

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-110
)	(Enforcement - Water)
J. McDANIEL, INC. an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **ENTRY OF APPEARANCE OF MONICA T. RIOS and J. McDANIEL'S ANSWER TO COMPLAINANT'S COMPLAINT**, copies of which are herewith served upon you.

Respectfully submitted,

J. McDANIEL, INC.,
Respondent,

By: /s/ Edward W. Dwyer
Edward W. Dwyer

Dated: January 12, 2006

Edward W. Dwyer
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, certify that I have served the attached

ENTRY OF APPEARANCE OF MONICA T. RIOS and J. McDANIEL, INC.'S

ANSWER TO COMPLAINANT'S COMPLAINT upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on January 12, 2006; and upon:

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

Javonna Homan, Esq.
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

by depositing said documents in the United States Mail in Springfield, Illinois, postage prepaid, on January 12, 2006.

By: /s/ Edward W. Dwyer
Edward W. Dwyer


BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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)	(Enforcement - Water)
J. McDANIEL, INC. an Illinois corporation,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF MONICA T. RIOS

NOW COMES Monica T. Rios, of the law firm of HODGE DWYER ZEMAN,
and hereby enters her appearance on behalf of Respondent, J. McDANIEL, INC.

Respectfully submitted,


Monica T. Rios
 Monica T. Rios

Dated: January 12, 2006

Monica T. Rios
 HODGE DWYER ZEMAN
 3150 Roland Avenue
 Post Office Box 5776
 Springfield, Illinois 62705-5776
 (217) 523-4900

ECSI:001/Fil/EOA-MTR

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Respondent.)	

**J. McDANIEL, INC.'S ANSWER
TO COMPLAINANT'S COMPLAINT**

NOW COMES Respondent, J. McDANIEL, INC. ("J. McDaniel"), by and through its attorneys, HODGE DWYER ZEMAN, and hereby files its Answer in this matter stating as follows:

COUNT I: WATER POLLUTION (VERMILION COUNTY)

1. Paragraph 1 contains a legal conclusion for which no response is required.

To the extent paragraph 1 contains any factual allegations, J. McDaniel has insufficient knowledge to admit or deny paragraph 1. Therefore, J. McDaniel denies the same.

2. Paragraph 2 contains a legal conclusion for which no response is required.

3. Paragraph 3 contains a legal conclusion for which no response is required.

To the extent paragraph 3 alleges facts regarding notice and the opportunity for a meeting with the Illinois EPA, J. McDaniel admits the same.

4. J. McDaniel admits paragraph 4.

5. The Act speaks for itself; no response is required.

6. The Act speaks for itself; no response is required.

7. The Act speaks for itself; no response is required.

8. The Act speaks for itself; no response is required.

9. The Act speaks for itself; no response is required.

10. J. McDaniel admits paragraph 10.

11. Paragraph 11 contains a legal conclusion for which no response is required. J. McDaniel affirmatively states that it did not intentionally allow gasoline to discharge into a storm water drain or drainage way.

12. Paragraph 12 contains a legal conclusion for which no response is required.

13. J. McDaniel admits paragraph 13 to the extent that at approximately 1:15 p.m. on November 12, 2001, the Danville Fire Department (“DFD”) responded to the scene and that DFD reported Lower Explosive Limit readings in the storm sewer from 50-70%. J. McDaniel has insufficient knowledge to admit or deny any other factual allegations in paragraph 13 and therefore denies the same.

14. J. McDaniel admits paragraph 14 to the extent that the DFD flushed the storm sewer at a rate of 100 to 200 gallons per minute for five or six hours. J. McDaniel has insufficient knowledge to admit or deny any other factual allegations in paragraph 14 and therefore denies the same. J. McDaniel affirmatively states that it was the actions of the DFD that resulted in any discharge to Stony Creek.

15. J. McDaniel admits paragraph 15.

16. J. McDaniel has insufficient knowledge to admit or deny the allegations of paragraph 16 and therefore denies the same.

17. J. McDaniel admits paragraph 17.

18. J. McDaniel admits paragraph 18.

19. J. McDaniel admits paragraph 19 to the extent that the Illinois Environmental Protection Agency (“Illinois EPA”), Illinois Department of Natural Resources (“Illinois DNR”), Bodine, DFD, and Terracon visited the site on November 13, 2001. Furthermore, J. McDaniel admits that the Illinois EPA, Terracon, and Bodine walked along the drainage way. J. McDaniel has insufficient knowledge to admit or deny the remaining allegations of paragraph 19 and therefore denies the same.

20. J. McDaniel has insufficient knowledge to admit or deny the allegations of paragraph 20 and therefore denies the same.

21. Paragraph 21 contains legal conclusions for which no responses are required.

WHEREFORE, the Respondent, J. McDANIEL, INC., respectfully requests that the Illinois Pollution Control Board deny the relief sought in Count I by the Complainant, PEOPLE OF THE STATE OF ILLINOIS.

COUNT II: WATER POLLUTION HAZARD (VERMILION COUNTY)

1-21. Respondent realleges and incorporates herein by reference its answers to paragraphs 1 through 21 of Count I as its answers to paragraphs 1 through 21 of this Count II.

22. J. McDaniel admits paragraph 22 to the extent that at the direction of the Illinois EPA, Terracon collected soil samples on or about November 13, 2001. J. McDaniel affirmatively states that Terracon collected samples from a dry creekbed and that the subsequent analytical results indicated levels of benzene, ethyl benzene, toluene, and total xylene (collectively referred to as “BETX”) as high as 751 micrograms per

kilogram (ug/kg), 3,120 ug/kg, 3,690 ug/kg, and 16, 900 ug/kg, respectively. To the extent paragraph 22 contains other factual allegations, J. McDaniel denies the same.

23. J. McDaniel admits that on April 12, 2002, the Illinois EPA rejected its proposed compliance commitment agreement because it was received after the forty-five (45) day statutory period for response to a Violation Notice had elapsed. To the extent paragraph 23 contains any other factual allegations, J. McDaniel denies the same.

24. J. McDaniel admits paragraph 24 to the extent that a report dated August 7, 2002, by Terracon proposed on behalf of J. McDaniel to achieve remediation pursuant to the Tiered Approach to Corrective Action Objectives (“TACO”) regulations in general and site-specific Tier 2 remediation objectives developed by Terracon. J. McDaniel affirmatively states that the August 7, 2002, report showed levels of benzene in sediments up to three hundred forty-one ug/kg (341 ug/kg). To the extent that paragraph 24 contains any other factual allegations, J. McDaniel denies the same.

25. Paragraph 25 contains a legal conclusion for which no response is required. To the extent that paragraph 25 contains any other factual allegations, J. McDaniel denies the same.

26. Paragraph 26 contains a legal conclusion for which no response is required.

WHEREFORE, the Respondent, J. McDANIEL, INC., respectfully requests that the Illinois Pollution Control Board deny the relief sought in Count II by the Complainant, PEOPLE OF THE STATE OF ILLINOIS.

COUNT III: WATER POLLUTION (McLEAN COUNTY)

1-9. J. McDaniel realleges and incorporates herein by reference its answers to paragraphs 1 through 9 of Count I as its answers to paragraphs 1 through 9 of this Count III.

10. J. McDaniel admits paragraph 10.

11. Paragraph 11 contains a legal conclusion for which no response is required. J. McDaniel affirmatively states that it did not intentionally allow gasoline to discharge into a road ditch.

12. Paragraph 12 contains a legal conclusion for which no response is required.

13. J. McDaniel admits paragraph 13 to the extent that on April 3, 2001, the McLean Fire Department arrived on scene. To the extent that paragraph 13 contains any other factual allegations, J. McDaniel has insufficient knowledge to admit or deny such allegations and therefore denies the same.

14. J. McDaniel admits paragraph 14 to the extent that the McLean Fire Department applied foam at the scene. To the extent paragraph 14 contains any other factual allegations, J. McDaniel has insufficient knowledge to admit or deny such allegations and therefore denies the same.

15. J. McDaniel admits paragraph 15 to the extent that gasoline traveled through the drainage way and discharged through approximately two miles of field tiles into Sugar Creek. To the extent that paragraph 15 contains other factual allegations, J. McDaniel has insufficient knowledge to admit or deny such allegations, and therefore denies the same.

16. J. McDaniel admits paragraph 16.

17. J. McDaniel has insufficient knowledge to admit or deny the allegations of paragraph 17 and therefore denies the same.

18. J. McDaniel has insufficient knowledge to admit or deny allegations of paragraph 18 and therefore denies the same.

19. J. McDaniel admits paragraph 19 to the extent that from April 4, 2001, through April 16, 2001, Bodine undertook the excavation and removal of an estimated 1,625 tons of contaminated soil. J. McDaniel affirmatively states that Bodine excavated a test pit in the gravel bar at Sugar Creek near where the tile line discharged and that at the request of McLean County Health Department J. McDaniel installed a new septic system for a nearby home since vapors from a field tile might have entered through the pre-existing septic system. To the extent that that paragraph 19 contains other factual allegations, J. McDaniel has insufficient knowledge to admit or deny such allegations and therefore denies the same.

20. J. McDaniel has insufficient knowledge to admit or deny the allegations of paragraph 20 and therefore denies the same. J. McDaniel affirmatively states that the field tile was sampled twice and the second sample, collected approximately seven weeks after the release, did not have any detections above the detection limits.

21. Paragraph 21 contains a legal conclusion for which no response is required.

WHEREFORE, the Respondent, J. McDANIEL, INC., respectfully requests that the Illinois Pollution Control Board deny the relief sought in Count III by the Complainant, PEOPLE OF THE STATE OF ILLINOIS.

COUNT IV: WATER POLLUTION HAZARD (McLEAN COUNTY)

1-9. Respondent realleges and incorporates herein by reference its answers to paragraphs 1 through 9 of Count I as its answers to paragraphs 1 through 9 of this Count IV.

10-20. Respondent realleges and incorporates herein by reference its answers to paragraphs 10 through 20 of Count III as its answers to paragraphs 10 through 20 of this Count IV.

21. J. McDaniel admits paragraph 21.

22. J. McDaniel has insufficient knowledge to admit or deny paragraph 22 and therefore denies the same. J. McDaniel affirmatively states that in a letter dated December 4, 2001, the Illinois EPA construed the November 2001 report as a proposed compliance commitment agreement although it had been received after the forty-five day statutory period for response to a Violation Notice had elapsed, and that on December 4, 2001, the Illinois EPA rejected the proposed compliance commitment agreement because clean-up objectives for soil had not been met in two areas north and south of Route 136, cleanup objectives for groundwater had not been met, and no sampling of a nearby residential well had been conducted. J. McDaniel further states that the November 2001 report stated that groundwater in the area of the sump exceeded groundwater standards.

23. J. McDaniel admits paragraph 23 to the extent that a remedial action plan dated August 2002 by Earth Tech proposed on behalf of the Respondent to continue efforts to mitigate soil contamination did not include additional investigation as to impacts upon a nearby residential well. J. McDaniel denies any remaining factual allegations contained in paragraph 23. J. McDaniel affirmatively states that the August

2002 Remedial Action Plan provides for the installation of a biosparge system to successfully remediate soil and groundwater contamination and that it further describes a sampling plan. J. McDaniel also affirmatively states the resident's well was not sampled because it was up-gradient from the spill and the County was known to have sampled and analyzed the well water three to four weeks after the accident and determined that it was clean. J. McDaniel further states that the results of the County's sampling of the residential well are stated in the May 2003 Site Investigation Report.

24. J. McDaniel admits paragraph 24 to the extent that as of May 30, 2003, when another remedial action plan was submitted by the Respondent to the Illinois EPA, soil and groundwater exceedances still remained, no sampling of the residential well, surface water or sediment had been conducted, and the biosparge system proposed by J. McDaniel to remediate the areas around Route 136 had not been implemented. To the extent that paragraph 24 contains any other factual allegations, J. McDaniel denies the same. J. McDaniel affirmatively states that as of October 21, 2003, a letter was transmitted by it to the Illinois EPA indicating that soil and groundwater exceedances still remained and the biosparge system had not yet been implemented. J. McDaniel further affirmatively states that between August 2002 and May 2003, it was waiting to receive its requested review and approval of the remedial action plan from the Illinois EPA and that it was not until the May 9, 2003, meeting that the Illinois EPA intended to respond to the submittal.

25. Paragraph 25 contains a legal conclusion for which no response is required.

WHEREFORE, the Respondent, J. McDANIEL, INC., respectfully requests that the Illinois Pollution Control Board deny the relief sought in Count IV by the Complainant, PEOPLE OF THE STATE OF ILLINOIS.

Respectfully submitted,

J. MCDANIEL, INC.,
Respondent,

By: /s/ Edward W. Dwyer
One of Its Attorneys

Dated: January 12, 2006

Edward W. Dwyer
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