

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

JUL 30 2004

STATE OF ILLINOIS  
Pollution Control Board

THE VILLAGE OF LOMBARD,  
ILLINOIS, an Illinois municipal  
corporation, )

Complainant, )

vs. )

BILL'S AUTO CENTER,  
BILL'S STANDARD SERVICE,  
and WILLIAM KOVAR, )

Respondents. )

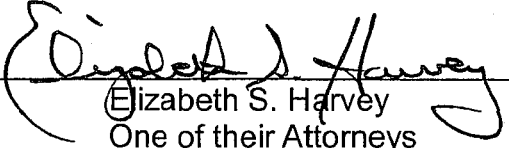
PCB 04-213  
(LUST Cost Recovery)

**NOTICE OF FILING**

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 30<sup>th</sup> day of July 2004, the following were filed with the Illinois Pollution Control Board: **Respondents' Appearance and Answer and Affirmative Defenses**, which are attached and herewith served upon you.


BILL'S AUTO CENTER,  
BILL'S STANDARD SERVICE, and  
WILLIAM KOVAR

By:   
Elizabeth S. Harvey  
One of their Attorneys

Michael J. Maher  
Elizabeth S. Harvey  
SWANSON, MARTIN & BELL  
One IBM Plaza, Suite 3300  
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Chicago, Illinois 60611  
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CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copy of the above-described documents to counsel of record via U.S. Mail at One IBM Plaza, Chicago, IL 60611, at or before 5:00 p.m. on July 30, 2004.

  
\_\_\_\_\_  
Jeanette M. Podlin

- Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

0192-001

**SERVICE LIST**  
**PCB 04-213**  
**(LUST Cost Recovery)**

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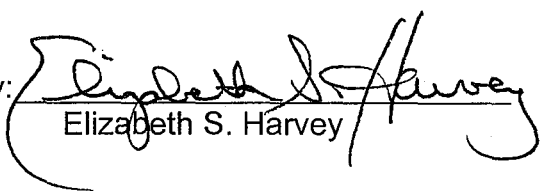
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APPEARANCE

Swanson, Martin & Bell hereby enters its appearance on behalf of respondents BILL'S AUTO CENTER, BILL'S STANDARD SERVICE, and WILLIAM KOVAR.

SWANSON, MARTIN & BELL

By:   
Elizabeth S. Harvey

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Dated: July 30, 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE VILLAGE OF LOMBARD,	)	
ILLINOIS, an Illinois municipal	)	
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	)	
BILL'S AUTO CENTER,	)	
BILL'S STANDARD SERVICE,	)	
and WILLIAM KOVAR,	)	
	)	
Respondents.	)	

**RESPONDENTS' ANSWER AND AFFIRMATIVE DEFENSES**

Respondents BILL'S AUTO CENTER, BILL'S STANDARD SERVICE, and WILLIAM KOVAR (collectively referred to hereinafter as "Respondents"), by its attorneys Swanson, Martin & Bell, hereby answer and assert affirmative defenses to the complaint propounded by complainant THE VILLAGE OF LOMBARD ("Village"). Respondents received the complaint on June 3, 2004: thus, this answer is timely filed pursuant to 35 Ill.Adm.Code 103.204(d).

**Summary of the Complaint**

The Village seeks to recover from the Respondents costs incurred in connection with the response, removal, and remedial action taken as the result of contamination from underground storage tanks at a facility in Lombard, Illinois. During excavation of a water line trench in the Village-owned Willow Street right-of-way on August 11, 2000, a gasoline odor was noted in the trench soils by the excavation contractor and supervising engineer for the Village. Installation of the new water main line was part of the project that also included installation of a new sanitary sewer line and lift station and reconstruction of Willow Street, west of Main Street. The odor was encountered when the trench, which was being excavated from west to east, reached an area south of the southwest corner of a former gas station, Bill's Auto Center, located at 330 S. Main Street. An investigation found that one or more of the underground storage tanks or fuel lines that were owned and operated by the Respondents had leaked and had

caused the contamination to the Village's property adjacent to that 330 S. Main Street site. The impacted soil encountered in the water line trench and on the village's property is a result of the release originating at the Bill's Auto Center facility. Due to the Respondents' acts and omissions, causing contamination and allowing contamination to remain in place, the Village incurred significant costs by conducting a response, removal, and remedial action to address the contamination.

**RESPONSE:** This paragraph purports to provide a summary of the complaint, rather than making specific allegations. Thus, no answer is required. To any extent that the Board believes an answer is necessary, Respondents deny the allegations of this summary paragraph.

### **Common Allegations**

1. The Village is an Illinois municipal corporation and a "person" within the meaning of Section 3.315 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/3.315.

**RESPONSE:** Respondents admit the allegations of paragraph 1.

2. Bill's Auto Center is a corporation or other business entity and a "person" within the meaning of Section 3.315 of the Act, 415 ILCS 5/3.315, and the owner and operator of six (6) underground storage tanks that were located on the real property commonly known as 330 S. Main Street, Lombard, Illinois (the "Facility").

**RESPONSE:** Respondents deny that Bill's Auto Center is a corporation, but admit the remaining allegations of paragraph 2.

3. Bill's Standard Service is a corporation or other business entity and a "person" within the meaning of Section 3.315 of the Act, 415 ILCS 5/3.315, and is or was the owner of the Facility where the underground storage tanks were located.

**RESPONSE:** Respondents deny that Bill's Standard Service is a corporation, and deny that Bill's Standard Service is or was the owner of the Facility. Respondents admit the remaining allegations of paragraph 3.

4. William Kovar is an individual and is the owner of and oversees and manages Bill's Auto Center and Bill's Standard Service.

**RESPONSE:** Respondents admit the allegations of paragraph 4.

5. Jurisdiction of the Illinois Pollution Control Board (the "Board") is proper pursuant to Section 31 of the Act, 415 ILCS 5/31.

**RESPONSE:** Respondents admit the allegations of paragraph 5.

6. The Facility formerly contained six (6) underground storage tanks used for the storage of gasoline and waste oil. At least five (5) of these tanks were removed on March 31, 1999.

**RESPONSE:** Respondents admit the allegations of paragraph 6.

7. During removal of the underground storage tanks from the Facility, there was evidence of a release through staining and odors within the soils and water surrounding the underground storage tanks. On March 31, 1999, a representative of the Office of the Illinois State Fire Marshal confirmed that a petroleum release had occurred at the Facility, and an Illinois Emergency Management Agency ("IEMA") Incident Number was assigned to the leaking underground storage tanks. On information and belief, in early 1996, during the installation of Phase II vapor recovery upgrades on the underground storage tank systems by the Respondents, impacted soils were encountered and the Respondents called IEMA and obtained an incident number. Based upon the historical use of the Facility as a service center and observations made during the underground storage tank removal, two (2) incident numbers issued to the site are related to the same release. Incident Nos. 990776 and 960012 were assigned to the Facility.

**RESPONSE:** Respondents admit the allegations of paragraph 7.

8. The Respondents exposed the underground storage tanks and pumped oily waste water and sludge from the tanks for disposal at an approved disposal facility. The underground storage tanks were cleaned and removed from the Facility.

**RESPONSE:** Respondents admit that their agent performed the acts alleged in paragraph 8.

9. During removal of the underground storage tanks, the Respondents discovered that fill under and around the tanks and native soil was contaminated by petroleum constituents that had leaked from the underground storage tanks.

**RESPONSE:** Respondents deny that petroleum constituents leaked from the underground storage tanks. Respondents admit the remaining allegations of paragraph 9.

10. On information and belief, beginning at the end of the period of active operation of the underground storage tanks and continuing to at least March 31, 1999, the Respondents permitted the continued release of petroleum constituents into soils at the Facility from the underground storage tanks.

**RESPONSE:** Respondents deny the allegations of paragraph 10.

11. The Illinois Environmental Protection Agency ("IEPA") received a 45-day report dated June 7, 2002, regarding the incident. The IEPA directed Respondents to perform corrective action in accordance with the Illinois Environmental Protection Act (the "Act") and the Illinois Administrative Code. Pursuant to the Act, the IEPA required the Respondents to file a Site Classification Work Plan and Corrective Action Plan and to otherwise comply with the law. On information and belief, the Respondents have failed to take any steps necessary to do a site investigation or to submit a Site Investigation Completion Report and Work Plan or to remediate the contamination caused by the leaking underground storage tanks.

**RESPONSE:** Respondents deny that they submitted a 45-day report dated June 7, 2002, but admit that they submitted a 45-day report dated June 2, 1999. Respondents admit that IEPA directed respondents to perform corrective action, but deny that the allegations of paragraph 11 accurately set forth the IEPA's direction to respondents. Respondents deny the allegations of the last sentence of paragraph 11.

12. The Village owns and controls property immediately adjacent to the Facility on the north side of Willow Street (the "Village Property").

**RESPONSE:** Respondents admit the allegations of paragraph 12.

13. On August 11, 2000, while installing a water main on the Village Property, an excavation contractor and supervising engineer for the Village noted a gasoline odor in and on the Village Property.



**RESPONSE:** Respondents have insufficient information to respond to the allegations of paragraph 13, and thus deny those allegations.

14. Upon a subsequent investigation, it was determined that petroleum contamination from the underground storage tanks at the Facility caused contamination to the Village Property.

**RESPONSE:** Respondents deny the allegations of paragraph 14.

15. The Village incurred response, removal, and remedial costs and expenses in excess of \$98,000.00 in connection with the contamination from the underground storage tanks at the Facility.

**RESPONSE:** Respondents have insufficient information to respond to the allegations regarding the amount spent, and thus deny those allegations. Respondents deny the remaining allegations of paragraph 15.

16. Despite repeated demands by the Village, the Respondents have not reimbursed the Village for the response, removal, and remedial costs incurred because of the leaking underground storage tanks at the Facility.

**RESPONSE:** Respondents admit that they have not "reimbursed" the Village for its claimed costs, but deny that they have any obligation or duty to do so.

**COUNT I**  
**Violation of Section 21(a) of the Act**

17. The Village re-alleges and incorporates by reference as if set forth fully herein paragraphs 1 through 16 of the Complaint.

**RESPONSE:** Respondents re-allege their responses to paragraphs 1 through 16 of the complaint, as if fully set forth here.

18. Section 21(a) of the Act prohibits any person from causing or allowing the open dumping of any waste. 415 ILCS 5/21(a).

**RESPONSE:** Paragraph 18 sets forth purported statutory provisions. The statute speaks for itself, and no answer is required.

19. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility and off-site onto the Village Property constitute "waste" under the Act. 415 ILCS 5/3.535.

**RESPONSE:** Respondents deny the allegations of paragraph 19.

20. The Respondents caused or allowed petroleum constituents to be released from the underground storage tanks at the Facility in violation of Section 21(a) of the Act.

**RESPONSE:** Respondents deny the allegations of paragraph 20.

**COUNT II**  
**Violation of Section 21(d)(2) of the Act**

On July 22, 2004, the Board dismissed Count II of the complaint as frivolous. Therefore, no answer is required to Count II.

**COUNT III**  
**Violation of Section 21(e) of the Act**

29 [sic]. The Village re-alleges and incorporates by reference as if set forth fully herein paragraphs 1 through 16 of the Complaint.

**RESPONSE:** Respondents re-allege their responses to paragraphs 1 through 16 of the complaint, as if fully set forth here.

30. Section 21(e) of the Act prohibits disposal, storage or abandonment of any waste "except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder." 415 ILCS 5/21(e).

**RESPONSE:** Paragraph 30 sets forth purported statutory provisions. The statute speaks for itself, and no answer is required.

31. The petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into surrounding soils at the Facility and onto the Village Property constitute "waste" under the Act. 415 ILCS 5/3.535.

**RESPONSE:** Respondents deny the allegations of paragraph 31.

32. The presence of petroleum constituents in underground storage tanks at the Facility constitutes "storage" under the Act. 415 ILCS 5/3.480.

**RESPONSE:** Respondents deny the allegations of paragraph 32.

33. The leaking of petroleum constituents from underground storage tanks at the Facility constitutes "disposal" under the Act. 415 ILCS 5/3.185.

**RESPONSE:** Respondents deny the allegations of paragraph 33.

34. The presence of petroleum constituents in underground storage tanks at the Facility for years after the cessation of active use by the Respondents constitutes "abandonment" under Section 21(e) of the Act. 451 ILCS 5/21(e).

**RESPONSE:** Respondents deny the allegations of paragraph 34.

35. The Respondents disposed, stored, and abandoned waste at a facility that did not meet the requirements of the Act, and the regulations and standards thereunder, in violation of Section 21(e) of the Act. 425 ILCS 5/21(e).

**RESPONSE:** Respondents deny the allegations of paragraph 35.

#### **COUNT IV Violation of Section 12(a) of the Act**

17. The Village re-alleges and incorporates by reference as if set forth herein paragraphs 1 through 16 of the Complaint.

**RESPONSE:** Respondents re-allege their responses to paragraphs 1 through 16 of the complaint, as if fully set forth here.

18. Section 12(a) of the Act prohibits a person from causing or allowing the discharge of any contaminants into the environment so as to cause or tend to cause water pollution in Illinois. 415 ILCS 5/12(a).

**RESPONSE:** Paragraph 30 sets forth purported statutory provisions. The statute speaks for itself, and no answer is required.

19. On information and belief, the leaking of the petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into the soils and groundwater and onto

Village Property caused water pollution in violations of regulations or standards adopted by the Board pursuant to the Act. 415 ILCS 5/12(a).

**RESPONSE:** Respondents deny the allegations of paragraph 19.

20. On information and belief, Respondents caused, threatened or allowed water pollution by allowing contaminants in the form of gasoline, waste oil, and other petroleum substances into the environment, which leaked into and remained in the soil and groundwater at the Facility in violation of Section 12(a) of the Act.

**RESPONSE:** Respondents deny the allegations of paragraph 20.

**COUNT V**  
**Violation of Section 12(d) of the Act**

17. The Village re-alleges and incorporates by reference as if set forth herein paragraphs 1 through 16 of the Complaint.

**RESPONSE:** Respondents re-allege their responses to paragraphs 1 through 16 of the complaint, as if fully set forth here.

18. Section 12(d) of the Act prohibits a person from depositing any contaminants upon the land in such place and manner so as to create a water pollution hazard. 415 ILCS 5/12(d).

**RESPONSE:** Paragraph 18 sets forth purported statutory provisions. The statute speaks for itself, and no answer is required.

19. On information and belief, the petroleum constituents present in the underground storage tanks at the Facility and released from the deteriorated underground storage tanks into the soils and groundwater at the Facility and onto Village Property constitutes a "deposit of contaminants upon the land" "so as to create a water pollution hazard" under Section 12(d) of the Act. 415 ILCS 5/12(d).

**RESPONSE:** Respondents deny the allegations of paragraph 19.

20. On information and belief, the Respondents created a water pollution hazard by allowing the release of contaminants, including gasoline, waste oil, and other petroleum substances to leak into and remain in the soils and groundwater at the Facility in violation of Section 12(d) of the Act. 415 ILCS 5/12(d).

**RESPONSE:** Respondents deny the allegations of paragraph 20.

WHEREFORE, Respondents pray that judgment be entered in their behalf and against the complainant, and for such other relief as the Board deems appropriate.

#### AFFIRMATIVE DEFENSES

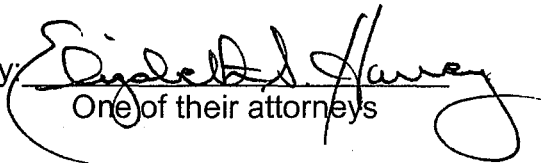
Respondents BILL'S AUTO CENTER, BILL'S STANDARD SERVICE, and WILLIAM KOVAR plead the following affirmative defenses. These affirmative defenses are pled without prejudice to Respondents' responses and denials to the allegations of the complaint.

1. The alleged contamination, and any costs or damages incurred by complainant, were caused solely by the acts and/or omissions of a third party (or third parties) other than Respondents.
2. Complainant's costs, if any, incurred in responding to the alleged contamination are excessive and not recoverable from Respondents.
3. The alleged contamination is a preexisting condition for which Respondents are not responsible.
4. Complainant suffered no losses or damages, and incurred no costs, that were proximately caused by Respondents.
5. Complainant's claims are barred to the extent it has failed to mitigate its damages and costs.
6. Respondents reserve their right to assert and rely upon other affirmative defenses which may become apparent during discovery of this case, and reserves its right to amend its answer to assert such further affirmative defenses.

WHEREFORE, Respondents pray that judgment be entered in their behalf and against the complainant, and for such other relief as the Board deems appropriate.

Respectfully submitted,

BILL'S AUTO CENTER,  
BILL'S STANDARD SERVICE, and  
WILLIAM KOVAR

By:   
One of their attorneys

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Dated: July 30, 2004