

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois)	
)	
Complainant,)	
)	PCB No. 11-79
v.)	
)	
INVERSE INVESTMENTS, L.L.C.,)	
an Illinois Limited Liability Company,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Krystyna Bednarczyk	Bradley P. Halloran
Assistant Attorney General	Hearing Officer
Environmental Bureau	Illinois Pollution Control Board
69 West Washington Street, 18 th Floor	100 West Randolph Street, Suite 11-500
Chicago, IL 60602	Chicago, IL 60601

PLEASE TAKE NOTICE that I have electronically filed today with the Office of the Clerk of the Pollution Control Board Respondent's Motion to Hearing Officer to Amend Answer and Defenses to Correct Typographical Error, a copy of which is attached hereto and herewith served upon you.

Dated: April 18, 2012

INVERSE INVESTMENTS, L.L.C.

By: /s/ Jennifer T. Nijman
Jennifer T. Nijman

Jennifer T. Nijman
NIJMAN FRANZETTI LLP
10 S. LaSalle St., Suite 3600
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 18th day of April, 2012, she caused to be served electronically the attached Motion to Hearing Officer to Amend Answer and Defenses to Correct Typographical Error upon the following person:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and by U.S. Mail, first class postage prepaid, to the following persons:

Krystyna Bednarczyk
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

/s/ Jennifer T. Nijman
Jennifer T. Nijman

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)	Enforcement - Water
INVERSE INVESTMENTS L.L.C.,)	
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**MOTION TO HEARING OFFICER TO AMEND ANSWER
AND DEFENSES TO CORRECT TYPOGRAPHICAL ERROR**

Respondent, INVERSE INVESTMENTS, L.L.C., by its undersigned attorneys, Nijman Franzetti LLP, hereby submits a motion to the Hearing Officer to amend its Answer, pursuant to Sections 101.502 and 101.610(n) of the Board General Rules, and Section 2-616 of the Illinois Code of Civil Procedure. 35 Ill. Adm. Code 101.502, 101.610(n), 735 ILCS 5/2-616. On March 9, 2012, Respondent filed its Answer and Defenses to Complainant's Complaint for Injunction and Civil Penalties. There is a typographical error in paragraph 51 of Respondent's Answer and Defense to Complaint. Paragraph 51 is missing the word "not," and Respondent submits that it should read: "Respondent has not caused or allowed the discharge of contaminants into the water because Respondent did *not* have control over the migration of the contaminants." (emphasis added). Respondent respectfully requests the Hearing Officer to grant

this Motion to Amend the Answer and that the attached Amended Answer and Defenses be allowed in this action.

Respectfully submitted,

INVERSE INVESTMENTS, L.L.C.

By /s/Jennifer T. Nijman
One of Its Attorneys

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**AMENDED
ANSWERS AND DEFENSES TO COMPLAINT
FOR INJUNCTION AND CIVIL PENALTIES**

Respondent, INVERSE INVESTMENTS L.L.C., by its undersigned attorneys, submits its Answers and Defenses to Complaint for Injunction and Civil Penalties as follows:

COUNT I

WATER POLLUTION

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, the 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 Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2010) against Respondent INVERSE INVESTMENTS L.L.C.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

2. The Illinois EPA is an administrative agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILLS 5/4 (2010), and charged, inter alia, with the duty of enforcing the Act.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

3. From at least August 4, 2003, to the date of filing of this Complaint, RESPONDENT INVERSE INVESTMENTS, L.L.C., (“Inverse”) has owned, and continues to own, the property located at 3004 West Route 120 (Elm Street), McHenry, Illinois (“Site”). Richard A. Adams II (“Adams”) is the manager of Inverse.

ANSWER: Respondent admits that it has owned the property located at 3004 West Route 120 (Elm Street) in McHenry, Illinois (“Site”) since 2005 and that Richard A. Adams II is the manager of Inverse Investments, LLC. Respondent denies the remaining allegations contained in paragraph 3.

4. The Site is approximately 0.3 acre in size. It is located at the northwest corner of Route 120 and Lake Ave., in a mixed-use commercial, residential, and recreational area. Private and non-community potable water wells are located within the general area of the Site. The Site is bordered to the north by a VFW Park, to the south by West Route 120 (Elm Street), to the west by commercial properties and to the east by Lake Avenue. Residential properties are located approximately 500 feet from the Site. The Fox River is approximately 1100 feet southwest of the Site.

ANSWER: Respondent admits that the Site is approximately 0.3 acre in size and is located on Route 120 in a mixed use commercial, residential, and recreational area. Respondent is without sufficient information to admit or deny the remaining allegations in paragraph 4 and therefore denies same.

5. The Site is improved with a single story building, a septic tank, and a parking lot composed of asphaltic materials that cover almost the entirety of the Site.

ANSWER: Respondent admits the allegations contained in paragraph 5 except that Respondent states that the septic tank was abandoned, and no longer in use prior to 2005. The property is served by municipal water and sewer.

6. From some date on or after 1960 but on or before 1970, at times better known to Respondent, the Site was operated as an automotive repair shop, which utilized a hydraulic lift and hydraulic oil reservoir within a concrete vault at the Site.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 6 and therefore denies same.

7. From 1970 through 1977, the Site was leased to Gem Cleaners, a dry cleaning operation.

ANSWER: Respondent admits that the Site was leased to Gem Cleaners by a prior owner at some time during the 1970s.

8. At times better known to Respondent, the Site also operated as a tire shop.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 6 and therefore denies same.

9. Historic use of dry cleaning solvents at the Site has resulted in the contamination of soil and groundwater with chlorinated volatile organic compounds ("VOCs").

ANSWER: Respondent denies the allegations of paragraph 9

10. Chlorinated VOCs are commonly associated with dry cleaning operations as well as with metal degreasing activities, such as in automotive repair shops.

ANSWER: Respondent admits that chlorinated VOCs are associated with dry cleaning operations. Respondent further admits that VOCs are commonly used in many other industries. Respondent is without sufficient information to admit or deny the remaining allegations in paragraph 10 and therefore denies same.

11. Tetrachloroethylene, also known as perchloroethylene ("PCE"), trichloroethylene ("TCE"), cis-1,2-dichloroethylene ("DCE") and vinyl chloride ("VC") are all Chlorinated VOCs. PCE, TCE, and DCE degrade chemically over time into VC, which can dissolve in water and migrate to groundwater.

ANSWER: Respondent admits the first sentence of paragraph 11. Respondent is without sufficient information to admit or deny the remaining allegations in paragraph 11 and therefore denies same.

12. VC is recognized by the United States Department of Health and Human Services, the United States Environmental Protection Agency, and the International Agency for Research on Cancer as a known human carcinogen. Short term exposure to high levels of VC can cause damage to the nervous system. Long term exposure can cause cancer and may damage the liver.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 12 and therefore denies same.

13. From at least August 4, 2003, and continuing to the date of filing of this Complaint, the exact dates better known to Respondent, chlorinated VOCs were and continue to be present in soils at the Site.

ANSWER: Respondent admits that chlorinated VOCs have been found in soil samples collected from the Site in 2005. Respondent denies the remaining allegations in paragraph 13.

14. During the period it has owned the Site, Inverse has engaged environmental consultants to investigate the Site.

ANSWER: Respondent admits the allegations of paragraph 14.

15. On November 16, 2005, Inverse collected soil samples from six different locations at various depths at the Site. Analytical testing of the soil samples revealed the following Chlorinated VOCs present in the soils:

	Sample Location	Collection Date	Constituent Concentration (1 mg/kg = mg/L = 1 ppm = 0.001)
PCE	BH-16	11/16/2005	560 mg/kg
	BH-17	11/16/2005	350 mg/kg
TCE	BH-16	11/16/2005	24 mg/kg
	BH-17	11/16/2005	11 mg/kg
DCE	BH-17	11/16/2005	2.4 mg/kg
	BH-19	11/16/2005	3.7 mg/kg

ANSWER: Respondent states that the investigation records speak for themselves and denies the remaining allegations in paragraph 15.

16. From at least August 4, 2003, and continuing to the date of filing of this Complaint, chlorinated VOCs were present in the groundwater at the Site.

ANSWER: Respondent admits that chlorinated VOCs have been found in the groundwater at the Site in 2005. Respondent denies the remaining allegations in paragraph 16.

17. Pursuant to the authority granted in Section 8(a) of the Illinois Groundwater Protection Act, 415 ILCS 55/8(a) (2010), the Illinois Pollution Control Board (“Board”) has promulgated rules and regulations to establish comprehensive water quality standards which are specifically for the protection of groundwater and which are codified as 35 Ill. Adm. Code 620: GROUNDWATER QUALITY STANDARDS (“Groundwater Quality Regulations”).

ANSWER: The allegations contained in paragraph 17 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

18. Class I groundwater is defined in Section 620.210(a) of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.210(a), as follows:

- a) Groundwater located 10 feet or more below the land surface and within:
 - 1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of such well;

ANSWER: The allegations contained in paragraph 18 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

19. The groundwater underlying the Site is within the minimum setback zone of a number of private and non-community potable water wells, and is a “Class I Groundwater” as that term is defined in Section 620.210(a) of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.210(a).

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 19 and therefore denies same.

20. Section 620.410(b) of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410(b), provides as follows: 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> (mg/L)	<u>Standard</u>
cis-1,2-Dichloroethylene ("DCE")	0.07
Tetrachloroethylene* ("PCE")	0.005
Trichloroethylene* ("TCE")	0.005
Vinyl Chloride* ("VC")	0.002

*Denotes a carcinogen.

ANSWER: The allegations contained in paragraph 20 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

21. On January 19, 2006, Inverse collected samples of groundwater from seven monitoring wells located on the Site. Analytical testing of the samples revealed the highest concentrations of DCE, PCE, TCE, and VC to be as follows:

Constituent	Sample Location	Collection Date	Constituent Concentration	Class I Groundwater Standards (1 mg/L = 1ppm = 0.001 ppb)
PCE	Site, MW-5	01/19/2006	15ppm	0.005 ppm
TCE	Site, MW-5	01/19/2006	2.6 ppm	0.005ppm
DCE	Site, MW-4	01/19/2006	8.0 ppm	0.07ppm
VC	Site, MW-4	01/19/2006	3.4ppm	0.002ppm

ANSWER: Respondent states that the investigation records speak for themselves and denies the remaining allegations in paragraph 21.

22. In August 2009 and November 2009, Inverse sampled the seven monitoring wells at the Site. Analytical testing of the August 2009 and November 2009 samples revealed the following:

Constituent	Sample Location	Collection Date	Constituent Concentration (1 mg/L = 1 ppm = 0.001 ppb)	Class I Groundwater Standards
PCE	Site, MW-3	08/06/09	5.7ppm	0.005 ppm
		11/19/09	6.6ppm	
TCE	Site, MW-3	08/06/09	1.6ppm	0.005ppm
		11/19/09	1.6ppm	
DCE	Site, MW-5	08/06/09	15ppm	0.07ppm
	Site, MW-4	11/19/09	14ppm	

Constituent	Sample Location	Collection Date	Constituent Concentration (1 mg/L = 1 ppm = 0.001 ppb)	Class I Groundwater Standards
VC	Site, MW-5	08/06/09	13ppm	0.002ppm
	Site, MW-4	11/19/09	9ppm	

ANSWER: Respondent states that the investigation records speak for themselves and denies the remaining allegations in paragraph 22.

23. In 2005, 2007 and 2008, the McHenry County Department of Public Health collected water samples from area potable water supply wells in proximity of the Site. Analytical testing of the samples revealed the presence of various chlorinated VOCs associated with dry-cleaning operations. The concentrations of these chlorinated VOCs in several potable water supply wells located south and west of the Site exceeded the Class I Groundwater Quality Standards established by the Board, as follows:

Sample Location	Collection Date	Constituent Concentration (in ppb): (1 mg/L = 1ppm = 0.001 ppb)			
		PCE	TCE	DCE	VC
Don's Dairy 3102 Route	01/10/07	ND	ND	ND	1.03
	01/30/07	ND	ND	ND	0.71
Private residence 1109	12/05/07	ND	ND	ND	1.83
Private residence 1107	12/05/07	ND	ND	ND	0.53
Private residence 1106	05/29/08	ND	ND	ND	3.59
Sunrise Groceries & Tackle 3020 Route 120	05/29/08	ND	ND	ND	0.68
Private Residence 1204 River Rd.	02/15/2007	ND	ND	ND	3.51
River Road Shell 3110	01/30/07	ND	ND	ND	0.91
Private Residence 1115 River Rd.	12/27/2005	ND	ND	ND	1.1

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 23 and therefore denies same. Respondent further denies that each of the sample locations are "in proximity" to the Site.

24. In October 2008, Illinois EPA collected groundwater samples using geoprobes in the area surrounding the Site. Geoprobe testing was generally conducted on groundwater at a depth of approximately 30 feet below ground surface ("bgs"), indicated by "S," or at a depth of approximately 45 feet bgs, indicated by "D."

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 24 and therefore denies same.

25. The October 2008 Illinois EPA geoprobe tests revealed the presence of chlorinated VOCs at the off-site G102S location. G102S is located on a parcel directly west of and adjacent to the Site. It is located approximately 30 feet west of the Site's west boundary lines. Analytical testing of the groundwater extracted at G102S contained VOC concentrations of: 110 ppb VC, 22.4 ppb DCE, 1.03 ppb TCE; and 1.40 ppb PCE.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 25 and therefore denies same.

26. The October 2008 Illinois EPA geoprobe tests revealed the presence of chlorinated VOCs at the off-site G104S location. G104S is located approximately 500 feet southwest of and down-gradient to the Site. Analytical testing of the groundwater extracted at G104S contained VOC concentrations of: 2.01 ppb DCE, 6.39 ppb TCE; and 74.3 ppb PCE.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 26 and therefore denies same.

27. The October 2008 Illinois EPA geoprobe tests revealed the presence of chlorinated VOCs at the off-site G105 location. G105S is located approximately 100 feet southwest down-gradient from the Site, immediately across Route 120. Analytical testing of the groundwater extracted at G105S revealed chlorinated VOC concentrations of: 367 ppb DCE, 9.34 ppb TCE, and 3.94 ppb VC. An additional geoprobe sample (G105D) taken at the same location at an approximate depth of 45 feet bgs contained a PCE concentration of 1.85 ppb.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 27 and therefore denies same.

28. The October 2008 Illinois EPA geoprobe tests revealed the presence of chlorinated VOCs at the off-site G106 location. G106 is located near G104 and approximately 500 feet down-gradient from and to the southwest of the Site. Analytical testing of the groundwater extracted at G106S revealed chlorinated VOC concentrations of: 96.6 ppb DCE and

10.3 ppb VC. Analytical testing of the groundwater extracted at G106D contained chlorinated VOC concentrations of: 2.21 ppb DCE and 9.19 ppb VC.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 28 and therefore denies same.

29. In March 2009, Illinois EPA conducted additional geoprobe groundwater tests of the area surrounding the Site.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 29 and therefore denies same.

30. The March 2009 Illinois EPA geoprobe tests revealed the presence of chlorinated VOCs at the off-site G115 location. G115 is located approximately 500 feet west and slightly south of the Site. Analytical testing of the groundwater extracted at G115S contained chlorinated VOC concentrations of 6.1 ppb DCE and 3.45 ppb VC. The samples extracted at G115D contained concentrations of: 4.04 ppb DCE and 1.55 ppb VC.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 30 and therefore denies same.

31. The March 2009 Illinois EPA geoprobe tests revealed the presence of chlorinated VOCs at the off-site G116S location. G116S is located directly west of the Site. Analytical testing of the groundwater extracted at an approximate depth of 30 feet bgs contained chlorinated VOC concentrations: of 24.1 ppb DCE and 1.63 ppb VC.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 31 and therefore denies same.

32. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), 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: The allegations contained in paragraph 32 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

33. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides the following definition:

“PERSON” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

ANSWER: The allegations contained in paragraph 33 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

34. Inverse is a “person,” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

ANSWER: The allegations contained in paragraph 34 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

35. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

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

ANSWER: The allegations contained in paragraph 35 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

36. Chlorinated VOCs both on and off the Site are “contaminants,” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

ANSWER: The allegations contained in paragraph 36 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

37. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), provides the following

“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: The allegations contained in paragraph 37 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

38. The groundwater underlying the Site and off-site groundwater are “water[s]” of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

ANSWER: The allegations contained in paragraph 38 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

39. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), provides 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: The allegations contained in paragraph 39 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

40. From at least August 4, 2003, and continuing through the date of filing of this Complaint, Inverse caused, threatened, or allowed the migration of chlorinated VOCs into soils and groundwater at the Site so as to cause the Class I Groundwater Quality Standards to be exceeded. Chlorinated VOCs were allowed to migrate into groundwater underlying the Site and into offsite groundwater.

ANSWER: Respondent denies the allegations of paragraph 40.

41. The VOCs migrating to groundwater at and near the Site created, or threatened to create a nuisance and rendered the groundwater harmful to human health and the environment.

This constituted water pollution as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2010).

ANSWER: Respondent denies the allegations of paragraph 41 and further states that the allegations in the second sentence of paragraph 41 constitute conclusions of law and require no response. To the extent a response is required, Respondent denies the allegations.

42. Inverse, by its actions as alleged herein, caused, threatened or allowed water pollution, and thereby violated and continues to violate Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

ANSWER: Respondent denies the allegations of paragraph 42.

RESPONDENT'S DEFENSE TO THE COMPLAINT

Respondent, Inverse Investments, L.L.C., asserts the following defense without waiving Complainant's obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law.

RESPONDENT DID NOT CAUSE OR ALLOW WATER POLLUTION

43. Respondent acquired the property through an inheritance in June 2005.

44. Since prior to 2005, the Site has been enrolled in the Site Remediation Program ("SRP") under Section 58 of the Act, 415 ILCS 5/58.

45. Since June 2005, Respondent has conducted remedial response activities at the Site under the supervision and approval of the Illinois EPA.

46. Any contaminants of concern found in the soil and groundwater at the Site are from historical conditions.

47. All businesses that may have discharged or contributed to any contamination at the Site ceased operating prior to 2005.

48. Respondent had no control over the migration of the contaminants through the groundwater prior to its inheritance in 2005.

49. By actively participating in the SRP since inheriting the property, Respondent has taken extensive precautions at the Site to prevent other intervening causes of any discharge of contaminants into the environment.

50. "Discharge" is not defined in the Act, however, under the Federal Clean Water Act, which delegates the authority of enforcement to the State of Illinois, migration of contaminants is not a "discharge". 33 U.S.C. 1362(16), (12). *See Aiello v. Town of Brookhaven*, 136 F.Supp.2d 81, 120 (E.D.N.Y. 2001) citing *Friends of Santa Fe County v. LAC Minerals, Inc.*, 892 F.Supp. 1333, 1354 (D.N.M. 1995). *See also Wilson v. Amoco Corp.* 33 F.Supp.2d 969, 975 (D.Wyo., 1998) (concluded that migration of residual contamination from previous releases is not an ongoing discharge, and holding otherwise would undermine the CWA's limitations in the statute's definition of points source) *But see Sierra Club v. Union Oil Co.*, 853 F.2d 667, 671 (9th Cir.1988).

51. Respondent has not caused or allowed the discharge of contaminants into the water because Respondent did not have control over the migration of the contaminants.

52. Respondent has not caused or allowed the discharge of contaminants into the water because Respondent has taken extensive precautions to prevent other intervening causes of any further discharge of contaminants into the environment.

53. Respondent has not caused or allowed the discharge of contaminants into the water because migration of contaminants is not a discharge under the Act.

WHEREFORE, Respondent requests that the Board dismiss this complaint with prejudice and other relief as the Board deems just and proper.

Respectfully submitted,

INVERSE INVESTMENTS, L.L.C.

By /s/Jennifer T. Nijman
One of Its Attorneys

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