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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

MATHER INVESTMENT  
PROPERTIES, L.L.C.,

Plaintiff,

v.

ILLINOIS STATE TRAPSHOOTERS  
ASSOCIATION, INC.,

Defendant.

Case No. 05-29

**NOTICE OF FILING**

To: Mr. Richard Ahrens  
Lewis, Rice & Fingersh  
500 N. Broadway  
Suite 2000  
St. Louis, MO 63102-2147

Mr. Fred Prillaman  
Mohan, Alewelt, Prillaman &  
Adami  
1 North Old State Capital  
Springfield, IL 62701-1323


Mr. Edward Meyer  
President, Illinois State  
Trapshooters Association  
314 West Park Street  
Edwardsville, IL 62025

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board a Complaint, a copy of which is herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. IF you have any questions, about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

Dated this 16<sup>th</sup> day of August, 2004.

Respectfully submitted,

MATHER INVESTMENT  
PROPERTIES, L.L.C., PLAINTIFF

By:   
One Of Its Attorneys

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**PROOF OF SERVICE**

The undersigned hereby certifies that an original and ten copies of the foregoing document were served by Federal Express to:

Dorothy Gunn, Clerk  
Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

and one copy of the foregoing document was served by placing same in a sealed envelope addressed to:

Mr. Richard Ahrens  
Lewis, Rice & Fingersh  
500 N. Broadway  
Suite 2000  
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Via Certified Mail

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Via Certified Mail

and by depositing same in the United States mail in Springfield, Illinois, on the 16<sup>th</sup> day of August, 2004, with postage fully prepaid.



Sorling, Northrup, Hanna  
Cullen & Cochran, Ltd.  
Charles J. Northrup, of Counsel  
Suite 800 Illinois Building  
P.O. Box 5131  
Springfield, IL 62705  
Telephone: 217.544.1144

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**COMPLAINT**

NOW COMES Complainant Mather Investment Properties, L.L.C., an Illinois Limited Liability Company, by and through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, R. Gerald Barris and Charles J. Northrup, of counsel, and for its Complaint against Respondent Illinois Trapshooters Association, Inc., states as follows:

1. Panther Creek Office Park, LLC (hereinafter PANTHER CREEK) is an Illinois Limited Liability Company located in Springfield, Illinois.
2. Mather Investment Properties LLC (hereinafter MATHER) is an Illinois Limited Liability Company located in Springfield, Illinois.
3. Respondent Illinois State Trapshooters Association, Inc. (hereinafter TRAPSHOOTERS) is an Illinois not-for-profit corporation.
4. On or about October 13, 1998 PANTHER CREEK entered into a contract to purchase approximately 64 acres of real estate in Sangamon County, Illinois (hereinafter the PROPERTY) from TRAPSHOOTERS, located southwest of the City of Springfield, Illinois, generally at the

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intersection of Interstate 72 and Illinois Route 4, commonly known as 3006 Mathers Road, and legally described as:

The South 3.88 acres of the East Half of the Southeast Quarter of Section 13;

The Northeast Quarter of the Northeast Quarter of Section 24; EXCEPTING THEREFROM a 0.102 acre tract conveyed to the State of Illinois, Department of Transportation, by Warranty Deed dated May 6, 1994, and recorded June 27, 1994 as Document No. 94-26746;

The South 3.91 acres of West Half of the Southeast Quarter of said Section 13;

The Northwest Quarter of Northeast Quarter of said Section 24; All in township 15 North, Range 6 West of the Third Principal meridian in Curran Township;

Situated in Sangamon County, Illinois.

5. On or about August 24, 1999, PANTHER CREEK, TRAPSHOOTERS and MATHER amended the contract and confirmed its assignment to MATHER.

6. MATHER has performed all of its obligations under the contract and took title to the PROPERTY on September 28, 2000.

7. At times known better by TRAPSHOOTERS, but since the 1930's, an outdoor gun shooting range, more recently known as the Mather Gun Club, operated on the PROPERTY.

8. At times known better by TRAPSHOOTERS, but at least between 1988 and 1998, TRAPSHOOTERS owned the PROPERTY and operated it as an outdoor gun shooting range.

9. During the TRAPSHOOTERS ownership and operation of the PROPERTY, lead shot, as well as broken clay targets, were discharged, deposited, and otherwise come to be located on the PROPERTY as a result of activities at the outdoor gun shooting range.

10. Prior to September, 1998, TRAPSHOOTERS had been considering selling the PROPERTY for development and had stopped using the property as an outdoor shooting range.

11. For over a decade prior to September, 1998, Trapshooters intentionally left and abandoned broken clay targets and lead shot in the soil and rented the property to be farmed and had the land and clay targets tilled into the soil each year.

12. Prior to September, 1998 TRAPSHOOTERS retained an environmental consultant to prepare a Phase I environmental assessment of the PROPERTY. In September, 1998, such an environmental assessment was prepared. Despite the use of the PROPERTY as a gun range for approximately more than 50 years, that assessment identified no "recognized environmental condition" associated with the PROPERTY.

13. In or about September, 1998, the Phase I environmental assessment identified above in paragraph eleven was provided to MATHER as evidence of the environmental condition of the PROPERTY.

14. Based upon the representation in the TRAPSHOOTERS' Phase I environmental assessment that there were no "recognized environmental conditions" at the PROPERTY, MATHER, as noted above in paragraph eleven, purchased the PROPERTY for commercial development.

15. On August 17, 2001, the Illinois Environmental Protection Agency sent a letter to MATHER informing it that any development or construction on the PROPERTY would be a new use of the PROPERTY, and taken in combination with the contamination resulting from activities at the former shooting range, could pose an unacceptable risk to human health and/or the environment. (A true and exact copy of the IEPA letter is attached as Exhibit 1.)

16. Subsequent to receipt of the August 17, 2001 letter from the Illinois EPA, MATHER retained an independent and qualified environmental consultant to delineate the scope and extent of

the presence of lead fragments, broken clay targets, and associated contamination, address concerns with the Illinois EPA, and develop a remedial plan for the PROPERTY. To date, MATHER has incurred costs to this consultant (not including subcontractors or analytical costs) in excess of \$ 180,000.

17. Subsequent to the receipt of the August 17, 2001 letter from the Illinois EPA, MATHER'S environmental consultant identified a "shot fall zone" across the length of the PROPERTY which contains lead fragments, broken clay targets, and associated contamination. This "shot fall zone" represents approximately 30 acres of the entire 64 acre property.

18. In or about July, 2002, and with the consent of the Illinois EPA, MATHER caused and paid for the surface soil of the "shot fall zone" to be "mined" for lead resulting in the collection of approximately 161,000 lbs of lead fragments. The cost of this activity was approximately \$103,000. Additional lead fragments and associated contamination remains on-site.

19. In or about July, 2002, and at the request of the Illinois EPA, MATHER caused and paid for the removal of broken clay targets on a portion of the PROPERTY. The cost of this activity was approximately \$ 30,000. Additional broken clay targets may remain on-site.

20. As of the filing of this Complaint, no development of any kind has taken place on the PROPERTY.

## **COUNT I**

### **(415 ILCS 5/21(e) - Waste Abandonment)**

1-20. Complainant hereby realleges and restates the allegations of paragraphs one through 15 of the General Allegations above as paragraphs one through 15 of this Count I.

21. Section 21(e) of the Act provides that:

No person shall:

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

415 ILCS 5/21(e).

22. By not using the property as an outdoor shooting range and/or transferring the PROPERTY to MATHER as described above in paragraphs four and five, TRAPSHOOTERS abandoned the lead fragments, broken clay targets, and associated contamination existing on the PROPERTY.

23. Section 3.53 of the Act defines "waste" as follows:

"WASTE" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.94, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or discharged material from any facility subject to Federal Surface Mining Control and Reclamation Act of 1977 or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

24. The lead fragments, broken clay targets, and associated contamination currently existing on the PROPERTY, and existing at the time of the transfer of the PROPERTY, constitute "waste."

25. At the time the TRAPSHOOTERS abandoned the waste at the PROPERTY, the

PROPERTY was not permitted by the Illinois EPA as a waste disposal, treatment or storage site and thus did not meet any requirements of the Act or regulations or standard promulgated thereunder.

WHEREFORE, for the above reasons, Complainant MATHER respectfully requests that this Board enter an Order on this Count I declaring, adjudging and decreeing as follows:

(a) That Respondent TRAPSHOOTERS violated Section 21(e) of the Illinois Environmental Protection Act (415 ILCS 5/21(e));

(b) That pursuant to Section 42(a) of the Illinois Environmental Protection Act Respondent TRAPSHOOTERS shall pay a civil penalty of \$50,000 for each such violation;

(c) That pursuant to Section 42(a) of the Illinois Environmental Protection Act Respondent TRAPSHOOTERS shall pay an additional civil penalty of \$10,000 per day during which such violation continued;

(d) That Respondent TRAPSHOOTERS shall cease and desist from all further violations the Illinois Environmental Protection Act, and shall remediate any lead fragments, broken clay targets, and associated contamination remaining on the property to levels appropriate under the Illinois Environmental Protection Act but no less stringent than TACO Tier One Residential Site Remediation Objectives as referenced in 35 Ill. Adm. Code Part 742;

(e) That Respondent TRAPSHOOTERS shall take any other remedial action in response to the presence of lead fragments, broken clay targets, and associated contamination that this Board deems reasonable and appropriate;

(f) That Respondent shall reimburse MATHER for all remedial action costs that MATHER has incurred or will incur as a result of the lead fragments, broken clay targets, and associated contamination, on the property including but not limited to:

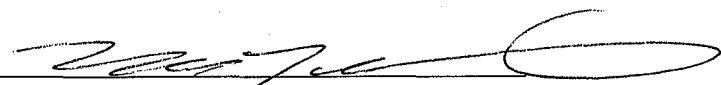


- (i) costs of investigation;
- (ii) costs of soil removal and disposal;
- (iii) costs of prior lead "mining" and other remedial actions;
- (iv) costs of any future monitoring or remediation if necessary.

(g) That Complainant MATHER shall be entitled to recover all other relief that the Board deems just and proper in this case.

Respectfully submitted,

MATHER INVESTMENT  
PROPERTIES, L.L.C., PLAINTIFF

By:   
One Of Its Attorneys

Sorling, Northrup, Hanna  
Cullen & Cochran, Ltd.  
Charles J. Northrup, of Counsel  
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Springfield, IL 62705  
Telephone: 217.544.1144

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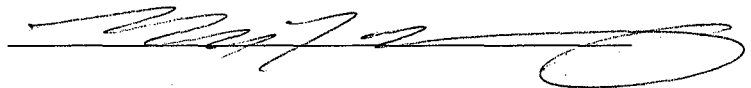
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## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

217/785-9407

THOMAS V. SKINNER, DIRECTOR

August 17, 2001

Mr. Leonard W. Sapp, Managing Partner  
Mather Investment Properties, LLC  
1999 West Wabash Avenue  
Springfield, Illinois 62704

Re: 1671205736 – Sangamon County  
Mather Gun Club (Mather Investment Properties)  
General Correspondence

Dear Mr. Sapp:

The purpose of this letter is to offer compliance assistance and perspective from the Illinois Environmental Protection Agency ("Illinois EPA") on the future redevelopment of the Mather Gun Club and associated properties in Springfield, Illinois. On June 19, 2001, the Springfield City Council passed two ordinances (Ordinance Numbers 343-06-01 and 344-06-01) regarding the annexation and zoning of the subject properties. Additionally, the Illinois EPA has been contacted by the public regarding potential heavy metal (primarily lead and arsenic) and polynuclear aromatic hydrocarbon ("PNA" or "PAH") contamination at the Mather Gun Club property due to the former use of the property as a trap and skeet shooting range.

If there are contaminants present at the site, there is the potential for the establishment of new or the exacerbation of existing contaminant exposure pathways during and after the redevelopment of the property which pose an unacceptable risk to human health and/or the environment. Be advised that if there is contamination present at the site that poses an unacceptable risk to human health or the environment or if the redevelopment of the site creates new exposure pathways that allows contamination at the site to pose an unacceptable risk to human health or the environment, all past, present and future owners of the property may be subject to liability pursuant to the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and/or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund). Please understand that the Illinois EPA has not inspected the property, but that this letter is based on Illinois EPA's past experiences with the redevelopment of former shooting ranges. It is based on these experiences that we offer the following discussion:

**EXHIBIT**

1

GEORGE H. RYAN, GOVERNOR

AUG 24 2001

August 17, 2001

Letter to Mr. Leonard W. Sapp

Regarding the Redevelopment of the Former Mather Gun Club

Page 2 of 3

**What activities or actions need to be conducted prior to transfer and redevelopment of the site?**

The Illinois EPA recommends that a Phase 1 (and potentially a Phase 2) Environmental Assessment be conducted prior to any transfer of the property. The purpose of this assessment is to identify any potential environmental problems to both the purchaser and seller.

If there is contamination identified at the site, from either the past use as a trap and skeet range or some other use, the current owner or future owner may choose to address the contamination on a voluntary basis through the Illinois Site Remediation Program ("SRP"). Upon completion of this process, the site would be issued a "No Further Remediation" ("NFR") letter that would be filed with the County Recorder. It is recommended that if new facilities are to be constructed, these facilities be constructed in areas that have been addressed through the SRP. This insures that new or different users of the property do not have exposure to unacceptable risks from any contamination.

Regarding any potential lead contamination at the site, typically, owners and/or operators of shooting ranges and trap, skeet and shooting sports clubs periodically mine the projectile backstops and shot fall zones to recover the metal values present (primarily lead) as scrap metal. Any residual contamination resulting from the operation of the shooting range would typically be addressed at the end of the operation of the facility on a voluntary basis.

**What permits and application forms need to be completed and where can these be acquired?**

With regard to the potential environmental remediation at the site, forms for enrollment in the SRP are available from the Illinois EPA or from the Illinois EPA SRP web site at "<http://www.epa.state.il.us/land/site-remediation/index.html>". At this web site, it is possible to download the three PDF forms that are necessary for enrollment into the SRP. Some of the potentially necessary remedial activities may need permits, but most do not. Specific questions can be addressed during the planning for any remedial activities based on the types of activities needed.

Presently and historically, no State or Federal environmental permits are required for rifle and pistol ranges, skeet, trap and shooting sports ranges as long as the shooting exercises do not impact environmentally sensitive areas, and are not into or over waters of the State of Illinois including any wetlands. This is consistent with federal court cases considering whether federal environmental regulatory requirements apply to shooting ranges. See *Connecticut Coastal Fishermen's Assoc. v. Remington Arms Co.*, 989 F.2d 1305 (2d Cir.1993); *Long Island Soundkeeper Fund v. New York Athletic Club*, 1996 WL 131863 (S.D.N.Y.); and, *Stone v. Naperville Park District, et al.*, 38 F. Supp. 2d 651 (N.D. Ill. 1999).

August 17, 2001

Letter to Mr. Leonard W. Sapp

Regarding the Redevelopment of the Former Mather Gun Club

Page 3 of 3

However, the Illinois EPA would like to emphasize that even though no environmental permits were or are generally required for the operation of a shooting range, environmental permits **may** be required for such activities as moving contaminated soil to other parts of the site, creating piles of contaminated soils, and moving contaminated soils off site. It is important to note that if, during the change in land use from a firearms range to some other use, a situation develops which presents an uncontrolled risk to human health or the environment, the Illinois EPA does have the authority to order or compel the responsible party to conduct the necessary environmental remediation and seek cost recovery from the responsible parties. It is suggested that you contact the Illinois EPA before performing any of these activities.

**What is the name and phone number of the contact person at the Illinois EPA who would be responsible for monitoring this project's completion?**

A project manager would be assigned to the project when/if the site is enrolled in the SRP.

If you should have any additional questions regarding this matter, or wish to discuss any of these issues further, please contact me at 217/785-9407. For additional information regarding the Illinois EPA's Voluntary Site Remediation Program, please contact Lawrence W. Eastep, P.E., Manager of the Bureau of Land's Remedial Project Management Section at 217/782-9802. For additional information regarding lead contamination issues at shooting ranges, please contact Clarence L. Smith, Manager of the Bureau of Land's Federal Site Remediation Section at 217/524-1655.

Respectfully,



William C. Child, Chief  
Bureau of Land

cc: Mr. Chris Danos  
Wal-Mart Stores, Inc.  
2001 Southeast 10<sup>th</sup> Street  
Bentonville, Arkansas 72716-0550