

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 ex rel. LISA MADIGAN, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 HICKS OILS & HICKSGAS, INCORPORATED, )  
 an Indiana corporation, )  
 )  
 Respondent. )

**RECEIVED**  
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 SEP 30 2009  
 STATE OF ILLINOIS  
 Pollution Control Board

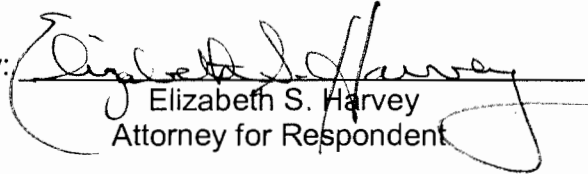
PCB NO. 2010-12  
 (Enforcement)

**NOTICE OF FILING**

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 30<sup>th</sup> day of September 2009, the following were filed with the Illinois Pollution Control Board: **Appearance and Respondent's Answer and Affirmative Defenses to Complaint**, which are attached and herewith served upon you.

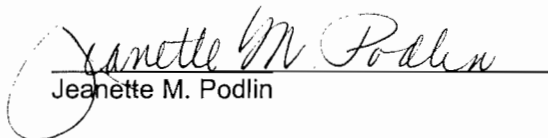
HICKS OILS AND HICKSGAS, INCORPORATED

By:   
 Elizabeth S. Harvey  
 Attorney for Respondent

Elizabeth S. Harvey  
 Michael J. Maher  
 SWANSON, MARTIN & BELL, LLP  
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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 in the above-captioned matter via U.S. Mail on or before 5:00 p.m. on September 30, 2009.

  
 Jeanette M. Podlin

[x] 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.

1248-001

**SERVICE LIST**

**People of the State of Illinois v. Hicks Oils & Hicksgas, Incorporated**

**PCB NO. 2010-12**

**(Enforcement)**

Michael D. Mankowski  
Assistant Attorney General  
Environmental Enforcement Bureau  
500 South Second Street  
Springfield, Illinois 62706

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

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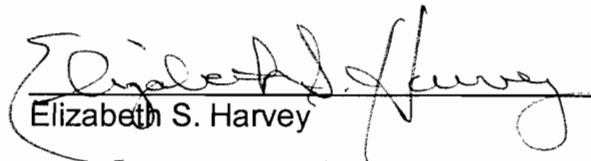
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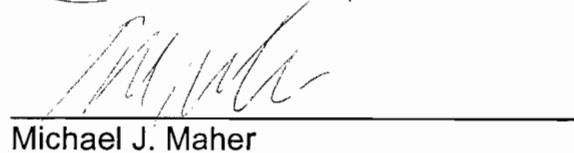
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**APPEARANCE**

The undersigned hereby submit their appearances on behalf of respondent HICKS OILS AND HICKSGAS, INCORPORATED.

  
 Elizabeth S. Harvey

  
 Michael J. Maher

Dated: September 30, 2009

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 Michael J. Maher  
 Swanson, Martin & Bell, LLP  
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**RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

Respondent HICKS OILS & HICKSGAS, INCORPORATED ("Hicks"), by its attorneys Swanson, Martin & Bell, LLP, hereby responds to the complaint filed by complainant PEOPLE OF THE STATE OF ILLINOIS.

**COUNT I**

**GROUNDWATER POLLUTION**

1. This Count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e).

**ANSWER:** Hicks admits that the Illinois Environmental Protection Act gives complainant certain powers. Hicks is without sufficient information to admit or deny the remainder of the allegations of paragraph 1.

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4, and which is charged, inter alia, with the

duty of enforcing the Act.

**ANSWER:** Hicks admits the allegations of paragraph 2.

3. The Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31, after providing the Respondent Hicks Oil & Hicksgas, Incorporated with notice and the opportunity to meet with the Illinois EPA.

**ANSWER:** The complaint speaks for itself on whether the Count is brought pursuant to Section 31 of the Act, and thus no answer is required to this allegation. Hicks admits the remaining allegations of paragraph 3.

4. The Respondent Hicks Oil & Hicksgas, Incorporated ("Hicks Oils") is an Indiana corporation, registered and in good standing with the Illinois Secretary of State.

**ANSWER:** Hicks admits the allegations of paragraph 4.

5. The Respondent is a retailer of bulk petroleum products and liquefied gas and at all times relevant to this Complaint, has owned and operated a bulk petroleum storage and transfer facility located at 1118 Wesley Road, just northwest of State Highway 29 in Creve Coeur, Tazewell County, Illinois ("site or facility").

**ANSWER:** Hicks admits that it previously owned and operated a bulk petroleum storage and transfer facility located at 1118 Wesley Road in Tazewell County, Illinois, and that the facility was located northwest of State Highway 29. Hicks denies that it currently owns that property or operates that facility, denies that the facility is located in Creve Coeur, and denies the remaining allegations of paragraph 5.

6. Located on the site are the retention dikes from five (5) previously removed bulk petroleum storage tanks and two partially disassembled distribution pipelines previously used to transfer petroleum products from a barge terminal on the Illinois River to the storage tanks. Also present are an office building, warehouse, and loading rack area

where employees filled tanker trucks for transport of petroleum products to customers.

**ANSWER:** Hicks admits that the dikes and structures listed in paragraph 6 were previously on the site. Hicks no longer owns, operates, or controls the site, and has insufficient information to state whether any or all of the dikes and structures are on the site presently.

7. Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

\*\*\*

**ANSWER:** Section 12(a) of the Act speaks for itself, and no answer is required.

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), contains the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

**ANSWER:** Section 3.165 of the Act speaks for itself, and no answer is required.

9. Section 3.170 of the Act, 415 ILCS 5/3.170 (2006), contains the following definition:

"CONTAMINATION" or "CONTAMINATE," when used in connection with groundwater, means water pollution of such groundwater.

**ANSWER:** Section 3.170 of the Act speaks for itself, and no answer is required.

10. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), contains the following definition:

'WATER POLLUTION' is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**ANSWER:** Section 3.545 of the Act speaks for itself, and no answer is required.

11. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), contains the following definition:

'WATERS' means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

**ANSWER:** Section 3.550 of the Act speaks for itself, and no answer is required.

12. Section 3.210 of the Act, 415 ILCS 5/3.210 (2006), contains the following definition:

"GROUNDWATER" means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure.

**ANSWER:** Section 3.210 of the Act speaks for itself, and no answer is required..

13. Section 620.115 of the Illinois Pollution Control Board's ("Board") Groundwater Regulations, 35 Ill. Adm. Code 620.115, prohibits offensive conditions in waters of the State:

No person shall cause, threaten or allow a violation of the Act, the Illinois Groundwater Protection Act [415 ILCS 55] or regulations adopted by the Board thereunder, including but not limited to this Part.

**ANSWER:** Section 620.115 of the Board's regulations speaks for itself, and no answer is required.

14. Section 620.405 of the Board's Groundwater Regulations, 35 Ill. Adm. Code 620.405, provides a general prohibition against violations of Groundwater Quality Standards

as follows:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

**ANSWER:** Section 620.405 of the Board's regulations speaks for itself, and no answer is required.

15. Section 620.410 of the Board's Groundwater Regulations, 35 Ill. Adm. Code 620.410, provides the Groundwater Quality Standards for Class I: Potable Resource Groundwater as follows:

- b) Organic Chemical Constituents Except due to natural causes or as provided in Section 620.450 or subsection (c), concentrations of the following organic chemical constituents shall not be exceeded in Class I groundwater:

<u>Constituent</u>		<u>Standard</u> <u>(mg/L)</u>
	***	
Benzene*	***	0.005

\*Denotes a carcinogen

**ANSWER:** Section 620.410 of the Board's regulations speaks for itself, and no answer is required.

16. On information and belief, in 2001, the Respondent removed the five (5) petroleum storage tanks, the loading rack, and the majority of the piping between the tanks and the loading area.

**ANSWER:** Hicks admits the allegations of paragraph 16.

17. On information and belief, in 2001, the Respondent hired an engineering firm to conduct remediation at the site.

**ANSWER:** Hicks admits that, in 2000, it hired an engineering firm to conduct investigation at the site. Hicks denies that it first hired the firm in 2001, and denies any implication that it had knowledge of any contamination on site when it hired the engineering



firm.

18. On information and belief, in May of 2002, the engineering firm tested a sample of groundwater from monitoring well number three (3), located at the site. Analysis of the sample showed a benzene concentration of 1.080 milligrams per liter ("mg/l").

**ANSWER:** Hicks admits the allegations of paragraph 18.

19. On February 24, 2004, the Respondent submitted to the Illinois EPA Division of Water Pollution Control a Coordinated Review of Permit Application Fact Sheet and Memorandum containing laboratory results collected by the Defendant [sic] from on-site monitoring wells. The results showed high levels of benzene, including the concentration of 1.080 mg/l found in monitoring well number three (3).

**ANSWER:** Hicks denies that laboratory results showed "high levels of benzene". Hicks has insufficient information to admit or deny the remaining allegations of paragraph 19.

20. Benzene is a contaminant as defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

**ANSWER:** The allegations of paragraph 20 are legal conclusions, to which no answer is required.

21. The facility is located in an area where the groundwater has an intrinsically high vulnerability to contamination due primarily to geological conditions, including permeable soils and a high infiltration rate of groundwater recharge. The groundwater is presently utilized as an aquifer and source of drinking water for local residences and is therefore a Class I resource groundwater.

**ANSWER:** The allegations of paragraph 21 are legal conclusions, to which no

answer is required.

22. By causing or allowing the discharge of contaminants to groundwater so as to exceed the Board's Groundwater Quality Standards for a Class I resource groundwater, and to thereby render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, the Respondent has violated Sections 12(a) of the Act, 415 ILCS 5/12(a) (2006), and 35 Ill. Adm. Code 620.115, 620.405 and 620.410.

**ANSWER:** Hicks denies the allegations of paragraph 22.

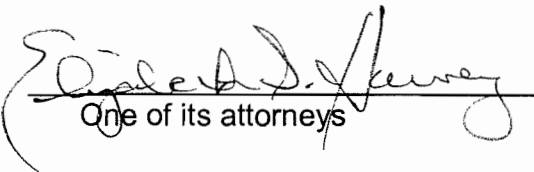
WHEREFORE, respondent Hicks Oils and Hicksgas, Incorporated, denies complainant is entitled to any of the requested relief, asks that the complaint be dismissed with prejudice and without any finding against Hicks, and for such other relief as the Board deems appropriate.

#### **AFFIRMATIVE DEFENSES**

1. Any contamination in or formerly in groundwater on the site formerly owned and operated by Hicks is the result of releases from previous owners of the site, including but not limited to Cities Service and Gulf Oil.
2. Any contamination in or formerly in groundwater on the site formerly owned and operated by Hicks is the result of releases from other property not owned, operated, or controlled by Hicks, including but not limited to the former Amoco Oil Company Peoria Terminal located west of the subject site.
3. Hicks reserves its right to assert and rely upon any affirmative defenses which may become apparent during the course of this case, and reserves its right to amend its answer to assert such affirmative defenses.

Respectfully submitted,

HICKS OILS & HICKSGAS, INCORPORATED

By:   
One of its attorneys

Dated: September 30, 2009.

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