

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

2222 ELSTON LLC, an Illinois limited liability company,
Complainant,

PCB No. 03-55

v.

PUREX INDUSTRIES, INC., a Delaware corporation, FEDERAL DIE CASTING CO., an Illinois corporation, FEDERAL CHICAGO CORP., an Illinois corporation, RAYMOND E. CROSS, an Illinois resident, BEVERLY BANK TRUST NO. 8-7611, an Illinois trustee, and LAKESIDE BANK TRUST NOS. 10-1087 & 10-1343, an Illinois trustee,
Respondents.

ANSWER TO COMPLAINT

Respondents, Federal Die Casting Co., an Illinois corporation, Federal Chicago Corp., an Illinois corporation, and Raymond E. Cross, an Illinois resident (hereinafter collectively referred to as "Federal Respondents"), for their answer to the Complaint of 2222 Elston LLC ("Elston"), an Illinois limited liability company, by and through its undersigned attorneys, state as follows:

STATEMENT OF THE CASE

1. Elston brings this action for cost recovery pursuant to Section 31(d) of the Illinois Environmental Protection Act (the "Act"), 415 ILL. COMP. STAT. 5/31(d). In January 2000, Elston acquired property commonly known as 2228 N. Elston Avenue (the "Site"), and described as follows: That part of Lots 1 to 5 in Block 4 in Fullerton's Addition to Chicago in the west 1/2 of the northeast 1/4 of Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: Beginning at the most northerly corner of Lot 1; thence south 45 degrees 00 minutes 00 seconds east along the northeasterly line of said lots, 99.32 feet; thence south 45 degrees 01 minutes 12 seconds west 52.25 feet; thence north 46 degrees, 17 minutes, 52 seconds west 76.48 feet; thence south 45 degrees, 02 minutes

56 seconds west 7.50 feet; thence north 44 degrees 59 minutes 01 seconds west 22.85 feet to the northwesterly line of said Lot 1; thence north 45 degrees 00 minutes 59 seconds east along said northwesterly line 61.48 feet to the point of beginning, in Cook County, Illinois.

ANSWER:

Federal Respondents admit that Complainant purports to bring this action for cost recovery pursuant to Section 31(d) of the Illinois Environmental Protection Act, 415 Ill. Comp. Stat. 5/31(d). Federal Respondents lack knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1, and therefore deny each and every allegation contained therein.

2. While seeking to restore certain vacant buildings on and adjacent to the Site into active commercial properties, Elston discovered 17 underground storage tanks (“USTs”) at the Site. These USTs contained, among other things, extremely high concentrations of polychlorinated biphenyls (“PCBs”), volatile organic compounds (“VOCs”) and used or waste tires.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and therefore deny each and every allegation contained therein.

3. Since this discovery, Elston has determined that the contents of these USTs have leaked into the soil at the Site, and has conducted certain response actions necessary to address threats to human health and the environment that might result from the UST contamination. Elston has spent approximately \$500,000, exclusive of attorneys' fees and interest, in connection with response actions performed at the Site to date.¹ In addition, Elston will continue to incur costs while conducting such further response actions as may be required to fully remediate the Site.

¹ Elston's costs do not include approximately \$350,000 in tax increment financing incentives allocated and incurred by the City of Chicago at the Site.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 3.

4. Elston has determined that Purex, FDC, FCC, Cross, Beverly and Lakeside owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon from 1913 through January 2000. During the period 1970 through January 2000, Respondents violated Sections 21(a), 21(b), 21(d), 21(e), 21(f), 12(a), 12(d) and 55(a) of the Act.

ANSWER:

Paragraph 4 contains conclusions of law to which no response is required. To the extent that Paragraph 4 contains allegations of fact, Federal Respondents deny each and every such allegation contained therein.

5. Elston seeks recovery of cleanup costs already incurred at the Site, and an order that Respondents reimburse Elston for all remaining cleanup costs.

ANSWER:

Federal Respondents admit that Elston purports to seek recovery of cleanup costs from Federal Respondents. Federal Respondents deny each and every other allegation contained in Paragraph 5.

PARTIES

6. Elston is an Illinois limited liability company with its principal place of business located at 1156 W. Armitage Avenue, Chicago, Illinois 60614. Elston acquired the Site in January 2000, and shortly thereafter discovered and began to conduct cleanup activities to address historical violations of the Act caused by Respondents at the Site.

ANSWER:

Federal Respondents deny that they have caused any historical violations of the Act. Federal Respondents lack knowledge sufficient to form a belief as to the truth of the remaining allegations contained within Paragraph 6, and therefore denies each and every allegation contained therein.

7. On information and belief, Purex is a Delaware corporation with its principal place of business located at 535 E. Alondra Boulevard, Gardena, California 90248. On information and belief, on or about June 30, 1964, Purex acquired a firm known as T. F. Washburn Company ("Washburn") through a statutory merger. As a result, Purex succeeded to all of the liabilities of Washburn relating to the Site. On information and belief, Purex acquired and began varnish operations on Lots 2, 3 and 4 at the Site in 1913, and on Lot 1 in 1935. On information and belief, Purex conducted varnish operations at the Site during the period 1913 through 1978.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 7, and therefore denies each and every allegation contained therein.

8. FDC is an Illinois corporation with its principal place of business located at 925 Martin Luther King Jr. Drive, North Chicago, Illinois 60064. FDC is a wholly-owned subsidiary of FCC. On information and belief, FDC conducted die casting operations at the Site from 1978 through January 2000.

ANSWER:

Federal Respondents admit that FDC is an Illinois Corporation with its principal place of business located at 925 Martin Luther King Jr. Drive, North Chicago, Illinois 60064. Federal Respondents admit that FDC is a wholly-owned subsidiary of FCC. Federal Respondents deny each and every remaining allegation contained in Paragraph 8.

9. FCC is an Illinois corporation with its principal place of business located at 925 Martin Luther King Jr. Drive, North Chicago, Illinois 60064. FCC acquired the Site from Purex in 1978, and its wholly-owned [sic.] subsidiary, FDC, conducted die casting operations at the Site from 1978 through January 2000.

ANSWER:

Federal Respondents admit that FCC is an Illinois corporation with its principal place of business located at 925 Martin Luther King Jr. Drive, North Chicago 60064. Federal Respondents admit that FDC is FCC's wholly-owned subsidiary. Federal Respondents deny each and every remaining allegation contained in Paragraph 9.

10. Cross is a natural person, and a citizen and resident of the State of Illinois. Cross resides at 910 N. Green Bay Road, Lake Forest, Illinois 60045. Cross owned the Site, or was the beneficiary of certain trusts that owned the Site, during times relevant to the allegations stated herein. In addition, during times relevant to the allegations stated herein, on information and belief Cross served as either a director, officer or shareholder of FDC or FCC, and participated in decisions relating to FDC's die casting operations, including but not limited to decisions relating to the treatment, storage or disposal of wastes generated from these operations.

ANSWER:

Federal Respondents admit that Raymond Cross is a natural person, citizen, and a resident of the State of Illinois, who resides at 910 N. Green Bay Road, Lake Forest, Illinois 60045. Federal Respondents deny that Cross owned the Site, was the beneficiary of certain trusts that owned the Site, or was an director, officer, or shareholder of FDC or FCC during times relevant to the allegations stated herein. Federal Respondents deny the remaining allegations contained in Paragraph 10.

11. Charter is a commercial bank operating in the State of Illinois with its principal place of business located at 1215 Superior Avenue, Cleveland, Ohio 44114. Charter acquired Beverly in October 1999 after a series of mergers. Beverly was acquired by First

National Bank of Wilmington on September 5, 1996. First National Bank of Wilmington was acquired by Saint Paul Federal Bank for Savings on July 2, 1998. Saint Paul Federal Bank for Savings was acquired by Charter One Bank, F.S.B. on October 2, 1999. Charter One Bank, F.S.B. was renamed Charter One Bank, N.A. on May 7, 2002. During the period 1983 through 1985, Beverly, n.k.a. Charter, served as trustee for Trust No. 8-7611 as owner of the Site.

ANSWER:

No response is necessary because the Board has found the Complaint to be frivolous as to this entity.

12. Lakeside is a banking association organized under the laws of the State of Illinois. During the period 1985 through 2000, Beverly served as trustee for Trust Nos. 10-1087 and 10-1343 as owners of the Site.

ANSWER:

No response is necessary because the Board has found the Complaint to be frivolous as to this entity.

RELEVANT FACTS

PUREX'S OWNERSHIP AND OPERATION

13. Purex's corporate predecessor Washburn acquired Lots 2, 3 and 4 at the Site in 1913, and Lot 1 in 1935.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore denies each and every allegation contained therein.

14. On information and belief, during the period 1913 to June 30, 1961, Washburn's principal place of business was located at 2244 N. Elston Avenue, which at the time consisted of Lots 1 through 4 at the Site.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and therefore denies each and every allegation contained therein.

15. On information and belief, Washburn installed and operated 17 USTs at the Site including, but not limited to, the following: a 2,000 gallon naphtha UST (Oct. 5, 1948); a 5,000 gallon fuel oil UST (Feb. 15, 1949); a 10,000 gallon naphtha UST (June 16, 1953); and three 5,000 gallon solvent USTs (May 16, 1960).

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and therefore denies each and every allegation contained therein.

16. On information and belief, on June 30, 1961 Purex acquired Washburn through a statutory merger and succeeded to all of the liabilities of Washburn relating to the Site.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 16, and therefore denies each and every allegation contained therein.

17. On information and belief, during the period 1913 to 1978, Purex conducted varnish operations on Lots 1 through 4, including operations relating to 17 USTs located under Lots 1 through 4.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 17, and therefore denies each and every allegation contained therein.

18. On information and belief, in connection with its varnish operations, Purex stored, disposed of or abandoned oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products in each of the 17 USTs at the Site.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 18, and therefore denies each and every allegation contained therein.

19. On information and belief, each of the 17 USTs owned, installed and operated by Purex began to leak, or continued to leak, during the period 1970 through 1978.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 19, and therefore denies each and every allegation contained therein.

20. On information and belief, the oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products stored or disposed of by Purex leaked, or continued to leak, from each of the 17 USTs at the Site into adjacent soil and groundwater during the period 1970 through 1978.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 20, and therefore denies each and every allegation contained therein.

21. On information and belief, during the period 1970 to 1978 Purex disposed of or abandoned waste tires, bricks and other discarded materials in USTs at the Site.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 21, and therefore denies each and every allegation contained therein.

FDC AND FCC'S OWNERSHIP AND OPERATION

22. On information and belief, as early as the 1940s through January 2000, FDC or FCC conducted die casting operations adjacent to the Site on Lots 5 through 12.

ANSWER:

Federal Respondents deny each and every remaining allegation contained in Paragraph 22.

23. On information and belief, on or about December 14, 1978, FCC acquired the Site, and FCC or FDC extended its die casting operations onto Lots 1 through 4.

ANSWER:

Federal Respondents admit that on December 19, 1978, FCC acquired title to Lots 1 through 4. Respondents deny each and every remaining allegation contained in Paragraph 23.

24. On information and belief, in connection with their die casting operations, FDC or FCC stored, disposed of or abandoned oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products in each of the 17 USTs at the Site.

ANSWER:

Federal Respondents deny each and every allegation contained in Paragraph 24.

25. On information and belief, each of the 17 USTs owned and operated by FDC or FCC began to leak, or continued to leak, during the period 1978 through January 2000.

ANSWER:

Federal Respondents deny each and every allegation contained in Paragraph 25.

26. On information and belief, the oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products stored or disposed of by FDC or FCC leaked, or continued to leak, from each of the 17 USTs at the Site into adjacent soil and groundwater during the period 1978 through January 2000.

ANSWER:

Federal Respondents deny each and every allegation contained in Paragraph 26.

27. On information and belief, during the period 1978 to January 2000, Purex disposed of or abandoned waste tires, bricks and other discarded materials in USTs at the Site.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 27, and therefore, deny each and every allegation contained therein.

CROSS LAKESIDE AND BEVERLY'S OWNERSHIP AND OPERATION

28. On information and belief, during the period 1978 through January 2000 Cross was a shareholder, officer or director of both FDC and FCC.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 28.

29. During the period 1974 through 1983, Cross owned Lots 5 through 12 adjacent to the Site in an individual capacity.

ANSWER:

Federal Respondents admit the allegations contained in Paragraph 29.

30. On information and belief, on or about October 19, 1983, Cross transferred Lots 5 through 12, and FCC transferred Lots 1 through 4, to a Trust #8-7611 established at Beverly Bank for the benefit of Cross.

ANSWER:

Federal Respondents admit the allegations contained in Paragraph 30.

31. On information and belief, on or about August 29, 1985, and October 20, 1985, Beverly Bank, as trustee for Trust #8-7611, transferred Lots 1 through 12 to Trust #10-1087 established at Lakeside Bank for the benefit of Cross.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 31.

32. On information and belief, Lakeside Bank, as trustee, owned Lots 1 through 12 for the benefit of Cross in Trust #10-1087 and Trust #10-1343 until January 1, 2000.

ANSWER:

Federal Respondents admit the allegations contained in Paragraph 32.

33. On information and belief, during the period 1978 through January 2000, Cross, Beverly and Lakeside leased lots 1 through 4 to FDC in order to conduct die casting operations.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 33.

34. On information and belief, during the period 1978 through January 2000, Cross, Beverly and Lakeside owned, operated, possessed, controlled or had authority over the Site, and the die casting and UST operations conducted there, including FDC or FCC's storage, disposal or abandonment of oils, solvents, varnish-related products and by-products, PCB-containing materials, petroleum related products and by-products, waste tires, bricks and other discarded materials.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 34.

ELSTON'S PRELIMINARY CLEANUP ACTIVITIES

35. Elston acquired the Site from Lakeside on January 1, 2000. In connection with that acquisition, Cross and Lakeside had disclosed the presence of only six USTs, not the 17 USTs that were eventually discovered by Elston. Admittedly, even with respect to the six disclosed USTs, there were no disclosures to Elston concerning leakage or contamination from those USTs.

ANSWER:

Federal Respondents admit that Elston acquired the Site from Lakeside in January 2000. Federal Respondents admit that Cross and Lakeside disclosed the presence of known USTs, and that Elston had the duty of inspection to discover the existence of additional USTs, and that Elston failed to perform its duty of inspection prior to sale. Federal Respondents deny each and every remaining allegation contained in Paragraph 35.

36. Elston did not conduct business, lease or use the Site in any material manner until Elston began to implement certain cleanup activities, including soil investigation and UST removal.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 36, and therefore denies each and every allegation contained therein.

37. During the period March through August 2000, Elston conducted soil investigations on Lots 1 through 4, and discovered elevated PCB and VOC levels in soil adjacent to the six known USTs. Elston began to remove the six known USTs and discovered oils, solvents, varnish-related products and by-products, PCB-containing materials, petroleum related products and by-products, waste tires, bricks and other discarded materials inside the USTs and in adjacent soils and groundwater.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 37, and therefore denies each and every allegation contained therein.

38. In June through July 2001, Elston conducted further soil investigations on Lots 1 through 4, and discovered the presence of eleven additional USTs, bringing the total to 17. Elston identified elevated PCB and VOC levels in soil adjacent to these eleven additional USTs, as well.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 38, and therefore denies each and every allegation contained therein.

39. Elston began to remove the remaining eleven USTs and to investigate adjacent soil and groundwater in or about September 2001.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 39, and therefore denies each and every allegation contained therein.

40. Elston has spent approximately \$500,000, exclusive of attorneys' fees and interest, in connection with response actions performed at the Site, to date, and will continue to incur costs while conducting such further response actions as may be required to fully remediate the Site.

ANSWER:

Federal Respondents lack knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 40, and therefore denies each and every allegation contained therein.

COUNT I

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/21(a))
(Against All Respondents)

41. Plaintiffs repeat the allegations of paragraphs 1 through 40, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to each of the allegations contained in paragraphs 1 through 40, inclusive, as if set forth fully herein.

42. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted there, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 42.

43. Upon information and belief, releases of oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products occurred from USTs at the Site while each of the Respondents was the owner and operator of the Site and the USTs buried beneath the Site.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 43.

44. Under Section 5/3.24 of the Act, 415 ILL. COMP. STAT. 5/3.24, "open dumping" is defined as: "consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill."

ANSWER:

Section 5/3.24 of the Act, 415 ILL. COMP. STAT. 5/3.24, speaks for itself, and to the extent that any of the allegations contained in Paragraph 44 vary therewith, Federal Respondents deny such allegations.

45. Under Section 5/3.31 of the Act, 415 ILL. COMP. STAT. 5/3.31, "refuse" is defined as "waste."

ANSWER:

Section 5/3.31 of the Act, 415 ILL. COMP. STAT. 5/3.31, speaks for itself, and to the extent that any of the allegations contained in Paragraph 45 vary therewith, Federal Respondents deny such allegations.

46. Under Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, "waste" is defined as: any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from . . . commercial . . . operations."

ANSWER:

Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, speaks for itself, and to the extent that any of the allegations contained in Paragraph 46 vary therewith, Federal Respondents deny such allegations.

47. Under Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, "disposal" is defined as: "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:

Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, speaks for itself, and to the extent that any of the allegations contained in Paragraph 47 vary therewith, Federal Respondents deny such allegations.

48. By allowing oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products to leak from the USTs at the Site during their ownership and management of the Site, each of the Respondents violated Section 5/21(a) of the Act, 415 ILL. COMP. STAT. 5/21(a), which provides that: No person shall . . . [c]ause or allow the open dumping of any waste."

ANSWER:

Section 5/21(a) of the Act, 415 ILL. COMP. STAT. 5/21(a), speaks for itself and to the extent that the allegations in Paragraph 48 vary therewith, Federal Respondents deny such allegations. Federal Respondents deny the remaining allegations contained in Paragraph 48.

49. As a foreseeable consequence of Respondents' violation of Section 5/21(a), the Site was contaminated with oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 49.

50. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 50.

COUNT II

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/21(b))
(Against All Respondents)

51. Plaintiffs repeat the allegations of paragraphs 1 through 50, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to the allegations contained in paragraphs 1 through 50, inclusive, as if set forth fully herein.

52. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 52.

53. Upon information and belief, releases of oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products occurred from USTs at the Site, onto or under public highways and other public property adjacent to the Site while each of the Respondents was the owner and operator of the Site and the USTs at the Site.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 53.

54. Under Section 5/3.24 of the Act, 415 ILL. COMP. STAT. 5/3.24, “open dumping” is defined as: “consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.”

ANSWER:

Section 5/3.24 of the Act, 415 ILL. COMP. STAT. 5/3.24, speaks for itself, and to the extent that the allegations contained in Paragraph 54 vary therewith, Federal Respondents deny such allegations.

55. Under Section 5/3.31 of the Act, 415 ILL. COMP. STAT. 5/3.31, “refuse” is defined as “waste.”

ANSWER:

Section 5/3.31 of the Act, 415 ILL. COMP. STAT. 5/3.31, speaks for itself, and to the extent that the allegations contained in Paragraph 55 vary therewith, Federal Respondents deny such allegations.

56. Under Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, “waste” is defined as: “any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from . . . commercial . . . operations.”

ANSWER:

Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, speaks for itself, and to the extent that the allegations contained in Paragraph 56 vary therewith, Federal Respondents deny such allegations.

57. Under Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, “disposal” is defined as: “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:

Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, speaks for itself, and to the extent that the allegations contained in Paragraph 57 vary therewith, Federal Respondents deny such allegations.

58. By allowing oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products to leak from the USTs at the Site, onto or under adjacent public highways and other public property, during their ownership and management of the Site, each of the Respondents violated Section 5/21(b) of the Act. 415 ILL. COMP. STAT. 5/21(b), which provides that: No person shall . . . [a]bandon, dump, or deposit any waste upon the public highways or other public property, except in a sanitary landfill approved by the Agency pursuant to the regulations adopted by the Board.”

ANSWER:

Section 5/21(b) of the Act, 415 ILL. COMP. STAT. 5/3.24, speaks for itself, and to the extent that the allegations contained in Paragraph 58 vary therewith, Federal Respondents deny such allegations. Federal Respondents deny each and every remaining allegation in Paragraph 58.

59. As a foreseeable consequence of Respondents' violation of Section 5/21(b), public highways and other public property adjacent to the Site was contaminated with oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products.

ANSWER:

Federal Respondents deny the allegations in Paragraph 59.

60. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site and adjacent public highways and other public property to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 60.

COUNT III

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/21(d))
(Against All Respondents)

61. Plaintiffs repeat the allegations of paragraphs 1 through 60, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to the allegations contained in paragraph 1 through 60, inclusive, as if set forth fully herein.

62. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 62.

63. Upon information and belief, each of the Respondents disposed of waste tires and other discarded materials in USTs or other facilities at the Site without a permit or in violation of standards or regulations adopted by the Illinois Pollution Control Board, or allowed such disposal to continue unabated, during periods of time when each of the Respondents owned, operated, possessed, controlled or had authority over the Site.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 63.

64. Under Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, “waste” is defined as: “any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from . . . commercial . . . operations.”

ANSWER:

Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, speaks for itself, and to the extent that the allegations contained in Paragraph 64 vary therewith, Federal Respondents deny such allegations.

65. Under Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, “disposal” is defined as: “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:

Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, speaks for itself, and to the extent that the allegations contained in Paragraph 65 vary therewith, Federal Respondents deny such allegations.

66. By disposing of waste tires and other discarded materials in USTs and other facilities at the Site, during their ownership and management of the Site, each of the Respondents violated Section 21(d) of the Act, which provides that

No person shall:

...

d. Conduct any waste-storage, waste-treatment, or waste disposal operation:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit;

(2) in violation of any regulations or standards adopted by the board under this Act;

415 ILL. COMP. STAT. 5/21(d).

ANSWER:

Section 5/21(d) of the Act, 415 ILL. COMP. STAT. 5/21(d), speaks for itself, and to the extent that the allegations contained in Paragraph 66 vary therewith, Federal Respondents deny such allegations. Federal Respondents deny the remaining allegations contained in Paragraph 66.

67. As a foreseeable consequence of Respondents' violation of Section 5/21(d), USTs and other facilities at the Site were contaminated with waste tires and other discarded materials.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 67.

68. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 68

COUNT IV

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/21(e))
(Against All Respondents)

69. Plaintiffs repeat the allegations of paragraphs 1 through 68, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to the allegations contained in paragraphs 1 through 68, inclusive, as if set forth fully herein.

70. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 70.

71. Upon information and belief, releases of oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products occurred from USTs at the Site while each of the Respondents was the owner and operator of the Site and the USTs at the Site.

ANSWER:

Federal Respondents deny the allegations in Paragraph 71.

72. Section 21(e) of the Illinois Environmental Protection 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 ILL. COMP. STAT. 5/21(e).

ANSWER:

Section 5/21(e) of the Act, 415 ILL. COMP. STAT. 5/21(e), speaks for itself, and to the extent that the allegations contained in Paragraph 72 vary therewith, Federal Respondents deny such allegations.

73. Under Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, “disposal” is defined as: “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:

Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, speaks for itself, and to the extent that the allegations contained in Paragraph 73 vary therewith, Federal Respondents deny such allegations.

74. Under Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, “waste” is defined as: “any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from . . . commercial . . . operations.”

ANSWER:

Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, speaks for itself, and to the extent that the allegations contained in Paragraph 74 vary therewith, Federal Respondents deny such allegations.

75. By allowing oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products to leak from the USTs at the Site, during their ownership and management of the Site, each of the Respondents violated Section 5/21(e) of the Act, 415 ILL. COMP. STAT. 5/21(e).

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 75.

76. As a foreseeable consequence of Respondents' violation of Section 5/21(e), the Site was contaminated with oils, solvents, varnish-related products and by-products. PCB-containing materials, and petroleum related products and by-products.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 76.

77. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 77.

COUNT V

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/21(f))
(Against All Respondents)

78. Plaintiffs repeat the allegations of paragraphs 1 through 77, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to the allegations contained in paragraphs 1 through 77, inclusive, as if set forth fully herein.

79. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 79.

80. Upon information and belief, each of the Respondents disposed of hazardous waste, including oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products, in USTs or other facilities at the Site without a permit or in violation of standards or regulations adopted by the Illinois Pollution Control Board, or allowed such disposal to continue unabated, during periods of time when each of the Respondents owned, operated, possessed, controlled or had authority over the Site.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 80.

81. Under Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, "waste" is defined as: "any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from . . . commercial . . . operations."

ANSWER:

Section 5/3.53 of the Act, 415 ILL. COMP. STAT. 5/3.53, speaks for itself, and to the extent that the allegations contained in Paragraph 81 vary therewith, Federal Respondents deny such allegations.

82. Under Section 5/3.15 of the Act, 415 ILL. COMP. STAT. 5/3.15, "hazardous waste" is defined as: "a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may . . . pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristic or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act. . . ."

ANSWER:

Section 5/3.15 of the Act, 415 ILL. COMP. STAT. 5/3.15, speaks for itself, and to the extent that the allegations contained in Paragraph 82 vary therewith, Federal Respondents deny such allegations.

83. Under Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, "disposal" is defined as: "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:

Section 5/3.08 of the Act, 415 ILL. COMP. STAT. 5/3.08, speaks for itself, and to the extent that the allegations contained in Paragraph 83 vary therewith, Federal Respondents deny such allegations.

84. By disposing of hazardous waste, including oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products, in USTs and other facilities at the Site during their ownership and management of the Site, each of the Respondents violated Section 21(f) of the Act, which provides that:

No person shall:

...

f. Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

(1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit. . . .; or

(2) in violation of any regulations or standards adopted by the Board under this Act; or

(3) in violation of any RCRA permit filing requirement established under standards adopted by the Board under this Act; or

(4) in violation of any order adopted by the Board under this Act.

415 ILL. COMP. STAT. 5/21(f).

ANSWER:

Section 5/21(f) of the Act, 415 ILL. COMP. STAT. 5/21(f), speaks for itself, and to the extent that the allegations contained in Paragraph 85 vary therewith, Federal Respondents deny such allegations. Federal Respondents deny each and every remaining allegation contained in Paragraph 84.

85. As a foreseeable consequence of Respondents' violation of Section 5/21(f), USTs and other facilities at the Site were contaminated with hazardous waste, including oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 85.

86. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 86

COUNT VI

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/12(a))
(Against All Respondents)

87. Plaintiffs repeat the allegations of paragraphs 1 through 86, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to the allegations contained in Paragraphs 1 through 86, inclusive, as if set forth fully herein.

88. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 88.

89. Upon information and belief, releases of oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products occurred from USTs at the Site while each of the Respondents was the owner and operator of the Site and the USTs at the Site.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 89.

90. Section 12(a) of the Illinois Environmental Protection Act provides that:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants 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.

415 ILL. COMP. STAT. 5/12(a).

ANSWER:

Section 5/12(a) of the Act, 415 ILL. COMP. STAT. 5/12(a), speaks for itself, and to the extent that the allegations contained in Paragraph 54 vary therewith, Federal Respondents deny such allegations.

91. Section 5/3.06 of the Act, 415 ILL. COMP. STAT. 5/3.06, defines "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source."

ANSWER:

Section 5/3.06 of the Act, 415 ILL. COMP. STAT. 5/3.06, speaks for itself, and to the extent that the allegations contained in Paragraph 91 vary therewith, Federal Respondents deny such allegations.

92. By allowing releases of oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products from USTs at the Site to leak into and remain in the land and groundwater at the Site during their ownership and management of the Site, each of the Respondents violated Section 5/12(a) of the Act.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 92.

93. As a foreseeable consequence of Respondents' violation of Section 5/12(a), the Site was contaminated with oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 93.

94. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 94

COUNT VII

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/12(d))
(Against All Respondents)

95. Plaintiffs repeat the allegations of paragraphs 1 through 94, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to the allegations contained in Paragraphs 1 through 94, inclusive, as if set forth fully herein.

96. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in paragraph 96.

97. Upon information and belief, releases of oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products occurred from USTs at the Site while each of the Respondents was the owner and operator of the Site and the USTs at the Site.

ANSWER:

Federal Respondents deny the allegations contained in paragraph 97.

98. Section 12(d) of the Illinois Environmental Protection Act provides that:

No person shall:

...

d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

415 ILL. COMP. STAT. 5/12(d).

ANSWER:

Section 5/12(d) of the Act, 415 ILL. COMP. STAT. 5/12(d), speaks for itself, and to the extent that the allegations contained in Paragraph 98 vary therewith, Federal Respondents deny such allegations.

99. Section 5/3.06 of the Act, 415 ILL. COMP. STAT. 5/3.06, defines "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source."

ANSWER:

Section 5/3.06 of the Act, 415 ILL. COMP. STAT. 5/3.06, speaks for itself, and to the extent that the allegations contained in Paragraph 99 vary therewith, Federal Respondents deny such allegations.

100. By allowing releases of oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products from USTs at the Site to leak into and remain in the land and groundwater at the Site during their ownership and management of the Site, each of the Respondents created a water pollution hazard thereby violating Section 5/12(d) of the Act,

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 100.

101. As a foreseeable consequence of Respondents' violation of Section 5/12(d), the Site was contaminated with oils, solvents, varnish-related products and by-products, PCB-containing materials, and petroleum related products and by-products.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 101.

102. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 102.

COUNT VIII

(Violation of Illinois Environmental Protection Act, 415 ILL. COMP. STAT. 5/55(a))
(Against All Respondents)

103. Plaintiffs repeat the allegations of paragraphs 1 through 102, inclusive, as if set forth fully herein.

ANSWER:

Federal Respondents repeat their answers to the allegations contained in paragraphs 1 through 102, inclusive, as if set forth fully herein.

104. Each of the Respondents owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, at various times during the period 1970 through January 2000.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 104.

105. Upon information and belief, each of the Respondents disposed of used or waste tires in USTs or other facilities at the Site in violation of standards or regulations adopted by the Illinois Pollution Control Board, or allowed such disposal to continue unabated, during periods of time when each of the Respondents owned, operated, possessed, controlled or had authority over the Site.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 105.

106. Under Section 5/54.13 of the Act, 415 ILL. COMP. STAT. 5/54.13, "used tire" is defined as: "a worn, damaged, or defective tire that is not mounted on a vehicle."

ANSWER:

Section 5/54.13 of the Act, 415 ILL. COMP. STAT. 5/54.13, speaks for itself, and to the extent that the allegations contained in Paragraph 106 vary therewith, Federal Respondents deny such allegations.

107. Under Section 5/54.16 of the Act, 415 ILL. COMP. STAT. 5/54.16, "waste tire" is defined as: "a used tire that has been disposed of."

ANSWER:

Section 5/54.16 of the Act, 415 ILL. COMP. STAT. 5/54.16, speaks for itself, and to the extent that the allegations contained in Paragraph 107 vary therewith, Federal Respondents deny such allegations.

108. Under Section 5/3.24 of the Act, 415 ILL. COMP. STAT. 5/3.24, "open dumping" is defined as: "consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill."

ANSWER:

Section 5/3.24 of the Act, 415 ILL. COMP. STAT. 5/3.24, speaks for itself, and to the extent that the allegations contained in Paragraph 108 vary therewith, Federal Respondents deny such allegations.

109. Under Section 5/54.04 of the Act, 415 ILL. COMP. STAT. 5/54.04, “disposal” is defined as: “the placement of used tires into or on any land or water except as an integral part of the systematic reuse or conversion in the regular course of business.”

ANSWER:

Section 5/54.04 of the Act, 415 ILL. COMP. STAT. 5/54.04, speaks for itself, and to the extent that the allegations contained in Paragraph 109 vary therewith, Federal Respondents deny such allegations.

110. By disposing of used or waste tires in USTs and other facilities at the Site, during their ownership and management of the Site, each of the Respondents violated Section 55(a) of the Act, which provides that:

No person shall:

(1) Cause or allow the open dumping of any used or waste tire.

...

(5) Abandon, dump or dispose of any used or waste tire on private or public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.

415 ILL. COMP. STAT. 5/55(a).

ANSWER:

Section 5/55(a) of the Act, 415 ILL. COMP. STAT. 5/55(a), speaks for itself, and to the extent that the allegations contained in Paragraph 110 vary therewith, Federal Respondents

deny such allegations. Federal Respondents deny all remaining allegations contained in Paragraph 110.

111. As a foreseeable consequence of Respondents' violation of Section 5/55(a), USTs and other facilities at the Site were contaminated with used or waste tires.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 111.

112. In response to the contamination, Elston has expended and will continue to expend considerable amounts of money to remediate the Site and adjacent public highways and other public property to meet applicable state and federal environmental and public health standards.

ANSWER:

Federal Respondents deny the allegations contained in Paragraph 112.

PRAYER FOR RELIEF

WHEREFORE, Complainant Elston prays for entry of judgment against each of the Respondents as follows:

- A. For judgment declaring that each Respondent violated Sections 21(a), 21(b), 21(d), 21(e), 21(f), 12(a), 12(d) and 55(a) of the Illinois Environmental Protection Act.
- B. For judgment ordering that each Respondent reimburse Elston for cleanup costs it has incurred at the Site as a result of these violations.
- C. For judgment ordering that each Respondent reimburse Elston for cleanup costs it will incur conducting further cleanup activities required at the Site as a result of these violations.
- D. For Complainant's attorneys' fees, expert witness fees costs and interest incurred as allowed by law; and
- E. For such other and further relief as the Board deems just and proper.

Dated: August 22, 2003

ANSWER:

Federal Respondents expressly deny that Complainant is entitled to any relief, including but not limited to the relief sought in the Complaint. Federal Respondents ask that the Complaint be dismissed with prejudice, that judgment be entered for Federal Respondents and that Federal Respondents be awarded their costs and attorneys' fees in defending against the Complaint. Federal Respondents further request whatever other relief the Board may deem appropriate. Federal Respondents deny any and all allegations in the request for relief in the Complaint.

GENERAL AFFIRMATIVE DEFENSES

As and for their General Affirmative Defenses, Federal Respondents state as follows:

FIRST GENERAL AFFIRMATIVE DEFENSE:

The Complaint is barred, in whole or in part, by the doctrine of waiver and/or equitable estoppel. In January 2000, Elston made an informed business decision to purchase a Brownfield property that it knew to a certainty required investigation and/or remediation. Elston explicitly agreed that, if it chose to consummate the transaction, the Seller's environmental liability would be limited to \$50,000 (which money Federal Respondents have already paid). After acquiring the property, Elston reneged on the deal it had cut, ignored the fact that part of the consideration paid to the Seller was Elston's agreement to limit the Federal Respondents' liability to \$50,000 and brought the instant action. Furthermore, Elston's failure to conduct the investigation required by the purchase agreement is the proximate and but for cause of this Complaint.

SECOND GENERAL AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against any of the Federal Respondents, as none of the Federal Respondents ever conducted any operations, committed any affirmative act, or allowed any act of disposal to occur with regard to the Underground Storage Tanks at the Site. Thus, none of the damages can be said to have been proximately caused by any act or omission of FCC.

THIRD GENERAL AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Raymond E. Cross, as Mr. Cross never owned the property at issue, although he formerly owned the adjacent property over 19 years ago in his individual capacity. Mr. Cross' alleged status as a shareholder, officer, or director of FDC is insufficient to establish liability under the act, and there are no facts alleged which would justify piercing the corporate veil.

FOURTH GENERAL AFFIRMATIVE DEFENSE

The Complaint is barred under the doctrine of laches. Complainant was aware of the soil and/or ground water conditions since before it purchased the Site in January 2000. Nonetheless, Complainant waited almost three years to bring this complaint, during which time Complainant dramatically increased any costs which may have been necessary to address threats to human health or the environment.

FIFTH GENERAL AFFIRMATIVE DEFENSE

This Complaint fails because the remedies requested would work an arbitrary and unreasonable hardship upon the Federal Respondents. There is no evidence that the Federal Respondents contributed at all to the alleged contamination of the Site, and there is ample evidence that the Complainant is equally if not more at fault compared to the Federal

Respondents, given the Complainants knowledge at the time of purchase, lack of due diligence in investigating the scope of the potential pollution risk, specific waiver, incompetent and/or negligent remediation and tank removal, acts, omissions, and/or other affirmative participation in causing the contamination of the Site. Moreover, the imposition of cost recovery upon the Federal Respondents would work an unreasonable financial hardship on the Federal Respondents.

SIXTH GENERAL AFFIRMATIVE DEFENSE

The Complaint is barred against the Federal Respondents because the alleged acts of contamination occurred by the act or acts of third parties, including prior owners, lessors, and/or successors-in-interest to the Federal Respondents, without the knowledge or consent of the Federal Respondents.

COUNT-SPECIFIC AFFIRMATIVE DEFENSES

Count I. Count I fails to state a claim because the Federal Respondents did not perform any affirmative act of “consolidation” of any refuse or waste at the Site. The alleged ownership of buried USTs not utilized by Federal Respondents is not “open dumping” as defined under 415 ILCS 5/21(a).

Count II. Count II fails to state a claim because the Federal Respondents did not perform any affirmative act of “abandon[ing], dump[ing], or deposit[ing]” any waste upon public highways at or near the Site, as required to prove a violation under 415 ILCS 5/21(b).

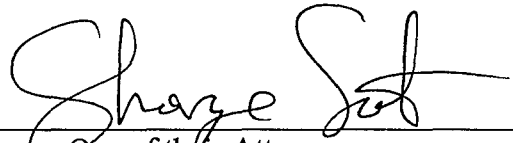
Count III. Count III fails to state a claim because the Federal Respondents did not conduct any waste storage, treatment, or disposal operations as required to prove a violation under 415 ILCS 5/21(d).

Count V. Count V fails to state a claim because the Federal Respondents did not conduct any waste storage, treatment, or disposal operations as required to prove a violation under 415 ILCS 5/21(d).

Count VII. Count VII fails to state a claim because the Federal Respondents did not perform any affirmative act of “deposit[ing]” hazardous waste upon the land as required to prove a violation of 415 ILCS 5/12(d).

Respectfully submitted,

**FEDERAL DIE CASTING CO.,
an Illinois corporation, FEDERAL
CHICAGO CORP., an Illinois
corporation, and RAYMOND E. CROSS,
an Illinois resident**



By: One of their Attorneys

Cary R. Perlman
Shorge K. Sato, Esq.
LATHAM & WATKINS LLP
233 South Wacker Drive
Suite 5800, Sears Tower
Chicago, Illinois 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

CERTIFICATE OF SERVICE

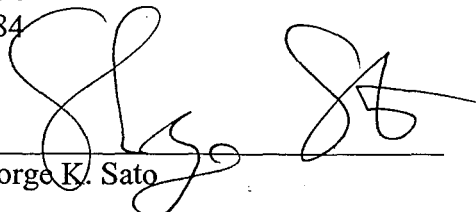
I, Shorge K. Sato, hereby certify that on this 22nd day of August, 2003, I served a true and correct copy of the ANSWER TO COMPLAINT upon the following by Federal

Express:

Francis A. Citera, Esq.
Daniel T. Fahner, Esq.
Greenberg Traurig, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
Telephone: (312) 456-8400
Facsimile: (312) 456-8435

Craig V. Richardson, Esq.
Christopher J. Neumann, Esq.
Greenberg Traurig, L.L.P.
1200 Seventeenth Street
Twenty-Fourth Floor
Denver, Colorado 80202
Telephone: (303) 572-6500
Facsimile: (303) 572-6540

Steven M. Siros
Robert L. Graham
Bill S. Forcade
Jason E. Yearout
Jenner & Block
One IBM Plaza
Chicago, IL 60611
Telephone: (312) 222-0350
Facsimile: (312) 527-0484



Shorge K. Sato