



**SERVICE LIST**

**BY FEDERAL EXPRESS**

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1343, and Beverly Bank Trust No. 8-7611.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

2222 ELSTON LLC, an Illinois limited liability company,

Complainant,

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. 8-7511**, an Illinois trustee, and **LAKESIDE BANK TRUST NOS. 10-1087 & 10-1343**, an Illinois trustee,

Respondents.

PCB No. 03-55

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**RESPONDENT PUREX INDUSTRIES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES**

Purex Industries, Inc. ("Purex"), a former Delaware corporation, by and through its undersigned attorneys, responds to the Complaint of 2222 Elston LLC ("Elston") against Purex, Federal Die Casting Co. ("FDC"), an Illinois corporation, Federal Chicago Corp. ("FCC"), an Illinois corporation, Raymond E. Cross ("Cross"), an Illinois resident, Beverly Bank Trust No. 8-7611 ("Beverly"), n.k.a. Charter One Bank, N.A. ("Charter"), an Illinois trustee, and Lakeside Bank Trust Nos. 10-1087 & 10-1343 ("Lakeside"), an Illinois trustee (collectively "Respondents"), 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 the Lots 1 to 5 in Block 4 in Fullerton's Addition to Chicago in the west ½ of the northeast ¼ 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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint, and therefore denies each and every one of them.

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.<sup>1</sup> In addition, Elston will continue to incur costs while conducting such further response actions as may be required to fully remediate the Site.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 4 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon from 1913 through January 2000. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the Complaint, and therefore denies each and every one of them.

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

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint, and therefore denies each and every one of them.

#### **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

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<sup>1</sup> 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.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 7 of the Complaint contains conclusions of law, no response is required. Purex admits that Purex Industries, Inc., the Respondent in this case, is a Delaware corporation with its principal place of business located in California. Purex denies that on or about June 30, 1964, Purex acquired a firm known as T.F. Washburn Company ("Washburn") through a statutory merger. Purex also denies that Purex acquired and began varnish operations on Lots 2, 3 and 4 at the Site in 1913, and on Lot 1 in 1935. Purex further denies that it conducted varnish operations at the Site during the period 1913 through 1978. Responding further, Purex states that in or about 1961, Purex Corporation, Ltd., a California corporation ("Purex California"), acquired the stock of T.F. Washburn Company. Purex further states that in 1974, Purex Corporation, Ltd. sold the Washburn business to Syncon Resins. In 1977, Purex California repossessed the Site, and subsequently sold the Site in 1978. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 7, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint, and therefore denies each and every one of them.

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 subsidiary, FDC, conducted die casting operations at the Site from 1978 through January 2000.

Response: Purex denies that FCC acquired the Site from Purex in 1978. Responding further, Purex states that in 1978, Purex Corporation, Ltd. sold the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 9 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint, and therefore denies each and every one of them.

## 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.

Response: To the extent that Paragraph 13 of the Complaint contains conclusions of law, no response is required. Purex further objects to Plaintiff's characterization of Washburn as Purex's corporate predecessor and denies the same. Purex lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 14 of the Complaint, and therefore denies each and every one of them.

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).

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 16 of the Complaint contains conclusions of law, no response is required. Purex denies that Purex acquired Washburn through a statutory merger and succeeded to all liabilities of Washburn relating to the Site. Responding further, Purex states that on or about June 30, 1961, Purex Corporation, Ltd., a California corporation, acquired the stock of T.F. Washburn Company.

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.

Response: Purex denies that 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. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 17, and therefore denies each and every one of them.

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.

Response: Purex denies that it 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. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 18, and therefore denies each and every one of them.

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.

Response: Purex denies that the 17 USTs were owned, installed, or operated by Purex. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 19 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex denies that it stored or disposed of oils, solvents, 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. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 20 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 21 of the Complaint contains conclusions of law, no response is required. Purex denies that it disposed of or abandoned waste tires, bricks and other discarded material in USTs at the Site. Purex lacks sufficient information to form a belief as to the remaining allegations contained in Paragraph 21 of the Complaint, and therefore denies each and every one of them.

#### 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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 23 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 21 of the Complaint contains conclusions of law, no response is required. Purex denies that it disposed of or abandoned waste tires, bricks and other discarded material in USTs at the Site. Purex lacks sufficient information to form a belief as to the remaining allegations contained in Paragraph 27 of the Complaint, and therefore denies each and every one of them.

#### 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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint, and therefore denies each and every one of them.

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

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint, and therefore denies each and every one of them.

#### 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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint, and therefore denies each and every one of them.

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

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint, and therefore denies each and every one of them.

### **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.

Response: Purex reincorporates its responses to Paragraphs 1 through 40 above.

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.

Response: To the extent that Paragraph 42 contains conclusions of law, no response is required. Purex denies that it owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted there, including the USTs located at the Site, during the period 1970 through January 2000. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 42 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 42 contains conclusions of law, no response is required. Purex denies that it was the owner or operator of the Site and the USTs buried beneath the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 43 of the Complaint, and therefore denies each and every one of them.

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."

Response: The allegations contained in Paragraph 44 of the Complaint are conclusions of law for which no answer is required.

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

Response: The allegations contained in Paragraph 45 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 46 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 47 of the Complaint are conclusions of law for which no answer is required.

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."

Response: To the extent that Paragraph 48 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 48 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 49 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 49 of the Complaint, and therefore denies each and every one of them.

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.



Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint, and therefore denies each and every one of them.

## 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.

Response: Purex reincorporates its responses to Paragraphs 1 through 50 above.

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.

Response: To the extent that Paragraph 52 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 52 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 53 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned or operated the Site and the USTs at the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 53 of the Complaint, and therefore denies each and every one of them.

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."

Response: The allegations contained in Paragraph 54 of the Complaint are conclusions of law for which no answer is required.

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

Response: The allegations contained in Paragraph 55 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 56 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 57 of the Complaint are conclusions of law for which no answer is required.

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.."

Response: To the extent that Paragraph 58 of the Complaint contains conclusions of law, no response is required. Purex denies that it allowed 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. Purex further denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 58 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 59 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 59 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint, and therefore denies each and every one of them.

### **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.

Response: Purex reincorporates its responses to Paragraphs 1 through 60 above.

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.

Response: To the extent that Paragraph 62 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 62 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 63 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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. Purex further denies that it owned, operated, possessed, controlled or had authority over the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 63 of the Complaint, and therefore denies each and every one of them.

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."

Response: The allegations contained in Paragraph 64 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 65 of the Complaint are conclusions of law for which no answer is required.

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).

Response: To the extent that Paragraph 66 of the Complaint contains conclusions of law, no response is required. Purex denies that it disposed of waste tires and other discarded materials in USTs and other facilities at the Site. Purex further denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 66 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 67 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 67 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint, and therefore denies each and every one of them.

#### 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.

Response: Purex reincorporates its responses to Paragraphs 1 through 68 above.

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.

Response: To the extent that Paragraph 70 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, during the period 1970 through January 2000. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 70 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 71 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned or operated the Site and the USTs at the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 71 of the Complaint, and therefore denies each and every one of them.

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).

Response: The allegations contained in Paragraph 72 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 73 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 74 of the Complaint are conclusions of law for which no answer is required.

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).

Response: To the extent that Paragraph 75 of the Complaint contains conclusions of law, no response is required. Purex denies that it allowed 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. Purex further denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 75 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 76 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 76 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint, and therefore denies each and every one of them.

#### **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.

Response: Purex reincorporates its responses to Paragraphs 1 through 77 above.

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.

Response: To the extent that Paragraph 79 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, during the period 1970 through January 2000. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 79 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 80 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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. Purex further denies that it owned, operated, possessed, controlled, or had authority over the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 80 of the Complaint, and therefore denies each and every one of them.

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."

Response: The allegations contained in Paragraph 81 of the Complaint are conclusions of law for which no answer is required.

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 . . . ."

Response: The allegations contained in Paragraph 82 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 83 of the Complaint are conclusions of law for which no answer is required.

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).

Response: To the extent that Paragraph 84 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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 and other facilities at the Site. Purex further denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 84 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 85 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 85 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint, and therefore denies each and every one of them.

#### **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.

Response: Purex reincorporates its responses to Paragraphs 1 through 86 above.

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.

Response: To the extent that Paragraph 88 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 88 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 89 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned or operated the Site and the USTs at the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 89 of the Complaint, and therefore denies each and every one of them.

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

No person shall:

- i. 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).

Response: The allegations contained in Paragraph 90 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 91 of the Complaint are conclusions of law for which no answer is required.

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.

Response: To the extent that Paragraph 92 of the Complaint contains conclusions of law, no response is required. Purex denies that it allowed 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. Purex further denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 92 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 93 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 93 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint, and therefore denies each and every one of them.

#### **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.

Response: Purex reincorporates its responses to Paragraphs 1 through 94 above.

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.

Response: To the extent that Paragraph 96 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 96 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 97 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned and operated the Site and the USTs at the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 97 of the Complaint, and therefore denies each and every one of them.

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).

Response: The allegations contained in Paragraph 98 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 99 of the Complaint are conclusions of law for which no answer is required.

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.

Response: To the extent that Paragraph 100 of the Complaint contains conclusions of law, no response is required. Purex denies that it allowed 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. Purex further denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 100 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 101 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 101 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint, and therefore denies each and every one of them.

#### **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.

Response: Purex reincorporates its responses to Paragraphs 1 through 102 above.

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.

Response: To the extent that Paragraph 104 of the Complaint contains conclusions of law, no response is required. Purex denies that it owned, operated, possessed, controlled or had authority over the Site and relevant operations conducted thereon, including the USTs located at the Site, during the period 1970 through January 2000. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 104 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 105 of the Complaint contains conclusions of law, no response is required. Purex denies that it 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. Purex further denies that it owned, operated, possessed, controlled or had authority over the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 105 of the Complaint, and therefore denies each and every one of them.

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."

Response: The allegations contained in Paragraph 106 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 107 of the Complaint are conclusions of law for which no answer is required.

108. Under Section 5/3.24 of the Act, 415 ILL. COMP. STAT. 5/3.14, "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."

Response: The allegations contained in Paragraph 108 of the Complaint are conclusions of law for which no answer is required.

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."

Response: The allegations contained in Paragraph 109 of the Complaint are conclusions of law for which no answer is required.



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).

Response: To the extent that Paragraph 110 of the Complaint contains conclusions of law, no response is required. Purex denies that it disposed of used or waste tires in USTs and other facilities at the Site. Purex further denies that it owned or managed the Site. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 110 of the Complaint, and therefore denies each and every one of them.

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.

Response: To the extent that Paragraph 111 of the Complaint contains conclusions of law, no response is required. Purex lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 111 of the Complaint, and therefore denies each and every one of them.

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.

Response: Purex lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint, and therefore denies each and every one of them.

**FIRST AFFIRMATIVE DEFENSE: LACK OF PERSONAL JURISDICTION**

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Purex alleges as follows:

1. In March 1982, Purex was created under the name PII Holdings, Inc. ("PII Holdings") to effect a leveraged buyout of Purex Industries, Inc. (a Delaware corporation incorporated in 1978 and not the Respondent Purex Industries, Inc.) by private investment groups consisting of corporations, banks, and insurance companies.

2. On August 30, 1982, PII Holdings changed its name to Purex Industries, Inc. (the Respondent in this proceeding).

3. In order for the Board to exercise personal jurisdiction over Purex, Complainant must demonstrate that Purex has sufficient contacts with the State of Illinois so as to satisfy Illinois' long-arm statute.

4. Since its inception in March 1982, Purex has not transacted business within Illinois, committed any tortious acts within Illinois, or otherwise had any contacts with Illinois so as to subject it to the jurisdiction of the Illinois courts.

5. As such, the Board lacks personal jurisdiction over Purex.

Wherefore, Purex asks that the Board enter an order that Complainant be awarded nothing as against Purex and denying Complainant any and all of the relief it seeks herein against Purex; and such other and further relief to which Purex is entitled under the law.

### **SECOND AFFIRMATIVE DEFENSE: LACHES**

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Purex alleges as follows:

1. Upon information and belief, Complainant acquired the property comprising the Site in or about January 2000.
2. Upon information and belief, before Complainant acquired the Site, it was fully aware of the fact that USTs and various contaminants were present on and beneath the property comprising the Site.
3. Upon information and belief, Complainants remained aware of the potential environmental concerns at the Site for at least two years after purchasing the Site, and elected not to file the Complaint now pending before the Board until October 25, 2002.
4. Purex has been prejudiced by Complainant's unreasonable delay in filing its Complaint.

Wherefore, Purex asks that the Board render a judgment in its favor and against Complainant; and that the Board enter an order that Complainant be awarded nothing as against Purex and denying Complainant any and all of the relief it seeks herein against Purex; and such other and further relief to which Purex is entitled under the law.

### **THIRD AFFIRMATIVE DEFENSE: EQUITABLE ESTOPPEL/WAIVER**

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Purex alleges as follows:

1. Upon information and belief, prior to acquiring the Site in 2000, Complainant was aware that the Site was contaminated and that USTs were present at the Site.

2. Upon information and belief, Complainant's knowledge, awareness, and acceptance of these environmental concerns and conditions was reflected in both conversations and correspondence during contract negotiations, as well as the final purchase price for the property comprising the Site.

3. Upon information and belief, Complainant was afforded the opportunity to conduct further investigation of environmental conditions prior to acquiring the Site; Complainant, however, elected not to conduct further environmental investigation of the Site.

4. Complainant knowingly waived its right to perform additional environmental due diligence prior to acquiring the Site.

5. As a result of the facts set forth in Paragraphs 1 through 4 above, Complainant is estopped from recovering any response costs relating to environmental conditions at the Site from Purex.

Wherefore, Purex asks that the Board render a judgment in its favor and against Complainant; and that the Board enter an order that Complainant be awarded nothing as against Purex and denying Complainant any and all of the relief it seeks herein against Purex; and such other and further relief to which Purex is entitled under the law.

#### **FOURTH AFFIRMATIVE DEFENSE: PROPORTIONATE LIABILITY**

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Purex alleges as follows:

1. Section 58.9 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/58.9, states:

Notwithstanding any other provisions of this Act to the contrary, including subsection (f) of Section 22.2, in no event may the Agency, the State of Illinois, or any person bring an action pursuant to this Act . . . to require any person to conduct remedial action or to seek recovery of costs for remedial activity conducted by the State of Illinois or any person beyond the remediation of releases of regulated substances that may be attributed to being proximately caused by

such person's act or omission or beyond such person's proportionate degree of responsibility for costs of the remedial action of releases of regulated substances that were proximately caused or contributed to by 2 or more persons.

2. In its prayer for relief, Complainant seeks an order requiring Purex to reimburse Complainant for cleanup costs it has incurred and will in the future incur relating to the Site.

3. Pursuant to Section 58.9 of the Act, Purex may only be liable for those costs of remedial activities relating to contamination proximately caused by Purex's acts or omissions.

4. Purex was not and is not responsible by act or omission for any response costs associated with the Site.

Wherefore, Purex asks that the Board render a judgment in its favor and against Complainant; and that the Board enter an order that Complainant be awarded nothing as against Purex and denying Complainant any and all of the relief it seeks herein against Purex; and such other and further relief to which Purex is entitled under the law.

**FIFTH AFFIRMATIVE DEFENSE:**  
**PROHIBITION ON RECOVERY OF RESPONSE COSTS**

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Purex alleges as follows:

1. By this Complaint, Complainants seeks to recover its costs in remediating alleged environmental contamination at the Site.

2. Section 45(b) of the Act, 415 ILCS 5/45(b), allows private parties to obtain only injunctive relief, attorneys' fees, and court costs from another private party for violating the Act.

3. The Act contains no explicit provision by which a private citizen may sue another private citizen to recover costs associated with remediating contaminated properties.

Wherefore, Purex asks that the Board render a judgment in its favor and against Complainant; and that the Board enter an order that Complainant be awarded nothing as against

**SEVENTH AFFIRMATIVE DEFENSE: ATTORNEYS' FEES**

In the alternative, without admitting any of the Complaint's allegations that it has denied or otherwise contradicting its answers and solely by way of affirmative and/or additional defense, Purex alleges as follows:

1. In its prayer for relief, Complainant seeks attorneys fees, expert witness fees and costs.
2. Section 42(f) of the Act, 415 ILCS 5/42(f), authorizes the Board to award attorneys' fees only in cases in which the Attorney General or a State's Attorney prevails on behalf of the People of the State of Illinois.
3. The Board has already acknowledged that it cannot award attorney fees or other ordinary expenses of litigation in this case.

Wherefore, Purex asks that the Board enter an order denying Complainant's request for attorney's fees, expert witness fees, and other costs from Purex, and provide such other and further relief to which Purex is entitled under the law.

Dated: August 22, 2003

Respectfully submitted,

PUREX INDUSTRIES, INC.


By: 

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**CERTIFICATE OF SERVICE**

I, Jason E. Yearout, an attorney, certify that I have served Respondent Purex Industries, Inc.'s Answer and Affirmative Defenses upon the parties on the attached service list, in the manner indicated, this 22nd day of August, 2003:

  
\_\_\_\_\_  
Jason E. Yearout