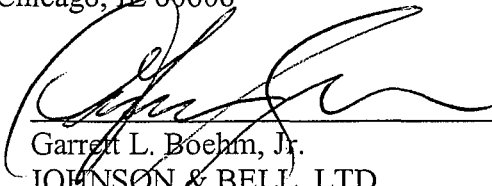
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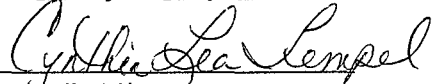
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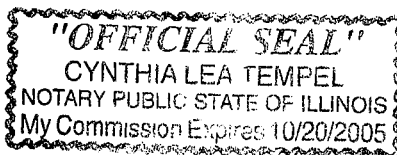


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