



MCHENRY COUNTY
BOARD OF HEALTH
AGENDA • SEPTEMBER 23, 2020

Special Meeting

County Board Conference Room

6:30 PM

667 Ware Rd, Administration Building, Woodstock, IL 60098

I. CALL TO ORDER

II. PUBLIC PARTICIPATION

III. PRESENTATIONS

1. 300 West LLC/Arnold Engineering
2. Steven Grossmark-Attorney for McHenry County Conservation District
3. Patrick Ries-Environmental Consultant for Residents
4. Jeff Diver-Attorney for Residents (Documents Only)
5. Patricia Nomm-Director of Environmental Health

IV. OLD BUSINESS

1. Groundwater Use Restriction Ordinance

V. NEW BUSINESS

VI. EXECUTIVE SESSION

VII. ADJOURNMENT

Technical and Regulatory Justification for Establishing a Groundwater-Use Restriction Ordinance

Arnold Site Marengo, Illinois



Submitted To:

**McHenry County Board
McHenry County Government Center
2200 North Seminary Ave.
Woodstock, Illinois 60098**

Prepared By:

**Environmental Information Logistics, LLC
534 Duane Street
Glen Ellyn, Illinois 60137
630.942.0635**

Prepared For:

**300 West LLC
55 E. Jackson Boulevard
Suite 500
Chicago, Illinois 60604**

December 9, 2019



December 9, 2019

Mr. Jack D. Franks
 County Board Chairman
 McHenry County Government Center
 2200 North Seminary Ave.
 Woodstock, Illinois 60098

Re: Groundwater-Use Restriction Ordinance – 300 North West Street, Marengo, Illinois

Dear Chairman Franks:

On behalf of 300 West LLC (“300W”), Environmental Information Logistics, LLC (“EIL”) submits this letter to McHenry County to summarize the benefits of adopting a groundwater-use restriction ordinance to address environmental conditions at the property located at 300 N. West Street, Marengo, Illinois (the “Site”).

EIL is a technical consultant engaged by 300W since 2016 to address requirements of its consent order with the Illinois Attorney General (“IAG”). 300W is a privately-held real estate investment and management firm that owns the Site. The Arnold Engineering Co. (“Arnold”) is a privately-held manufacturer of magnet-related products and has been a tenant of 300W since 2006. Arnold employees approximately 60 workers at the Site.

The attached report presents the basis for establishing a groundwater-use restriction ordinance under the Illinois EPA’s Site Remediation Program (“SRP”) and Tiered Approach to Corrective Action Objectives (“TACO”) that govern cleanup of the Site.

300W understands that groundwater impact in the area of the Site is a concern for the community. By establishing a groundwater-use restriction ordinance for the Site, McHenry County can protect the human health of its citizens, meet standards for preservation of the environment, allow continued recreational and agricultural use of MCCD property without compromising its mission, and provide a pathway to closure for neighbors of the Site.

Project Background

Industrial activities have taken place at the Site for more than 100-years. Past Site owners and operators used solvents and other constituents that are now subject to regulatory cleanup standards. 300W purchased the property in 2006.

300W identified the Site as a “brownfield” to the Illinois EPA and enrolled the property in the SRP in June 2007. 300W then embarked on a series of increasingly extensive investigations of environmental conditions at the Site. 300W’s actions led to discovery of the groundwater conditions near the Site and a consent order with the IAG to perform Site investigation and remediation.

Tier 2 Cleanup Standards and Institutional Controls are a Standard Illinois EPA-Approved Approach

SRP and TACO provide three tiers of cleanup levels. The tiered approach allows for a level of cleanup that can be reasonably achieved, with the oversight and approval of Illinois EPA. The three tiers of cleanup levels allowed under TACO are equally protective of human health and the environment, and account for the use of the property and potential impacts to stakeholders. 300W plans to implement a Tier 2 cleanup of the Site that requires an institutional control consisting of a groundwater-use restriction ordinance prohibiting the potable use of groundwater within a carefully defined area.

A Tier 2 cleanup with institutional controls will not relieve 300W of having to remediate the Site to address risks posed to groundwater, workers on site, and/or nearby residents. 300W will address potential sources of groundwater impact on the Site by excavating and properly disposing of soils that exceed Tier 2 cleanup levels at a permitted landfill. On-site workers will be protected from any risks posed by impacted soil through the use of asphalt or concrete “caps” or barriers. 300W will also complete connections between residents’ homes and the water main they have already constructed to supply the residents with safe drinking water. 300W continues to document completion of these activities in a series of reports submitted to the IAG and Illinois EPA.

Groundwater-use restriction ordinances are a common component of environmental remedies in Illinois' SRP. In fact, eight municipalities have adopted groundwater ordinances in McHenry County since 1996. Hundreds of local governments have done the same across Illinois. The ordinances allow public and private entities to complete practically achievable cleanups that are protective of human health and the environment. These municipalities have benefited through economic re-development of blighted property, expansion of commerce, and retaining valued employers that provide jobs and expand the tax base. Elected officials led the process of adopting ordinances because it was the right choice for the community. In short, Tier 2 cleanups that rely on institutional controls are a common and accepted approach for addressing legacy environmental conditions.

A Groundwater Use Restriction Ordinance is the Most Viable Option

A groundwater use restriction is the most viable option to address the groundwater conditions off-Site. It is well established in scientific research that groundwater is not easily remediated. Illinois EPA recognizes remedies like pumping and treating groundwater take decades and are generally ineffective. In recognition of this issue, Illinois EPA has adopted risk-based cleanup levels (like TACO) and allows use restrictions as an integral part of remedies. In this case, we have considered various options and determined there is no viable remedial alternative to address groundwater – any active remedy will take decades to achieve cleanup thresholds. In fact, Illinois EPA likely would still require a groundwater-use restriction ordinance during the extended timeframe it would take for groundwater pollutant levels to drop below applicable standards. Without a use restriction for groundwater, the Site will continue to pose a risk to human health and the environment.

An Ordinance will not Restrict MCCD Property Use or Compromise its Mission

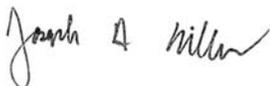
We recognize the County has received an objection to a groundwater ordinance from the McHenry County Conservation District ("MCCD"). The basis for the objection is unclear given the legacy circumstances we are working to address and the fact that the off-Site issue is limited to groundwater beneath property. While MCCD's mission of providing and preserving open space for the benefit of the public is appreciated, the objective of protecting residents from exposure to impacted groundwater, as part of an Illinois EPA-approved remedy, must take priority. 300W, with the approval of Illinois EPA, is working to protect human health and the environment.

Impacted groundwater from or near the Site does not pose risk for recreational or agricultural use of MCCD property. Persons on MCCD property for recreation are not exposed to groundwater and will still enjoy the open lands. The existence of the ordinance will not impair recreational enjoyment of MCCD property. MCCD will be able to continue to use groundwater for agricultural irrigation under the ordinance.

300W understands MCCD's commitment to environmental stewardship, preservation, and protection. Adopting the ordinance to allow a decades-old environmental impact to be cleaned up while preserving the undeveloped state of MCCD property is consistent with this mission. The alternative, that is, some type of active remedy, likely would still require a restriction on groundwater use for the foreseeable future and would result in intrusive remediation work and possibly construction and operation of infrastructure on MCCD property incompatible with its recreational use.

At this time, 300W requests that the County agree to move forward with a groundwater-use restriction ordinance for the area described in the attached report to allow resolution of environmental conditions near the Site. In order to proceed with the ordinance, or if you have any questions, please contact Howard Jablecki, counsel to 300W, at Klein, Thorpe and Jenkins, Ltd. at (312) 984-6400 or hcjablecki@ktjlaw.com.

Sincerely,
Environmental Information Logistics



Joseph D. Miller, P.G.
Project Manager

cc: Howie Jablecki – Klein, Thorpe and Jenkins, Ltd.

Technical and Regulatory Justification for Establishing a Groundwater-Use Restriction Ordinance

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- Attachment 2 Example of Adopting Language for a Groundwater-Use Restriction Ordinance

List of Drawings

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- Sheet 2 Tier 2 Remedial Scope – On-Site
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- Sheet 4 Proposed Groundwater Use Restriction Ordinance Boundary and Aerial Photograph
- Sheet 5 Proposed Groundwater Use Restriction Ordinance Boundary and Property Parcels

Communication: 300 West LLC/Arnold Engineering (Presentations)

1.0 Introduction

Environmental Information Logistics, LLC (“EIL”) has prepared this report for McHenry County to document justification for adopting a groundwater-use restriction ordinance under the Illinois Tiered Approach to Corrective Action Objectives (“TACO”) rules to address environmental conditions at the property located at 300 North West Street in Marengo, Illinois (“Site”) on behalf of 300 West LLC (300W).

2.0 Background and Regulatory Framework

The Site covers some 90-acres on the northwest side of Marengo as shown on Sheet 1 in Attachment 1.

300W voluntarily enrolled the Site in the Site Remediation Program (“SRP”) in 2007 with the intent of obtaining a no further remediation (“NFR”) letter from the Illinois EPA. In order to understand the basis for a groundwater ordinance within Illinois’ regulatory construct, the following discussion provides background regarding the objectives, mechanisms, and requirements for the SRP and how it relates to the Tiered Approach to Corrective Action Objectives.

2.1 The Illinois Site Remediation Program and Tiered Approach to Corrective Action Objectives

Illinois has provided a mechanism for applicants to voluntarily investigate and remediate environmental conditions since 1989. The Illinois SRP is authorized in the Illinois Environmental Protection Act and codified in Illinois Pollution Control Board rules (Title 35, Illinois Administrative Code Subtitle G Part 740). Applicants enrolled in the SRP commit to investigate specified pollutants (Part 740) and to meet environmental standards for identified compounds, with Illinois EPA review and oversight.

The standards for remediation, aka the Remedial Objectives (“ROs”), derive from the Tiered Approach to Corrective Action Objectives (“TACO”). TACO sets out risk-based standards to protect human health and the environment (35 IAC 742). TACO describes the procedures for evaluating risk to human health and the environment associated with exposure to environmental pollutants in soil, groundwater, and soil gas on residential and industrial/commercial sites.

2.2 Remedial Objectives

TACO provides for three levels of ROs. Tier 1 numeric ROs are listed for most of the target compounds relative to exposure routes (e.g., residential soil ingestion or construction worker soil inhalation). Tier 2 ROs can be calculated by the applicant to account for site-specific variables like, for example, the rate of groundwater flow. The objective of the SRP in providing tiered ROs is to allow alternate cleanup methods that remain protective of human health and the environment while promoting the return of brownfield sites to valuable use. Tier 3 ROs rely on future property uses, toxicological inputs, cancer risk above 1 in a million, site-specific exposure data, and other site-specific factors.

300W plans to use Tier 2 ROs in this case for the Site.

2.3 Institutional Controls

TACO provides for institutional controls or non-engineered mechanisms like administrative and legal vehicles to eliminate exposure routes and protect human health and the environment. For instance, in addition to active remedial activities like soil removal, the Site itself will be subject to at least two institutional controls as part of the remedy. An environmental land use control (“ELUC”) will be established limiting use of the Site to industrial/commercial purposes. The Site will also have an ELUC that prohibits potable (i.e., ingestion) use of groundwater in order to eliminate the groundwater ingestion exposure route.

An ordinance that restricts potable groundwater use is a form of an institutional control commonly applied as part of TACO remedies. Restriction ordinances are adopted when it will take time for groundwater contaminants to attenuate and/or to eliminate risk from groundwater consumption. The administrative prohibition of potable groundwater use within the ordinance boundary protects the populace from risk associated with this exposure pathway. The ordinance can still allow for agricultural or other non-potable uses of groundwater with Illinois EPA approval.

3.0 Overview of Site and Project History

Industrial activities have taken place at the Site for more than 100 years. Past owners and operators used solvents and other constituents that are now subject to regulatory cleanup standards. 300W purchased the property in 2006.

300W identified the Site as a “brownfield” to the Illinois EPA and enrolled the property in the SRP in June 2007. 300W then embarked on a series of increasingly extensive investigations of environmental conditions at the Site while regularly reporting the results to the Illinois EPA. 300W’s actions led to discovery of the groundwater conditions near the Site and a consent order with the Illinois Attorney General’s Office (“IAG”) to perform Site investigation and remediation.

Since enrolling the Site in the SRP, 300W has conducted a detailed and extensive investigation. What began as a limited investigation of specific areas evolved into a very large and complex matter extending off-Site. The number of investigatory locations 300W has completed since 2006 is summarized below.

Investigation Location Type	2006	2008	2010	2011	2013	2015	2017
Drilled Soil Boring Location	27	9	40	11	38	135	97
Installed Groundwater Monitoring Well Location	---	---	30	2	23	49	38
Point-In-Time Groundwater Sample Location	---	---	---	---	---	1	15
Subsurface Pore Water Sample Location	---	---	---	---	---	---	1
Subsurface Soil Gas Probe Location	---	---	---	---	---	---	2
Off-Site Residential and Irrigation Wells Samples	---	---	---	---	---	25	---
Surface Soil Sample Location	---	---	---	---	1	---	---
Surface Water Sample Location	---	---	---	---	---	---	1

The investigation resulted in 115,436 laboratory analytical results for samples of environmental media collected at the Site. Of those 115,436 laboratory results, there were 97,206 samples that had *no detection* of a constituent of concern as shown in the following table.

Number of Detections and Non-Detections Comprising the 115,436 Lab Results		
Fraction	Detects	Non-Detects
Metals	13,461	8,995
VOC	4,373	38,708
PAHs	329	8,525
PCBs	34	3,711
SVOC	24	27,706
Pesticides	9	9,561
	18,230	97,206

Greater than five times as many (i.e., 97,206) non-detects have been identified at/near the Site than detected concentrations (i.e., 18,230). In addition, groundwater impacts are sporadic and inconsistent. As a result, and as further discussed below, active remediation of historic impacts to groundwater at the Site is not feasible.

4.0 Project Status

300W constructed piping to convey City of Marengo drinking water to residents along Railroad Street and Ritz Road in 2017. 300W obtained access to the residents' properties to allow construction of the lateral connections to their homes' after resolving legal disputes in fall 2019. 300W has continued to supply affected residents with bottled drinking water throughout this process. 300W plans to construct the lateral connections to supply city water to neighboring residents as soon as possible. The intensive phases of investigation at the Site have been concluded. Additional investigations to close data gaps and refine the extent of some parameters in soil and groundwater will be performed.

After concluding the above-described investigations, 300W will establish Tier 2 remedial objectives and propose them to the Illinois EPA. 300W seeks to inform Illinois EPA at that time that a groundwater-use restriction ordinance extending north and west of the property will be part of the final remedy.

5.0 Tier 2 Remediation

Drawings showing sample locations on- and off-Site meeting Tier 2 ROs are provided as Sheets 2 and 3, respectively, in Attachment 1. 300W plans to remediate soils on the Site to meet approved ROs by excavation and off-site disposal at a permitted landfill approved to accept this waste. 300W will construct engineered concrete or asphalt barriers on the Site (aka caps, like a parking pad) to exclude the soil ingestion and outdoor soil inhalation exposure routes. 300W also plans to construct a ventilation system for Building 2/3/4/7 to address groundwater and soil gas analytical results for the indoor air inhalation exposure route.

These remedial measures will be combined with institutional controls both on and off the Site. On-Site, 300W will propose land use controls in the form of ELUCs that get recorded on the title of the property. The ELUCs will cover use of the property (commercial/industrial) as well as restrict groundwater (no potable water wells). Off-Site, 300W will propose the use of a groundwater-use restriction ordinance extending north and west of the property. The ordinance will still allow for agricultural or other non-potable uses of groundwater, with Illinois EPA approval. These institutional controls will serve to protect persons on- and off-Site from exposure to groundwater.

It is important to note that contaminants in groundwater likely left the Site decades ago. There is no form of remediation that can force those contaminants back to the Site. 300W has considered whether alternatives exist to more actively address groundwater. Any active groundwater remedy would be performed on the Site (not off-Site), would only serve to attempt to control groundwater, and likely will have little effect. Even if a Site remedy could work to somewhat improve groundwater conditions, it would still take decades to have any meaningful effect further away. As a result, alternate groundwater remedies would also require an ordinance to protect the off-Site areas from risk posed by legacy impacts. Because contaminants in groundwater are widely dispersed, it is not practicable to attempt to address the groundwater in the areas off the Site where impacts are present. The remedy 300W proposes, combined with the institutional controls of ELUCs and a groundwater ordinance, is the most feasible remedy for the Site and off-Site. If an ordinance is not approved for the off-Site areas, 300W will be forced to try to work with each individual property owner to ask that they agree to individual ELUCs (land use controls). That process is cumbersome, could take years, and may not be successful for all properties – and in the meantime - the residents will not be protected from legacy groundwater risk.

6.0 Precedents for Groundwater-Use Restriction Ordinances in McHenry County

Recognizing the issues related to historically impacted properties, multiple municipalities in McHenry County have adopted groundwater-use restriction ordinances. The Village of Algonquin, the City of Crystal Lake, the Village of Fox River Grove, the City of Harvard, the City of Marengo, the City of McHenry, the Village of Union, and the City of Woodstock have all adopted at least one groundwater-use restriction ordinance prohibiting potable use of groundwater within parts or all of their jurisdictions in connection with groundwater and soil impacts caused by legacy industrial activity. Hundreds of local governments have done the same across Illinois. The ordinances have allowed public and private entities to complete practically achievable cleanups that are protective of human health and the environment. These municipalities have benefited through economic re-development of blighted property, expansion of commerce, and retaining valued employers that provide jobs and expand the tax base. Elected officials led the process of adopting ordinances because it was the right choice for the community. In short, Tier 2 cleanups that rely on institutional controls are a common and accepted approach for addressing risk posed by legacy environmental conditions.

Language the Village of Union included in their groundwater-use restriction ordinance is provided as an example in Attachment 2.

7.0 Ordinance Boundary and Requirements

The boundary for the proposed ordinance is shown on Sheets 4 and 5 in Attachment 1.

Based on Illinois EPA regulations, the groundwater ordinance to be proposed by 300W would meet the following requirements:

1. The ordinance will prohibit installation and use of potable wells within its boundary by entities other than McHenry County. McHenry County will be allowed to install and use potable wells within the ordinance limits subject to specified conditions (35 IAC 742). Illinois EPA can allow non-potable groundwater use by the MCCD.
2. The ordinance cannot be limited to specific depths or aquifers.
3. The ordinance boundary will need to be fixed by the adopting language and not dependent on other delineations like public water service areas or zoning districts.
4. The adopting language will need to specify that the ordinance can serve as an institutional control and be available for equal use by remediation applicants.

300W will prepare language for the ordinance and prepare a legal description of its limits based on a professional land survey, for review and approval by McHenry County, if the County chooses to approve its adoption. 300W will reimburse the County for administrative and legal costs associated with establishing the ordinance.

At this time, 300W requests that the County approve the concept of implementing a groundwater-use restriction ordinance for the area described on Sheets 4 and 5, Attachment 1. Once approved, 300W would be pleased to prepare a draft ordinance for the County's review and approval.

Attachment 1

Drawings

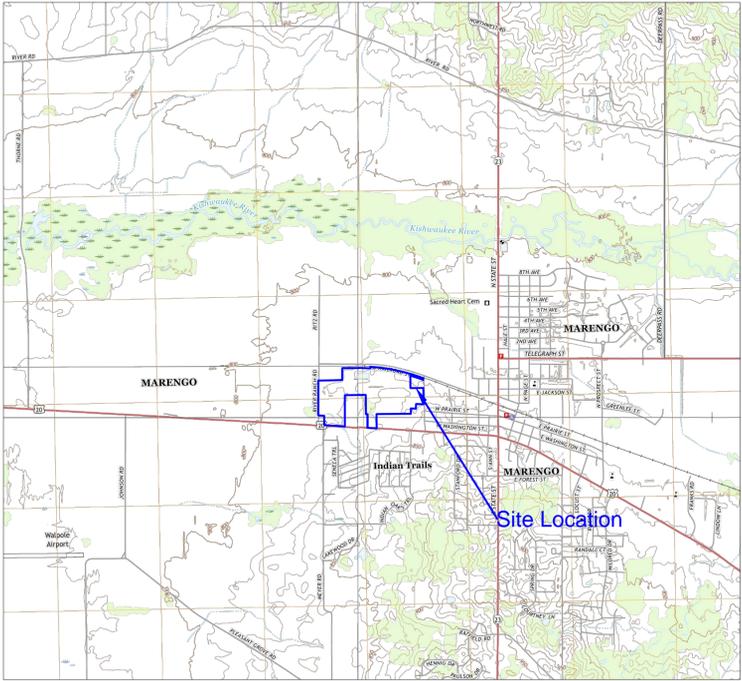
Attachment 1 - Proposal to McHenry County for Groundwater-Use Restriction Ordinance



Prepared For:
300 West LLC
Marengo, Illinois

Environmental Information Logistics, LLC

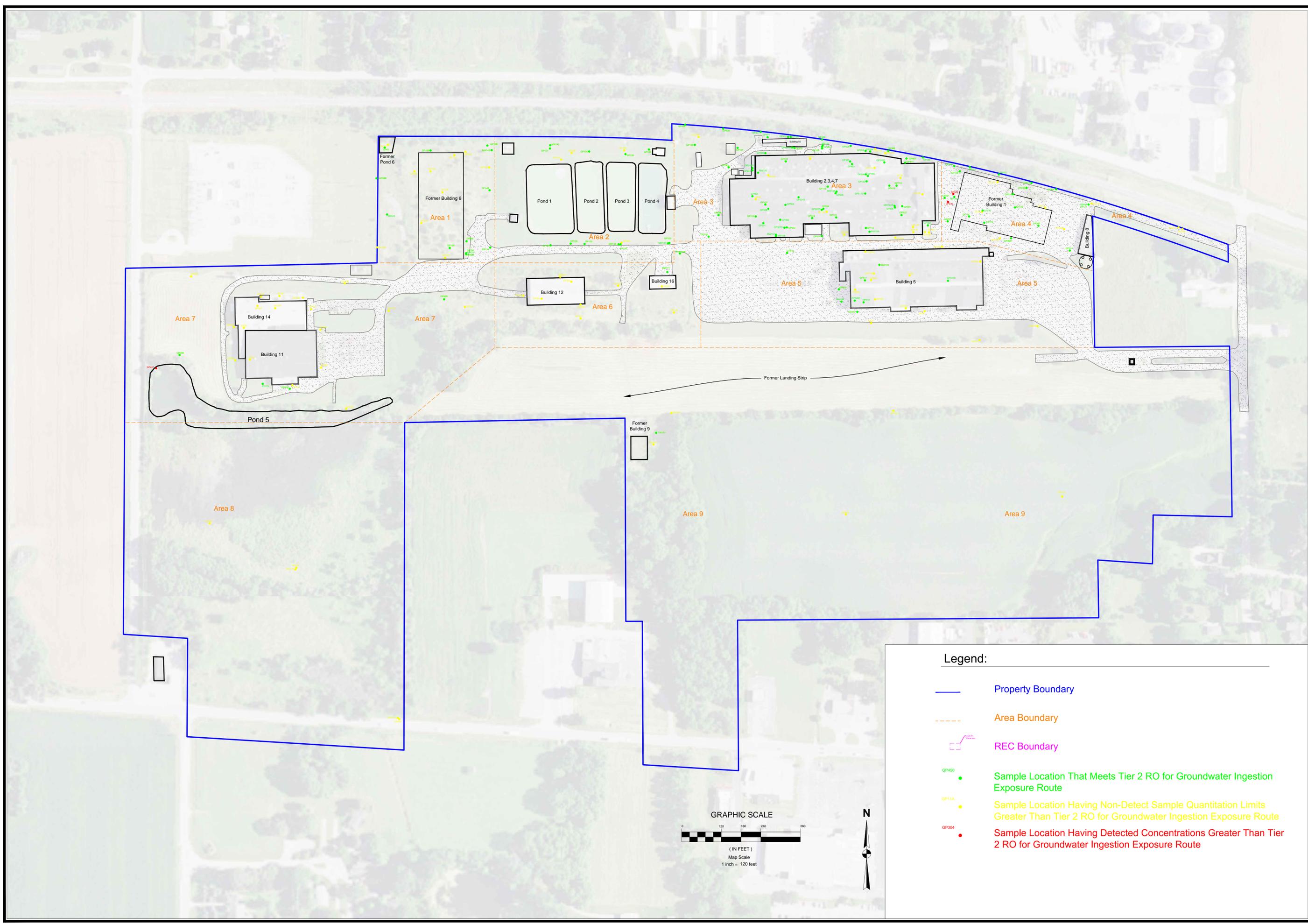
534 Duane Street
Glen Ellyn, Illinois 60137
(630) 942-0635



Index of Sheets

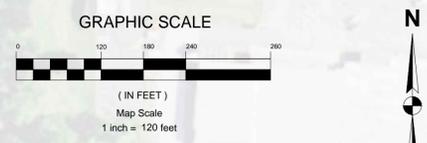
Sheet Number and Contents

01	Title Sheet and Site Location
02	Tier 2 Remedial Scope - On-Site
03	Tier 2 Remedial Scope - Off-Site
04	Proposed Groundwater-Use Restriction Ordinance Boundary and Aerial Photograph
05	Proposed Groundwater-Use Restriction Ordinance Boundary and Property Parcels

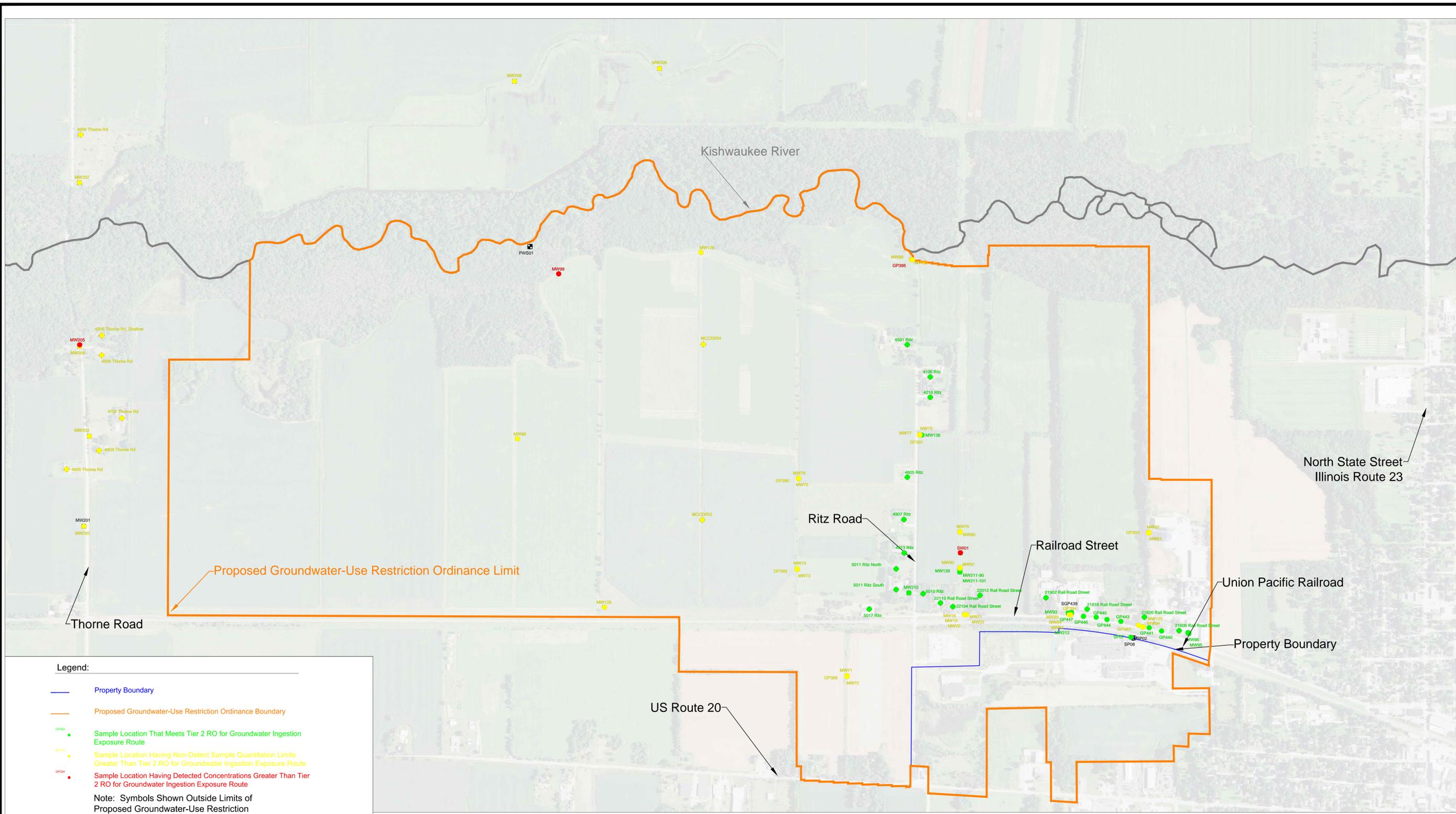


Legend:

- Property Boundary
- - - Area Boundary
- - - REC Boundary
- GP450 Sample Location That Meets Tier 2 RO for Groundwater Ingestion Exposure Route
- GP11A Sample Location Having Non-Detect Sample Quantitation Limits Greater Than Tier 2 RO for Groundwater Ingestion Exposure Route
- GP304 Sample Location Having Detected Concentrations Greater Than Tier 2 RO for Groundwater Ingestion Exposure Route



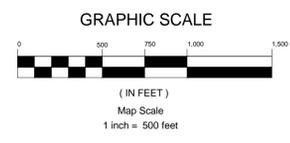
300 West Marengo, Illinois	300 West	DRM JDM JDM 2019-12-09	DRM JDM JDM 2019-12-09	3.1
Tier 2 Remedial Scope - On-Site	EIL ENVIRONMENTAL INFORMATION LOGISTICS, LLC COMMERCIAL, LLC	DES: _____ DATE: _____	DRM: _____ DATE: _____	REFUSIONS
DATE: 2019-12-09	PROJECT NO: 161101	APP: _____	INTAL: _____	JDM: _____
LAYOUT: Y02a	FILENAME: Base Map	CHK: _____	DATE: _____	JDM: _____
SHEET 2	PREPARED BY: _____	GP: _____	DATE: _____	JDM: _____
Communication: 300 West LLC/Arnold Engineering (Presentations)	Copyright © Environmental Information Logistics, LLC	GP: _____	DATE: _____	JDM: _____
Packet Pg. 13	300 West LLC/Arnold Engineering (Presentations)	GP: _____	DATE: _____	JDM: _____



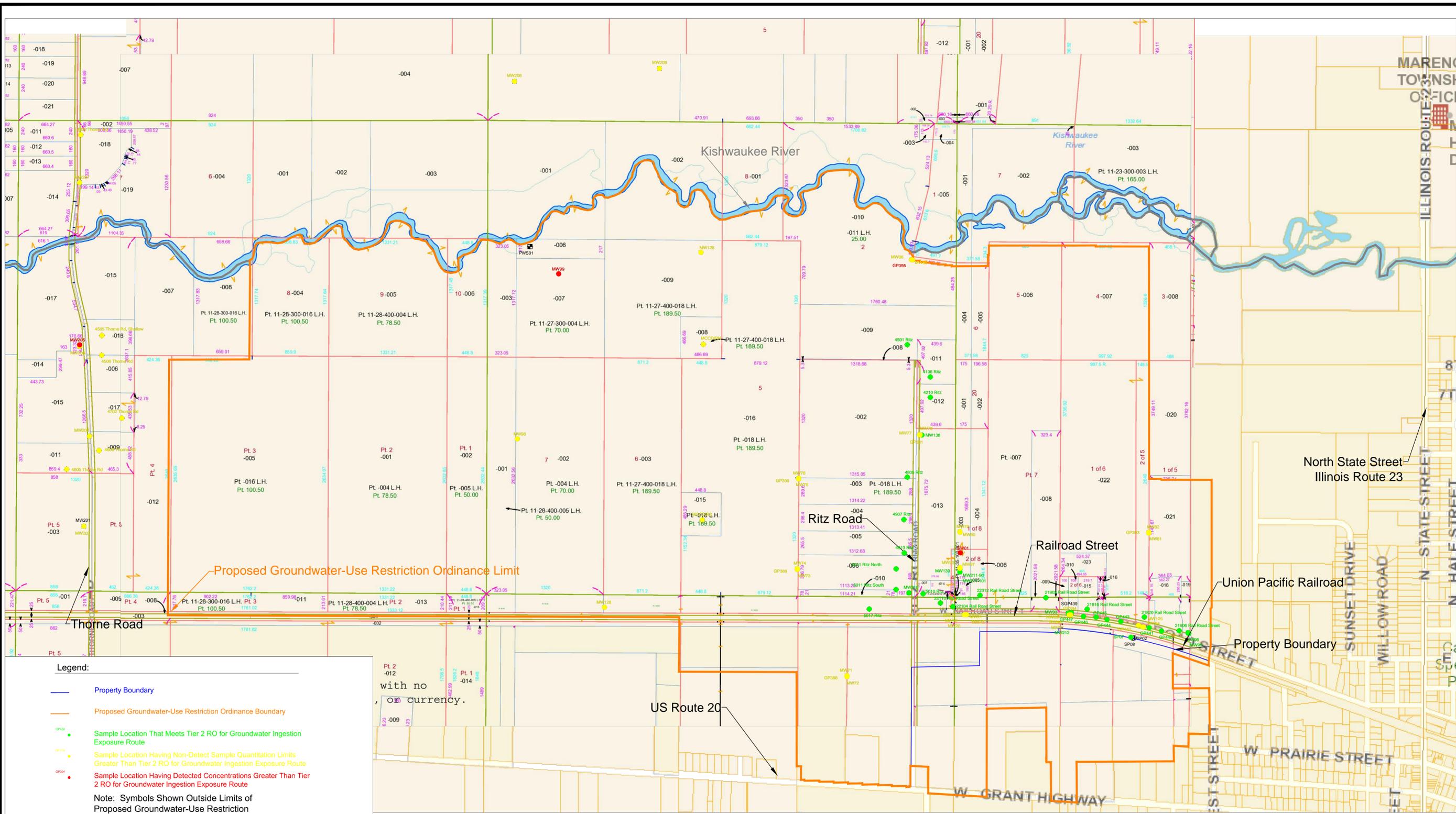
Legend:

- Property Boundary
- Proposed Groundwater-Use Restriction Ordinance Boundary
- Sample Location That Meets Tier 2 RO for Groundwater Ingestion Exposure Route
- Sample Location Having Non-Detect Sample Quantitation Limits Greater Than Tier 2 RO for Groundwater Ingestion Exposure Route
- Sample Location Having Detected Concentrations Greater Than Tier 2 RO for Groundwater Ingestion Exposure Route

Note: Symbols Shown Outside Limits of Proposed Groundwater-Use Restriction Ordinance Boundary Reflect Results of Tier 1 Analyses



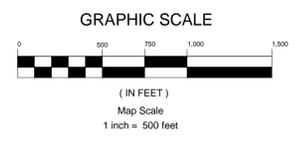
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APP							
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Copyright © Environmental Information Logistics, LLC							
Environmental Information Logistics, LLC							
300 West							
Marengo, Illinois							
Proposed Groundwater-Use Restriction Ordinance Boundary and Aerial Photograph							
DATE	2019-12-09						
PROJECT NO	161101						
FILENAME	Base Map						
LAYOUT	Y04a						
SHEET 4							
Communication: 300 West LLC/Arnold Engineering (Presentations)							



Legend:

- Property Boundary
- Proposed Groundwater-Use Restriction Ordinance Boundary
- Sample Location That Meets Tier 2 RO for Groundwater Ingestion Exposure Route
- Sample Location Having Non-Detect Sample Quantitation Limits Greater Than Tier 2 RO for Groundwater Ingestion Exposure Route
- Sample Location Having Detected Concentrations Greater Than Tier 2 RO for Groundwater Ingestion Exposure Route

Note: Symbols Shown Outside Limits of Proposed Groundwater-Use Restriction Ordinance Boundary Reflect Results of Tier 1 Analyses



DRN JDM 2019-12-09	DATE	INITIAL	DATE	Copyright © Environmental Information Logistics, LLC			
DES	CHK	APP					
300 West Environmental Information Logistics, LLC Communication: 300 West LLC/Arnold Engineering (Presentations)							
PREPARED FOR	300 West Marenco, Illinois						
PREPARED BY	Proposed Groundwater-Use Restriction Ordinance Boundary and Property Parcels						
DATE	2019-12-09						
PROJECT NO	161101						
FILENAME	Base Map						
LAYOUT	Y05a						
SHEET 5							
							3.1

Attachment 2

Example of Adopting Language for a Groundwater-Use Restriction Ordinance

VILLAGE OF UNION

ORDINANCE NO. 2017-09

AN ORDINANCE PROHIBITING THE USE OF GROUNDWATER AS A POTABLE WATER SUPPLY BY THE
INSTALLATION OR USE OF POTABLE WATER SUPPLY WELLS OR BY ANY OTHER METHOD

ADOPTED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF UNION

THIS 19TH DAY OF DECEMBER, 2017

PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE PRESIDENT
AND BOARD OF TRUSTEES OF THE VILLAGE OF UNION,

MCHENRY COUNTY, ILLINOIS
THIS 19TH DAY OF DECEMBER, 2017

RECEIVED
JAN 19 2018
IEPA/BOL

Communication: 300 West LLC/Arnold Engineering (Presentations)

ORDINANCE # 2017-09

AN ORDINANCE PROHIBITING THE USE OF GROUNDWATER AS A POTABLE WATER SUPPLY BY THE INSTALLATION OR USE OF POTABLE WATER SUPPLY WELLS OR BY ANY OTHER METHOD

WHEREAS, certain properties in the Village of Union, Illinois have been used over a period of time for commercial/industrial purposes; and

WHEREAS, because of said use, concentrations of certain chemical constituents in the groundwater beneath the Village May exceed Class I groundwater quality standards for potable resource groundwater as set forth in 35 Illinois Administrative Code 620 or Tier 1 remediation objectives as set forth in 35 Illinois Administrative Code 742; and

WHEREAS, the Village of Union desires to limit potential threats to human health from the groundwater contamination while facilitating the redevelopment and productive use of properties that are the source of said chemical constituents;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF UNION, ILLINOIS:

SECTION ONE. Definitions:

As used in this Ordinance, the following terms shall have the following description and meanings:

“Village” shall mean the Village of Union, McHenry County, Illinois

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity of its representatives, agents or assigns;

“Potable water” is any water used for human or domestic consumption including, but not limited to, water used for drinking, bathing, swimming, washing dishes or preparing foods.

SECTION TWO: Use of Groundwater as Potable Water Supply Prohibited:

Except for uses or methods that existed prior to the effective date of this Ordinance, the use or attempted use of groundwater within the corporate limits of the Village as a potable water supply by the installation or drilling of wells or by any other method is hereby prohibited. This prohibition expressly includes the Village of Union.

SECTION THREE: Repairs and Improvements:

In no event shall this Ordinance prohibit the City from conducting repairs or making improvements to its potable water system, sanitary sewer system and/or other infrastructure located underground or above ground in the Area.

SECTION FOUR: Penalties:

Any person violating the provisions of this Ordinance shall be subject to a fine of up to \$750.00 for each violation and be responsible for the Village's cost of enforcement, including reasonable attorneys' fees.

SECTION FIVE: Repealer:

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

SECTION SIX: Severability:

If any provision of this ordinance or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

SECTION SEVEN: Effective Date:

This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

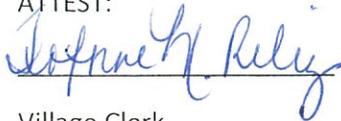
PASSED AND APPROVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF UNION, McHENRY COUNTY, ILLINOIS THIS 19TH DAY OF DECEMBER, 2017.



President

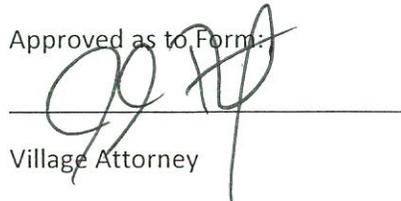
	Ayes	Nays	Absent	Abstain
Trustee Pace	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Beebe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee McDonald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Ball	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Swanson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Fredrickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Wagner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ATTEST:



Village Clerk

Approved as to Form:



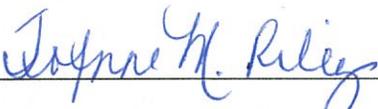
Village Attorney

Communication: 300 West LLC/Arnold Engineering (Presentations)

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

CERTIFICATION

I, JOANNE RILEY, do hereby certify that I am the duly appointed, authorized and acting Clerk of the Village of Union, County of McHenry, State of Illinois, and that as such Clerk, I am the keeper of the records and minutes of the proceedings of the President and Board of Trustees of said Village. I do hereby certify that the foregoing Ordinance hereto attached, entitled ORDINANCE # 2017-09: AN ORDINANCE PROHIBITING THE USE OF GROUNDWATER AS A POTABLE WATER SUPPLY BY THE INSTALLATION OR USE OF POTABLE WATER SUPPLY WELLS OR BY ANY OTHER METHOD 2017-2018, is a true and correct copy of an Ordinance duly passed and approved at a duly authorized and regular meeting of said President and Board of Trustees held on the 19th day of DECEMBER, 2017, at which time the Village President and 6 Trustees were present. Motion was made and seconded that the foregoing Ordinance was passed and approved. Upon roll-call vote, 6 Trustees present voted AYE and 0 Trustees present voted NAY, whereupon said Ordinance was declared duly passed and was thereupon approved by said President.



JOANNE RILEY, VILLAGE CLERK

(CORPORATE SEAL)

Communication: 300 West LLC/Arnold Engineering (Presentations)

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December 19, 2019

VIA EMAIL/REGULAR MAIL (jdfranks@mchenrycountyil.gov)

Mr. Jack D. Franks
County Board Chairman
McHenry County Government Center
2200 North Seminary Ave.
Woodstock, Illinois 60098

Re: Groundwater-Use Restriction Ordinance
300 North West Street, Marengo, Illinois

Dear Chairman Franks:

On behalf of The Arnold Engineering Co. (“Arnold”), I am submitting this letter to McHenry County in support of the groundwater-use restriction ordinance as conceptually proposed by 300 West, LLC (“300 West”) for the property located at 300 N. West Street, Marengo, Illinois (the “Site”). Arnold is a tenant at the Site and employs more than 60 people there. Establishing a groundwater-use restriction ordinance will protect the human health of the citizens at the Site and in the area, meet standards for preservation of the environment, allow continued recreational and agricultural use of the McHenry County Conservation District property without compromising its mission, and provide a pathway to closure for Site and the neighbors of the Site.

Groundwater-use restriction ordinances are a common component of environmental remedies in Illinois’ Site Remediation Program (“SRP”). In fact, Illinois EPA publishes a Groundwater Ordinance Status Chart (see <http://epadata.epa.state.il.us/land/gwordinance/>), listing the many ordinances that have been accepted as environmental institutional controls under Illinois law (35 Ill. Adm. Code 742.1015). Illinois EPA even provides a model groundwater ordinance on its website for public use, again evidencing the agency’s agreement that ordinances are an effective and important part of site remediations across the State. See <https://www2.illinois.gov/epa/topics/cleanup-programs/institutional-control/Pages/groundwater-ordinance.aspx>.

Jack D. Franks
December 19, 2019
Page 2

Arnold supports the use of a groundwater ordinance because it will be protective of the human health and the environment at the Site. It is important to Arnold that the proposed ordinance will restrict access to the impacted groundwater at and off the Site. Arnold understands that any remedy for the Site will take many years and an ordinance will serve to eliminate risk to human health and the environment. Arnold's employees will also be protected by the excavation of soil from certain areas of the Site and by appropriate concrete and asphalt caps/barriers.

Arnold is interested in continuing to improve and invest in the Site but can only do so if the County moves forward with the groundwater use restriction ordinance so that environmental conditions near the Site can be resolved.

I would be happy to answer your questions.

Sincerely,



Jennifer T. Nijman

ORDINANCE NUMBER _____

AN ORDINANCE PROHIBITING THE USE OF GROUNDWATER AS A POTABLE WATER SUPPLY BY THE INSTALLATION OR USE OF POTABLE WATER SUPPLY WELLS OR BY ANY OTHER METHOD

WHEREAS, certain properties in the City [Village] of _____, Illinois have been used over a period of time for commercial/industrial purposes; and

WHEREAS, because of said use, concentrations of certain chemical constituents in the groundwater beneath the City [Village] may exceed Class I groundwater quality standards for potable resource groundwater as set forth in 35 Illinois Administrative Code 620 or Tier 1 remediation objectives as set forth in 35 Illinois Administrative Code 742; and

WHEREAS, the City [Village] of _____ desires to limit potential threats to human health from groundwater contamination while facilitating the redevelopment and productive use of properties that are the source of said chemical constituents;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY [VILLAGE] OF _____, ILLINOIS:

Section One. Use of groundwater as a potable water supply prohibited.

[Except for such uses or methods in existence before the effective date of this ordinance,] The use or attempt to use as a potable water supply groundwater from within the corporate limits of the City [Village] of _____, as a potable water supply, by the installation or drilling of wells or by any other method is hereby prohibited. This prohibition [expressly includes] [does not include] the City [Village] of _____.

Section Two. Penalties.

Any person violating the provisions of this ordinance shall be subject to a fine of up to _____ for each violation.

Section Three. Definitions.

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or their legal representatives, agents or assigns.

Communication: 300 West LLC/Arnold Engineering (Presentations)

“Potable water” is any water used for human or domestic consumption, including, but not limited to, water used for drinking, bathing, swimming, washing dishes, or preparing foods.

Section Four. Memorandum of Understanding.

[This Section is only necessary if ordinance does not expressly prohibit installation of potable water supply wells by the city or village--could be separate resolution]

The Mayor of the City [Village] of _____ is hereby authorized and directed to enter into a Memorandum of Understanding with the Illinois Environmental Protection Agency (“Illinois EPA”) in which the City [Village] of _____ assumes responsibility for tracking all sites that have received no further remediation determinations from the Illinois EPA, notifying the Illinois EPA of changes to this ordinance, and taking certain precautions when siting public potable water supply wells.

Section Five. Repealer.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

Section Six. Severability.

If any provision of this ordinance or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

Section Seven. Effective date.

This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

ADOPTED: _____
(Date)

APPROVED: _____
(Date)

(City Clerk)

(Mayor)

Officially published this _____ day of _____, 20__.

Communication: 300 West LLC/Arnold Engineering (Presentations)

Before the McHenry County, Illinois, Board of Health

**The McHenry County Conservation District's Objections to
Proceeding Regarding a Groundwater Use Restriction Ordinance
September 17, 2020**

Executive Summary

- 300 West LLC's request regarding a groundwater use restriction ordinance contains no technical support, does not request adoption of such an ordinance and fails to indicate what McHenry County is expected to do at this time.
- A request to adopt such an ordinance may come later but 300 West LLC ("300 West") does not say when.
- Arnold Engineering Co. ("Arnold") has not joined 300 West in the pending request.
- A court entered Agreed Order ("AO"), dated December 14, 2015, requires Arnold and 300 West to conduct a remediation regarding pollution at and emanating from the Arnold site in McHenry County.
- Remediations in Illinois are typically conducted by proceeding through the Illinois Site Remediation Program ("SRP"), adopted by statute in 1996, with the Illinois Environmental Protection Agency issuing a No Further Remediation ("NFR") letter.
- The first step in the SRP is to prepare a Site Investigation ("SI"), identifying pollution sources at a site and defining the nature and extent of contamination.
- Arnold purchased the subject site in the early 1900s and has since operated it as an industrial facility. 300 West acquired the property in 2006, at which time Arnold went on to operate the site as a tenant.
- Study of groundwater started as early as 1990.
- 300 West reports that it entered the SRP in 2007 though it provided information to the State as early as 2004.
- Over the years, and decades, Arnold and 300 West have so far failed to even prepare an adequate SI, with Arnold refusing to participate in the remediation process.
- The State's goals regarding this matter are reported to include remediation of soil and groundwater.
- The McHenry County Conservation District ("District") owns property near the Arnold site.

- Groundwater at the District's property is contaminated by pollution from the Arnold site.
- State law requires the District to, among other things, manage its property to promote conservation of natural resources and to leave its property unimpaired for future generations.
- State law also provides for the protection and enhancement of groundwater resources and that adverse effects on the environment be borne by those that cause them.
- In this situation, adoption of a groundwater use restriction ordinance and the ordinance being the basis in whole or in part of a NFR letter would be contrary to the Illinois Constitution.

Introduction

On December 9, 2019, 300 West LLC (“300 West”), through its consultant, Environmental Information Logistics, LLC (“EIL”), submitted a written request to McHenry County about a groundwater use restriction ordinance. On June 3, 2020, at a hearing of a committee of the McHenry County Board of Health, 300 West’s lawyer made a presentation as a follow up to the consultant’s earlier written submittal. The request is not for entry of a groundwater use restriction ordinance. Instead, it is for something else, though it is not clear what that something else is.

First, the technical information 300 West’s consultant provides is thin, at best. EIL states in the written document that it intends to address requirements of a Agreed Order. Although a copy of the order or even an explanation of the order’s requirements are not provided, 300 West apparently admits that the order requires remediation of contamination at a subject site and contamination that has migrated off site, mainly in groundwater. The point of the request appears to be that, instead of 300 West, and Arnold Engineering Co. (“Arnold”) for that matter, providing remediation of offsite downstream contaminated groundwater, 300 West wants McHenry County to prohibit landowners from ever using the groundwater. This is the case even for properties that do not have an alternate water source.

The explanation for prohibiting landowners from ever using their groundwater is provided in only conclusory statements about treatment of groundwater without providing, for example, technical or engineering reports or case studies, evaluation of the facts of this situation or the consultant’s experience in this regard. Instead, 300 West and EIL generically state that groundwater is not easily remediated, that the technique of pumping and treating groundwater takes decades and is generally not effective, that active remediation is not viable because it would take decades, that groundwater disperses and it is not practical to address it off site and, if one stops contaminated groundwater from leaving a site, it would take decades to have any meaningful effect away from the contaminated site. 300 West and EIL even make contradictory statements about groundwater remediation. On the one hand, they say an active remedy would result in intrusive remediation and possibly construction and operation of infrastructure on offsite property not compatible with use of the offsite property. On the other hand, they say that any active remediation of groundwater would be performed on the subject site, not off site. Therefore, the only reason 300 West provides for its request is that performing a complete and

appropriate remedy is not easy and it takes too long. No other factual or technical support is provided. As stated above, thin at best.

Second, 300 West cites no law as to exactly what legal authority the County is expected to exercise or the legal action the County is expected to take at this time.

The bottom line is that 300 West will apparently ask at some point in the future that McHenry County forever prohibit certain property owners from using their only source of water, groundwater, at their properties and to forever impair the environmental condition of properties because performing an appropriate remediation is not easy and will take too long. As explained further below, this request should be denied.

Background/Facts

Groundwater Use Restriction Ordinances, the Illinois Site Remediation Program and No Further Remediation Letters

The Illinois Environmental Protection Act (“Act”) and regulations that implement the Act include provisions regarding the Illinois Site Remediation Program (“SRP”), 415 ILCS Title XVII, 35 Ill.Adm.Code 740 and 742. The SRP, first added to the Act in 1996 with the regulations adopted in 1997, provides a path by which a remedial applicant (RA) requests and the State, through the Illinois Environmental Protection Agency (“IEPA”), can issue what is called a No Further Remediation (NFR) letter. An NFR letter, which has important legal significance, sets out the IEPA’s position that a remediation it has monitored and approved at a site is protective of health and the environment.

The RA must prepare and submit to IEPA for review and approval four reports.

- i. Site Investigation (SI). This report, among other things, identifies the nature (pollutants) and extent (vertical and horizontal, including off site) of contamination. It must also identify what are referred to as recognized environmental conditions (“RECs”), or sources of contamination at a site. These two features are the essence of an SI and are essential for the work that follows. Without this information, a RA cannot proceed through the SRP.
- ii. Remedial Objectives Report (ROR). This report identifies remedial standards that can apply to the situation and be the basis for a remedial plan.
- iii. Remedial Action Plan (RAP). This report sets out how the remediation will be achieved.
- iv. Remedial Action Completion Report (RACR). In this report, the RA informs IEPA that the RAP has been completed, and IEPA can then issue the NFR letter.

One or more of the reports can be submitted to IEPA at a time for its review and approval. A RA can avoid active clean up, such as removing some or all contaminated soil or treating contaminated soil or groundwater, by use of, among other things, what are called institutional controls. One type of institutional control that eliminates one possible route of exposure, that being contact with groundwater, is an ordinance adopted by a local government prohibiting use of contaminated groundwater in all or part of a community. This at times is referred to as a

groundwater use restriction ordinance (“groundwater ordinance”). The proposal to use such a groundwater ordinance would typically be made after the SI has been prepared. The extent of contamination identified in an SI can be the area covered by the ordinance and the proposal to use an ordinance would typically be found in the ROR or RAP.

The District understands that use of a groundwater ordinance is not uncommon. However, the District also understands that such an ordinance is used when a community and off-site properties with contaminated groundwater have available a public water supply that is or can be tapped for potable and other water uses. For example, a groundwater ordinance is used in the Chicago metropolitan area where property owners tap Lake Michigan for potable and other water needs. Another example is a community that has a public water supply that taps a common deep water well. As part of its December 9, 2019 written submittal, 300 West and EIL provide an example of this at Attachment 2, what they refer to as adopting language for a groundwater ordinance. The attachment is a copy of an ordinance adopted by the Village of Union. At Section 3, there is an explicit reference to Union’s potable water system. The District is not aware, and 300 West has not provided an example, of any situation where a groundwater ordinance was adopted by a local government and was the basis in whole or in part for an IEPA issued NFR letter when no alternate water supply was available to properties covered by the ordinance.

Arnold/300 West/Site History

As 300 West reports, the site has been used for industrial purposes for over 100 years. In fact, the site was originally developed in the late 1890s and was first used as a railyard and railroad engine manufacturing and maintenance facility. Arnold purchased the property in the early 1900s. Its magnetic manufacturing operations started in the 1950s. A report regarding groundwater flow was prepared in 1990. See Exhibit A, excerpts from a report, a November 11, 2013 Focused Site Investigation Report by Environmental Group Services Limited. 300 West was well aware of pollution at the site before it acquired the property reportedly in 2006. See Exhibit B, a court pleading, the attachments to which can be produced if needed. Since the sale, Arnold has operated the site for industrial purposes as a tenant.

300 West reports it entered the SRP in 2007. There is some question as to whether 300 West or another perhaps related company entered the SRP and whether tis was in 2007 or 2008. For the purposes of this objection, the District will assume 300 West entered he SRP in 2007, assuming the role of RA. Arnold did not assume the role of RA or partner with 300 West in this position.

On February 2, 2008, IEPA issued a Notice of Violation (“NOV”) to Arnold regarding contamination at the Arnold site, Arnold being the active polluter at the site. On April 15, 2008, IEPA issued a NOV to 300 West regarding that same contamination. 300 West responded to the NOV in part in a June 17, 2008 letter stating that it intended to sample groundwater monitoring wells in order to investigate pollution at the Arnold site and that it expected to complete all four reports in the SRP by December of 2008. See Exhibit C and group Exhibit D.

In an August 27, 2012 letter to a consultant regarding the Arnold site, IEPA rejected a March 27, 2012 Site Investigation Report (SIR) that IEPA received April 11, 201[2]. The reason for the rejection was, at least in part, that information had not been obtained about RECs. IEPA stated

that it had provided guidance about what could be an approvable SIR in IEPA letters dated December 12, 2009, regarding a Phase I Environmental Site Assessment (“ESA”), and September 17, 2010, regarding a Phase II subsurface investigation report. Response to those letters in the form of the March 27, 2012 SIR was not adequate. See Exhibit E.

The State attempted to negotiate with Arnold and 300 West regarding the pollution problems at the Arnold site with no success. The State filed suit against Arnold and 300 West in June of 2013.

In a January 21, 2014 letter to the consultant, IEPA rejected a November 18, 2013 Focused SIR regarding VOCs, a report that IEPA had received on November 11, 2013. The Focused SIR did not include identification of RECs and areas of concern, characterization of exposure routes and other items typically included in such reports. IEPA stated that it had requested this information in letters dated December 8, 2009, September 17, 2010 and August 27, 2012, but satisfactory responses to these letters were never provided. IEPA also stated that reports dated December, 2004, March, 2006 and April, 2008 provided more information. See Exhibit F.

The State’s case proceeded including with what is called discovery, the exchange of information among the parties and obtaining information from third parties. One or both defendants agreed to certain work which included environmental sampling and providing bottled water to certain neighbors to the Arnold site whose individual water wells are contaminated.

On March 16, 2015, the State filed an Amended Complaint in its case. On December 14, 2015, a Third Agreed Preliminary Injunction Order (Agreed Order) was entered in the case requiring, among other things, that Arnold and 300 West perform a remediation. An agreed order is one where the parties agree to the order before its entry by the court. This legally committed Arnold and 300 West to perform a remediation, the details of which would be determined later by proceeding before the IEPA. In particular, the Agreed Order requires work that mirrors and is consistent with the SRP.

The Agreed Order included deadlines by which 300 West and Arnold were required to complete and submit to IEPA for its review and approval the SRP reports listed above. The SI was to be completed by March 31, 2016, again, a date to which Arnold and 300 West agreed.

On April 1, 2016, IEPA received what was labeled a Comprehensive Site Investigation and Remedial Objective Report (2016 CSI/ROR) dated March 31, 2016. In a June 17, 2016 letter to 300 West and Arnold, IEPA rejected the 2016 CSI/ROR. IEPA stated that the horizontal and vertical extent of contamination in soil and groundwater had not been accomplished. Also, not all known RECs and Areas of Concern (AOC)s had been identified, including 12 underground storage tanks (“USTs”), several above ground storage tanks (“ASTs”) and PCB containing transformers. IEPA noted that only 300 West submitted this report and that both Arnold and 300 West must submit reports. IEPA also cited to a December 31, 2014 letter it sent to Arnold and 300 West that provided guidance on performing a site investigation. See Exhibit G. Even after coaching by IEPA, Arnold failed to submit the SI and 300 West submitted a SI in name only.

A series of pleadings filed from about September 28, 2017, through November 22, 2017, in the State’s case against Arnold and 300 West brought into focus Arnold’s failure and refusal to

comply with the Agreed Order and conduct, with 300 West, a remediation regarding this matter. See group Exhibit H. Omitted exhibits can be produced. The State filed a motion to compel Arnold and 300 West to comply with the Agreed Order. In its response to the motion, 300 West in part stated that it, 300 West, “is a single-asset entity organized and existing solely for the ownership of the [subject property]. Work on this project, including work to complete and submit the revised CSIR/ROR by [a certain] deadline ... was forced to be suspended due to a funding issue for this single-asset entity. ... this funding issue resulted in consultants being unable to perform their work, and ultimately deadlines being missed.” See 300 West’s October 27, 2017 response to the State’s motion, pages 2 and 4. The State then documented in its reply to 300 West’s and Arnold’s response memos examples of Arnold’s failure and refusal to perform the remediation. Arnold admitted in deposition testimony for example that it had not performed under the relevant part of the Agreed Order, had not retained or paid consultants and contractors regarding the required work and had not funded the work. See the State’s reply memo including pages 6-7 and citations. Arnold’s egregious conduct, or lack of conduct, directly resulted in a work stoppage.

About two years after the 2016 CSI/ROR was rejected by the June 17, 2016 IEPA letter, the same thing happened again. On March 13, 2018, IEPA received a Revised CSI/ROR dated March 1, 2018. In a June 8, 2018 letter, IEPA rejected that report. IEPA stated that the report largely included attachments of previously submitted reports, many of which were not approved, and that more recently collected data was not provided. Arnold and 300 West also should have, but did not, determine the chemical character and extent of oil emanating from the floor of one of the buildings at the Arnold site, building 2/3/4/7. Citing the IEPA June 17, 2016 letter, IEPA stated that Arnold and 300 West did not identify all RECs and AOCs and did not submit adequate information showing the extent of contamination. See Exhibit I. Arnold and 300 West again failed to prepare and submit an adequate SI, including and especially as to the required essential parts of an SI.

Arnold and 300 West were then required to submit an adequate SI to IEPA by January of 2020 but 300 West failed, and Arnold refused, to do so. The District understands that 300 West seeks an extension of that deadline to mid-2021. This would be more than five years after the original deadline of March 31, 2015, to which Arnold and 300 West agreed, for completing and submitting to IEPA the SI.

The District notes that Arnold did not submit the request regarding a groundwater ordinance to McHenry County. Only 300 West did.

The State of Illinois

In a February 11, 2014 letter, IEPA told Mr. Steve Anthony of Marengo that IEPA is seeking a long-term solution for contamination at the Arnold site. In particular, IEPA states that its goals include remediation of all contaminants present on site at levels greater than state cleanup values and off site at levels greater than safe drinking water standards for private well water use. See Exhibit J.

In a July 31, 2015 letter, then Illinois Attorney General Lisa Madigan, through the Chief of her office’s Environmental Enforcement/Litigation Division, told the Supervisor of Marengo

Township that the goal of her office regarding this matter is to make sure that residents have permanent access to safe drinking water and that Arnold and 300 West remediate the soil and groundwater contamination. A copy of this letter was sent to many people including State legislators, other Marengo Township officials, County officials, Marengo officials and the District. See Exhibit K.

In its two letters rejecting 300 West's 2016 CSI/ROR and the 2018 Revised CSI/ROR, IEPA also rejected suggestions by 300 West that there need not be a complete and appropriate remediation. In its June 17, 2016 letter, IEPA stated, contrary to a proposal by 300 West, that connecting properties with contaminated private wells to a public water supply is not considered active remediation of groundwater. In its June 8, 2018 letter, IEPA stated that proposed monitoring of natural attenuation as a remedial action is not an appropriate remedial strategy and cannot be used to prevent direct human contact to contaminated groundwater. See Exhibits G and I.

300 West is asking something of McHenry County that has apparently been expressly ruled out by the State since 2014.

McHenry County Conservation District

The District's legal purposes and obligations are described below. As to its involvement with this matter, it owns about 700 acres of land northwest of the Arnold site, just past many of the most nearby residences to the site. It currently leases, and has for some time leased, the property to tenants for agricultural purposes. Typically, two irrigation wells had been used by the tenant farmers to water crops, mainly corn. The property is also used for hunting. As is the case with other property the District owns, and for any Conservation District, it manages its properties for the benefit of future generations, always with the option of creating natural habitats.

In about the summer of 2015, the District was notified that its groundwater was polluted by contaminants from the Arnold site. The District was informed and understands that groundwater flows in the subsurface from southeast of the Arnold site, flows through the Arnold site, where it becomes contaminated by pollution at the Arnold site, and then flows to and through the District's property. In an August 10, 2015 letter to the District's lawyer, IEPA requested that the District stop use of its irrigation wells. IEPA also reported in the letter that it was concerned about use of the wells for two reasons. First, IEPA stated that the groundwater contaminants are mobile and may move in the direction of the two irrigation wells. Second, IEPA was concerned about the potential effects of using contaminated groundwater on agricultural fields. See Exhibit L. The irrigation wells have not been used since. IEPA has not since contacted the District saying the irrigation wells could be used again.

The District has cooperated regarding the investigation of the area groundwater. It has allowed sampling of its irrigation wells. In addition, on November 11, 2015, the District issued a license to Arnold and 300 West permitting them to install and sample groundwater monitoring wells on District property. Ten such monitoring wells have been installed and sampled, and each is still in place.

In an April 30, 2019 letter, the District informed Arnold and 300 West that it objected to them incorporating a groundwater use restriction ordinance into any remediation plan. Doing so

would not be consistent with law, including the Illinois statute that created Illinois Conservation Districts. See Exhibit M.

Law/Argument

The Illinois Conservation District Act

In Illinois, Conservation Districts are created by statute, the Conservation District Act (“CDA”), 70 ILCS 410/1 et seq. Section 3 of the CDA provides in part:

The purpose of this [Conservation District] Act is to provide for the creation of conservation districts. Such districts may, and their principal purpose is to, acquire in fee or a lesser right or interest, preserve and maintain wildland, other open land, scenic roadways and pathways; hold such real property, with or without public access, for the education, pleasure and recreation of the public or for other open space values; preserve portions thereof in their natural condition and undertake development of other portions thereof; manage and use such real property in such manner and with such restrictions as will leave it unimpaired for the benefit of future generations; and otherwise promote the conservation of nature, flora and fauna, natural environment and natural resources of the district. 70 ILCS 410/3.

The District’s charge and legal obligations are clear. It must, among other things, make decisions about and work at how it will preserve and maintain wildlife, preserve portions of its property in a natural condition, though it can develop portions, manage and use property for the benefit of future generations and promote conservation of nature, the natural environment and natural resources. By requesting a groundwater ordinance as part of its remediation plan, 300 West would instead have McHenry County and then IEPA make decisions regarding the District’s use of its property. 300 West’s reason for this again is that conducting an appropriate remediation is not easy and will take too long, even decades. Such a request is contrary to the CDA, including the Illinois legislature’s intent in adopting the CDA. 300 West’s request, if granted, would shift the financial burden for part of the remediation away from the two liable and culpable parties and onto neighboring property owners. In the District’s case, the financial burden would be shifted to McHenry County taxpayers.

That 300 West argues that conducting an appropriate remedy would take decades is ironic in light of the fact that 300 West is in its second decade of being in the SRP and it has not even completed the first of four reports in that program, the SI. If Arnold participated in the remediation it was ordered and agreed to undertake and adopted this argument, the irony would be greater. Arnold would be heading into the fourth decade of investigation of the pollution at the site and is in its second century of being responsible for pollution at the site. Even if one assumed for the sake of argument only that an appropriate remediation did take decades, that is certainly within the District’s time frame of being required to leave property unimpaired for the benefit of future generations.

Eventually adopting the requested groundwater ordinance would be contrary to the CDA.

Illinois Constitution/Groundwater Protection Act/Environmental Protection Act/Illinois SRP

Illinois law requires protection of the environment. The Illinois Constitution provides in part:

Section 1. Public Policy – Legislative Responsibility - The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Section 2. Rights of Individuals - Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

Each Illinois citizen has a right to a healthful environment. It is also the public policy in Illinois to provide for and maintain a healthful environment for not only this but also future generations. These rights and public policy should be considered and incorporated into decisions made by the State and local governments.

The Illinois Groundwater Protection Act (“Groundwater Act”), 415 ILCS 55 et seq, sets out findings and policy regarding groundwater. In the Groundwater Act, the General Assembly finds, among other things, that a large portion of Illinois’ citizens rely on groundwater for consumption, industries use a significant amount of groundwater, contamination of groundwater adversely impacts health and welfare of citizens and adversely impacts the economic viability of the State and protection of groundwater is a necessity for future economic development in the State. The General Assembly then declares that it is the policy of the State to restore, protect and enhance groundwater as a natural resource. The General Assembly also recognizes the essential and pervasive role of groundwater in the social and economic well-being of the people of Illinois and its vital importance to health and welfare. It is further recognized that groundwater must be used for beneficial and legitimate purposes, that degradation should be prevented and groundwater should be managed to allow for maximum benefit of the people of Illinois. 415 ILCS 55/2(a) and (b). It therefore is the policy of the State to protect and enhance groundwater resources.

The Illinois Environmental Protection Act (“Act”) drives home these points. Section 2 of the Act, 415 ILCS 5/2, provides in part:

(b) It is the purpose of this Act ... to establish a unified, state-wide program[,] supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them. and

(c) The terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of this Act as set forth in subsection (b) of this Section ...

The Illinois regulations that in part implement the SRP, the Tiered Approach to Corrective Action Objections (TACO), 35 Ill. Adm. Code 742.100, set out the purpose of the TACO

procedures. At Section 742.100(b), it states: “The purpose of these procedures is to provide for the adequate protection of human health and the environment based on the risks to human health posed by environmental conditions while incorporating site related information.”

Illinois law clearly provides for not only protecting the environment but also restoring and enhancing it. Adverse effects on the environment must be fully considered and borne by those that caused them. And decisions regarding the environment must tend towards promoting these principles.

300 West’s ultimate request for adoption of a groundwater ordinance will not protect the environment. Since certain of the properties that would be covered by such an ordinance do not have an alternate water supply, this situation instead calls for restoration and enhancement of the environment.

The idea that McHenry County is being asked to embrace is that health will be protected if people are required to stay away from the groundwater and are prohibited from using it. A permanent groundwater dead zone is being sought in this proceeding. 300 West would have McHenry County believe that this is the most, or only, feasible option because doing otherwise is not easy and will take too long. However, (i) 300 West’s request has been pending for nine months, (ii) 300 West has been in the SRP for 13 years and (iii) the first report of which we are aware regarding groundwater at the Arnold site is dated 1990. No information has been produced evaluating specific remedial options for this particular situation. This is an unconvincing way for 300 West, and Arnold for that matter, to suggest that their intent is to altruistically protect health.

A pessimistic person could think that 300 West will ultimately request that McHenry County adopt a groundwater ordinance so that less, if any, rather than more active remediation could be conducted and that less, much less, rather than more money will be spent. We know that 300 West is a single asset entity. Presumably then its only income is rent paid by Arnold. We also know that Arnold refuses to participate in the remediation including by refusing to fund it, even to avoid a work stoppage.

This situation calls for, demands, that health and the environment be protected and the environment be restored and enhanced. That should be done with the cost born by those responsible for and who caused the pollution. 300 West’s request should be rejected.

Constitutional Law Issues Regarding Groundwater Ordinance

The Illinois Constitution also controls this situation for both the County and the District. With all respect, the County does not have the legal authority to adopt this type of ordinance when property covered by the ordinance does not have an alternate water source. If the County adopted such an ordinance, doing so would be an inappropriate exercise of its police power and would amount to an unconstitutional taking, or damaging, of property. It would also violate the District’s equal protection and due process rights.

Certain fact issues are implicated regarding these issues. Only the County has information about its contact with or role regarding the 300 West request. The District has certain impressions and understandings in this regard and assumes the following. The County has been aware of this

situation for years but has not initiated any action to consider, study or adopt the groundwater ordinance 300 West suggests. The County has never thought that, in order to promote health and welfare of McHenry County citizens, it must step in and prohibit use of groundwater by neighbors to the Arnold site, including in the case of properties that do not have an alternate water supply. Instead, it is 300 West that has raised this issue with the County and, with Arnold, is interested in, and wants the County to adopt, a groundwater ordinance. 300 West, and presumably Arnold, want the County to do something that 300 West and Arnold have not been able to do on their own, get the State to approve an inadequate and inappropriate remediation. Instead of promoting health and welfare in the county, the suggested ordinance would not result in remediation and enhancement of the environment but instead would result in continued contamination of groundwater now and into the future. Less, if any, rather than more active remediation would be performed. As indicated above, an ordinance would also be a poor substitute for protection of health.

Adoption of the suggested ordinance would also create a situation whereby the District would be placed in a markedly different position from the position in which Arnold and 300 West would be placed. The District's property has been damaged. On the one hand, the proposed ordinance would arguably require the District to live with this damage. On the other hand, Arnold, the active polluter in this situation, and 300 West, which acquired the subject property knowing it was contaminated thereby assuming environmental responsibility with Arnold, would arguably walk away from the responsibility and cost of remediating the damage for which both are responsible. The District is unaware of how the County, by adopting a groundwater ordinance, has a legitimate purpose or interest in creating this dichotomy.

Also, the SRP does not provide for neighbors to a site enrolled in the program to receive notice and an opportunity to be heard before a NFR letter is issued. 415 ILCS 5/58.7(h) (community outreach is optional).

As to the exercise of the County's police power, property rights are both a liberty and a right that existed before the Illinois Constitution and are guaranteed by it. They are subject to exercise of government police power which, importantly, promotes and protects public health and welfare. For an exercise of the police power, i.e. adoption of an ordinance, there must be a real and substantial relation to public health and welfare. The exercise of the police power is invalid if it is arbitrary, capricious and unrelated to public health and welfare. The District respectfully suggests that McHenry County has never on its own initiative thought that adopting a groundwater ordinance is a way to protect public health and welfare. As discussed above, such an ordinance would not protect public health and welfare. Adopting such an ordinance would only protect Arnold's and 300 West's interests and would continue to permit them to avoid conducting an appropriate remediation. The District respectfully submits that this would not be a proper exercise of the County's police power.

Governments have the right to acquire private property, or damage private property, so long as (a) the taking is for a public use; and (b) just compensation is paid to the landowner. At this point in this case, there is no suggestion that the District's situation involves or reaches the second prong of the test. The public must to some extent be entitled to control, use or enjoy the property as a right. In order to determine whether the public is the primary beneficiary of a taking, including damage to property, courts look to (a) the actual motives behind the taking; and

(b) whether the taking was an independent and legitimate decision to further a planned public use and arguably to promote public health and welfare. Property may be taken, or damaged, for the purpose of enabling the government to carry out its functions. Adoption of the suggested groundwater ordinance would be contrary to each of these standards and legal principles. Such an ordinance would only promote Arnold's and 300 West's interests in not conducting an appropriate remediation and not spending money. It would result in permanent damage for those properties that do not have an alternate water source and would not be an act the County would undertake to carry out its functions.

The guarantee of equal protection prohibits a government from according unequal treatment to persons placed by statute into different classes for reasons wholly unrelated to the purpose of the legislation. The classification cannot be arbitrary and there must be a rational basis for the classification. As stated above, a groundwater ordinance would put the District in a markedly different and unfair position or category than Arnold and 300 West without protecting public health and welfare but shifting financial burden from Arnold and 300 West to McHenry County taxpayers.

Procedural due process requires notice and an opportunity to be heard. Substantive due process provides that a statute is unconstitutional if it impermissibly restricts a person's life, liberty or property interest. First, as stated above, a neighbor to a site enrolled in the SRP is not provided notice or an opportunity to be heard before an NFR letter is issued by IEPA. Through this proceeding, the County is tied to the SRP in light of the certain use of a groundwater ordinance it would adopt to obtain an NFR letter. The District maintains this would be a violation of its procedural due process rights. Second, since adoption of such an ordinance would be an unconstitutional exercise of police power and an unconstitutional taking of, or damage to, the District's property, the District's substantive due process rights would be violated.

As stated above, the County does not have the legal authority to adopt this type of ordinance since doing so would be an inappropriate exercise of its police powers and such an ordinance would also amount to an unconstitutional taking of property. It would violate the District's equal protection and due process rights. The District did not burden the County with case law at this time, generally setting out legal principles implicated. Case law can be provided if needed.

Conclusion

For the reasons stated above, the McHenry County Conservation District respectfully maintains that McHenry County should deny the pending request and conclude that a groundwater ordinance as proposed, if presented in this situation in the future, would also be rejected.

Respectfully Submitted

The McHenry County Conservation District

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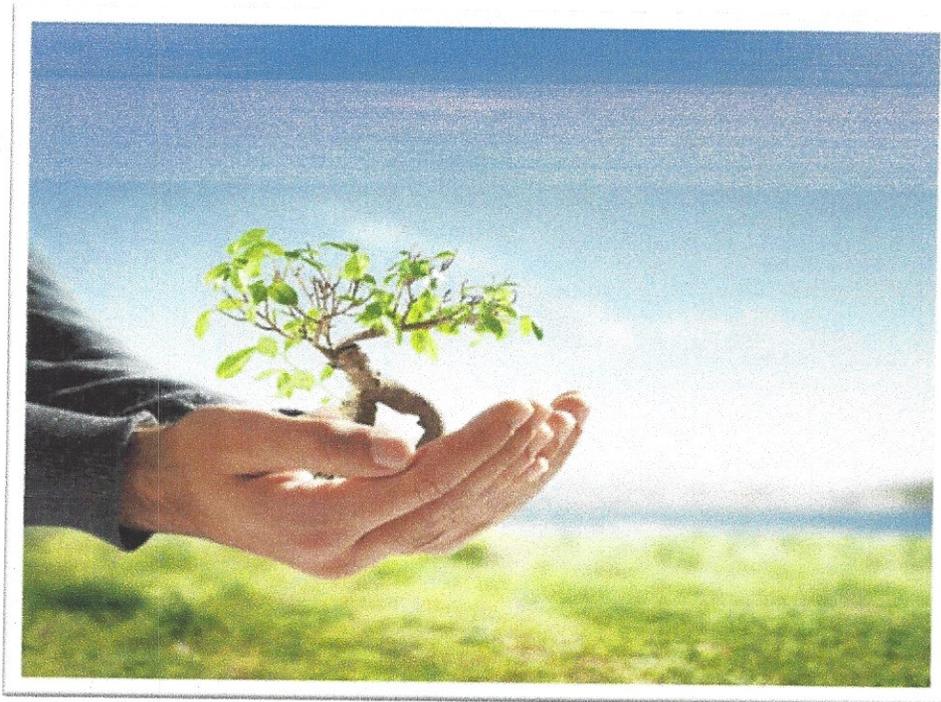
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Focused Site Investigation Report

*LPC # 1110650003 – McHenry County
Marengo – Arnold Magnetic Technologies
300 West LLC
Site Remediation Program/Technical Reports*



Prepared for:
Mr. John Daley
300 West LLC
2340 South River Road – Suite 310
Des Plaines, Illinois 60018

Prepared by:
Bill Lennon
Project Manager
Steve Boom
Project Manager
November 18, 2013

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)



SUBJECT PROPERTY

300 West LLC
300 West Street
Marengo, Illinois 60152

Prepared For

Illinois Environmental Protection Agency
Site Remediation Program/Tim Zook, Project Manager
1021 North Grand Avenue East
Springfield, Illinois 62702

Prepared By

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On Behalf of

Mr. John Daley
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November 18, 2013

EGSL Project Number: 805247



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TCE has been detected above the GRO in several wells across the site associated with building 2/3/4/7, Pond 3 and possibly former building 6 at a minimum. Depths of the contaminant have been reported at 30 and 50 feet bgs associated with building 2/3/4/7, <50 feet at Pond 3 and <50 feet northeast of former building 6.

1,1,2 TCA and 1,2 DCE has been reported above the GRO under building 2/3/4/7 at a depth of 30 feet bgs. The vertical extent of 1,1,2-TCA and DCE does not appear to be defined at this time as a deeper well at this location has currently not been installed and sampled.

Carbon Tetrachloride was detected slightly above the GRO in one well at 30 feet deep in building 2/3/4/7. The GRO for carbon tetrachloride is 0.005 mg/L. The laboratory reported a concentration of 0.0066 mg/L from groundwater analyzed at this location.

Chloroform has been detected above the GRO at locations associated with building 2/3/4/7, the pond system and at the southeast corner of former building 6. The depth of this contaminant is currently identified to be 30 feet bgs however this contaminant may be present at greater depths south of Pond 1 and in building 2/3/4/7. The vertical extent of this contaminant does not appear to be defined at these two locations.

Bromodichloromethane has been detected above the GRO at one location south of Pond 4 at a depth of 30 feet bgs. The laboratory reported the contaminant at a concentration of 0.0017mg/L, slightly above the GRO of 0.0002mg/L. The contaminant does not appear to be defined at this location.

Bromomethane has been detected above the GRO at the northwest corner of the property at the former Pond 6 location. The laboratory reported the contaminant present in a sample collected from 50 feet bgs but absent from a sample collected from a depth of 70 feet bgs. It appears that the vertical and horizontal extent of this contaminant has been defined onsite.

2. SITE CHARACTERIZATION

A number of sources were consulted in the preparation of this Focused Site Investigation Report. These sources include but are not limited to state government agencies and previous environmental reports prepared by environmental consulting firms including EGSL. Information and data collected from these sources was used to identify contaminants of concern and evaluate the site fate and transport mechanism to determine the vertical and horizontal extents of contaminants of concern present in the soil and groundwater under the site.

2.1 SOURCES REVIEWED

The sources consulted in the preparation of this report include but are not limited to:

- Monitoring Well Network Installation and Ground-Water Flow Assessment prepared by Roux Associates, Inc. dated May 17, 1990.



- ✓ *The Arnold Engineering Co, Marengo, IL, Permit No. 1999-EO-4027 dated August 30, 2001.*
- ✓ *Environmental Review of Nine Arnold Magnetics Facilities prepared by ENVIRON International Corporation, dated December 2004.*
- ✓ *Unidentified Document: Monthly Summary of Groundwater Sampling Results; Arnold Magnetic Technologies, Marengo, IL.*
- ✓ *Updated Environmental Review of six facilities of Arnold Magnetics prepared by ENVIRON International Corporation, dated March 2006. This document was severely redacted.*
- ✓ *Phase I Environmental Site Assessment and Limited Environmental Compliance Review of Arnold Magnetic Technologies Corporation, 300 N. West Street, Marengo, Illinois prepared by ENVIRON International Corporation, dated April 2008.*
- ✓ *Phase I Environmental Assessment prepared by EGSL, dated September 30, 2009.*
- ✓ *Limited Phase II Subsurface Soil and Groundwater Investigation Report prepared by EGSL, dated March 3, 2006.*
- ✓ *Limited Phase II Subsurface Soil Investigation Report prepared by EGSL, dated May 27, 2008.*
- ✓ *Phase II Subsurface Soil Investigation Report prepared by EGSL, dated July 15, 2010.*
- ✓ *Illinois State Geological Survey web site. www.isgs.illinois.edu.*
- ✓ *United States Department of Agriculture web site. www.websoilsurvey.sc.egov.usda.gov.*
- ✓ *Illinois State Water Survey web site. www.sws.uiuc.edu.*
- ✓ *Verified Complaint for Injunction and Civil Penalties No. 13CH1046 dated June 14, 2013.*
- ✓ *Agreed Preliminary Injunction Order No. 13CH1046 dated August 23, 2013.*

2.2 SITE HISTORY

The Subject Property was originally developed in the late 1890s and was first utilized as a rail yard and railroad engine manufacturing/maintenance facility. The Subject Property was reportedly purchased by Arnold in the early 1900s, with their magnetic operations/manufacturing beginning in the 1950s.

The following buildings are currently, or have been historically, located on the Subject Property (see Site map, Figure 3):

- ✓ **Building 1:** Built in the late 1890s and demolished around 2002. The building was approximately 40,000-square-feet in size and was originally utilized for railroad engine manufacturing and repair. Arnold later utilized Building 1 for magnet production, pressing operations, and heat treating.
- ✓ **Building 2/3/4/7:** The original portion of the building (Bldg. 2) was constructed in the 1950s, with subsequent additions (Bldgs. 3, 4, and 7) added later. The entire building is approximately 135,000-square-feet in size and was formerly utilized for office space, maintenance, shipping, and miscellaneous storage. Building 2/3/4/7 was historically utilized for tape-core, powder-core and winding operations associated with magnetic manufacturing; all manufacturing operations ceased in this building in approximately 2002 and the building is currently unused.
- ✓ **Building 5:** Constructed in the 1950s-1960s and is approximately 74,000-square-feet in size. Currently and historically has been utilized by Arnold for their Alnico Products Division, which manufactures magnetic components by molting, melting, and finishing Aluminum, Nickel, and Cobalt. This building is currently outside the scope of this investigation.



Bromomethane has been detected above the GRO at the northwest corner of the property at the former Pond 6 location. The laboratory reported the contaminant present in a sample collected from 50 feet bgs but absent from a sample collected from a depth of 70 feet bgs. It appears that the vertical and horizontal extent of this contaminant has been defined onsite.

As indicated above the vertical extent of several of the COCs in the groundwater have not been delineated. The installation of five additional groundwater monitoring wells adjacent to MW-36, 37, 41, 44 and 46, and sampling and analysis of the groundwater in these areas to a depth of 100 feet bgs is warranted as a next phase of the investigation.

5. SIGNATURES OF ENVIRONMENTAL PROFESSIONALS

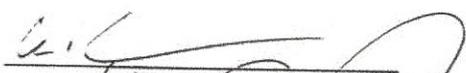
This report pertains to the property located at 300 West Street, Marengo, Illinois. Our professional services have been performed using the degree of care and skill ordinarily exercised under similar circumstances by environmental professionals practicing in this field. The representations made in this report are accurate and true to the best knowledge of the undersigned.

Sincerely,

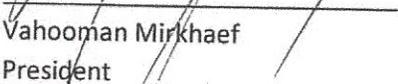
ENVIRONMENTAL GROUP SERVICES, LIMITED



Steve Boom
Project Manager



Bill Lennon
Project Manager



Vahooman Mirkhaef
President



IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
300 WEST LLC, an Illinois limited liability)
co., and THE ARNOLD ENGINEERING)
CO., an Illinois corporation,)
)
Defendants.)

No. 13-CH-1046

THE ARNOLD ENGINEERING CO.’S RESPONSE TO PLAINTIFF’S PETITION TO ENFORCE COURT ORDER AND FOR RULE TO SHOW CAUSE

Defendant, THE ARNOLD ENGINEERING CO. (“Arnold Engineering”), for its Response to the State of Illinois’ (“Plaintiff”) Petition to Enforce Court Order and for Rule to Show Cause Against the Arnold Engineering Company regarding the Hook-Up Project¹ (“Plaintiff’s Petition”), states that Plaintiff’s requested relief should be denied because it is not ripe and is beyond the scope of the Consent Order and applicable law. The parties have been working diligently towards connecting the area residents to municipal water. The relief requested in Plaintiff’s Petition appears to be limited to seeking an order to require Arnold Engineering — and not Defendant 300 West LLC — to obtain a letter of credit (LOC) that the City of Marengo (“City”) recently demanded before the City will allow residents to receive to City water. The issue is not ripe because the financial security issue is not the last item needed before the hook ups can proceed and because the City agreed that a LOC is not required at this moment. Moreover, this Court previously

¹ Arnold Engineering has also filed a Cross Motion Against 300 West LLC For Plaintiff’s Petition requesting that any Petition regarding the Consent Order should include both 300 West and Arnold Engineering.



Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

determined that a performance bond is appropriate financial security for the State of Illinois in this case; Arnold Engineering requests that a performance bond become the appropriate mechanism to be used for the City's financial assurance as well.

The Consent Order does not dictate which party must conduct the work under the Order, only that the work must proceed. The Consent Order allows 300 West LLC ("300 West") and Arnold Engineering (collectively "the Defendants"), to determine how, and by whom, the work is performed. 300 West has consistently stated that it is and will continue to conduct the work required under the Consent Order. 300 West funds the work through significant payments made by Arnold Engineering under its lease. Neither the Plaintiff nor 300 West have presented any basis for 300 West's failure to commit to providing financial security to the City, especially given that 300 West owns the property and controls the work.

I. STATEMENT OF FACTS

A. 300 West LLC's Ownership of the Site

300 West owns and controls the property located at 300 N. West Street in Marengo, IL ("300W Property" or "Site"). When 300 West purchased the 300W Property in 2006, 300 West agreed to promptly undertake and diligently pursue all actions to obtain an No Further Remediation ("NFR") letter from the Illinois Environmental Protection Agency ("Illinois EPA"). (See Ex. 1, Property Purchase Agreement, ¶18). In particular, paragraph 18 of the 2006 Purchase Agreement provides that 300 West will undertake and pursue all actions, through the Illinois EPA's program and oversight, to address known groundwater contamination. (Ex. 1, ¶18). John Daley and Gerald Nudo, the owners/managers of 300 West, personally guaranteed this obligation. (See Ex. 1, Exhibit F of Purchase Agreement, Purchaser Guaranty, ¶1.1 ("Guarantors hereby unconditionally guarantee the full, timely and complete payment and performance by Purchaser of the obligations

of Purchaser under Sections 16(b) and 18 of the Sale Agreement...”). In fact, John Daley recently stated under oath that it is his intention and the intention of 300 West to continue to meet the obligations under the Consent Order. (Ex. 2, 2017 Dep. of John Daley, p. 88:15-19). Since the Consent Order was entered, 300 West has controlled and continues to control all the contracts for the work related to conducting the hook-up project and is also coordinating the work with the City – a separate party.

B. The Arnold Engineering Company’s Lease of the Site

Arnold Engineering began making lease payments to 300 West when 300 West purchased the Property in 2006. Arnold Engineering and its related company have paid to 300 West more than \$5.7 million to date.² (Ex. 3, Affidavit of Larry Cozart). 300 West also has at least one other tenant at the 300W Property paying rent. (Ex. 4, 2017 Deposition of G. Nudo, p. 19:11-20:1). All of Arnold Engineering’s payments are and have been available for the remediation of the 300W Property because 300 West has no other costs related to the Property. Arnold Engineering’s lease with 300 West is an “Absolutely Net Lease.” (Ex. 5, Arnold Engineering Lease Agreement, ¶2.3). This means that Arnold Engineering pays “all expenses of every type relating to the Premises after commencement of the lease term and all rentals shall be received by [300 West] without set-off, offset, abatement or deduction of any kind.” (Ex. 5, ¶2.3). Thus, Arnold Engineering pays all costs to maintain the 300W Property and all components and portions thereof, including all structures, HVAC systems, landscaping, and improvements, in good and safe repair, and operating condition; and make all repairs, renewals and replacements that are necessary. (Ex. 5, ¶4.1). Since 2012 Arnold Engineering has paid approximately \$169,212 for repairs and maintenance of the 300W Property and approximately \$484,360 for leasehold improvements to the 300W Property. (Ex. 3,

² The current parent companies to Arnold Engineering acquired it as part of a larger transaction in 2012, long after the alleged historic contamination at the 300W Property took place.

Affidavit of Larry Cozart). The improvements have included new exhaust fans, new air conditioning units, , installation of gutters and downspouts, a new water heater, new fire hydrants, and restructuring the telecom and fiber optics infrastructure. (Ex. 3, Affidavit of Larry Cozart). Arnold Engineering pays the Real Property Taxes for their proportionate share of the 300W Property, which has totaled \$222,597 since 2012. (Ex. 5, ¶5.1, Ex. 3). Arnold Engineering pays all services and utilities including fuel, water, gas, electricity, sewage disposal, power, air conditioning, telephone and janitorial, totaling over \$4.7 million since 2012. (Ex. 5, ¶5.2, and Ex. 3). Arnold Engineering even removes the snow and ice from the 300W Property, including the property used by the third tenant, for a total cost of approximately \$52,380. (Ex. 5, ¶3.5, Ex. 3). In sum, since 2012, Arnold Engineering has paid approximately \$5,159,131 in expenses, repairs, maintenance and improvements at the 300W Property in addition to its rent payments. (Ex. 3, Affidavit of Larry Cozart). 300 West has little to no expenses related to the 300W Property other than its obligation to remediate the contamination.

C. Agreement with the City of Marengo

In February 2016, the City of Marengo (“City”), 300 West, and Arnold Engineering entered into an Agreement to allow the parties to provide permanent drinking water to the residents near the Site (the “Hook-Up Project”). (Ex. 6, 2016 Agreement with the City of Marengo). In July 2018 the City made its demand for a LOC as financial security for the installation of the final portion of the water connection (Segment 1A). Segment 1A of the City water connection is entirely on the 300W Property, and the work to complete Segment 1A is not needed to connect the residents. The City requires Segment 1A as a “loop” for longer term service issues. As a result, the Segment 1A work will not begin until at least late 2019. (Ex. 6, Map attached to City Agreement). After negotiation with the City and with the assistance of the Court, the City agreed that it would require

the LOC at the time it begins providing the homes with City water; not at the date of signing an amended Agreement.

D. Financial Security under the Consent Order

This Court already approved a form of financial assurance for work required to conduct the Hook up Project – a performance bond obtained by 300 West. On January 24, 2017, 300 West provided to the Plaintiff a performance bond of \$1,000,000 issued by Liberty Mutual guaranteeing performance of specifically contracted work for the Hook-Up Project. (Ex. 7, *300 West's Response to Plaintiff's Petition to Enforce Court Order and for Rule to Show Cause Regarding Financial Assurance*, Ex. B). 300 West provided the performance bond to comply with Section III.D.3.d.i the Consent Order, which required \$1,000,000 financial security for the work described in Section III.D.3.a, the Defendants' Obligations for the "Hook-ups of Residential Homes to the City of Marengo Public Water Supply." *Consent Order* entered on June 1, 2016.

Claiming that the performance bond was insufficient financial security because it did not allow the State to receive the funds, Plaintiff asked the Court to require that Defendants provide a different form of financial security. *Plaintiff's Reply in Support of Plaintiff's Petition to Enforce Court Order and for Rule to Show Cause Regarding Financial Security*, filed in this matter on April 12, 2017. The Court denied Plaintiff's request. On May 16, 2017 the Court found that 300 West's Performance and Payment Bond was open-ended and referenced the obligations which arise under the Consent Order; and that the Defendants had complied with their obligation under the Consent Order. (Ex. 8, Decision and Order, May 16, 2017). The Court found Plaintiff's arguments about the integrity of the financial security "fleeting and baseless" and denied the petition. (Ex. 8).

II. ARGUMENT

A. Plaintiff's Petition is Not Ripe

Plaintiff's Petition to enforce the consent order is not ripe for review by this Court because it is third party issues that are preventing the hook ups – not the acts of Defendants or the LOC. As of the date of this Response, Defendants have not received signed easements from the residents to be hooked-up. In fact, one resident (Mr. Gerber) suddenly elected *not* to be hooked up, requiring yet more revisions to the easements and agreements with the residents. As the work cannot begin until after the easements are signed, any financial security required by the City would not need to be in place until after the easements are signed and the work begins. In other words, there is no reason for Plaintiff to demand that either Defendant, be it Arnold or 300 West, obtain financial security now.

Plaintiff's claim is not ripe because the LOC (or other financial security) need not be provided at this moment. The City agreed, after negotiations with the Court's assistance, that the City would could wait for 300 West to obtain financial security until the time that the City was asked to turn on the water. There is no barrier for the City to approve and/or sign the amendment to the Agreement now. The City's demand that the Defendants provide details concerning an LOC before the City will even approve an amended City Agreement is an unreasonable demand by a third party, and has nothing to do with the Consent Order between Plaintiff and Defendants. This is the exact situation Defendants envisioned when they requested that the Consent Order schedule entered on June 13, 2018 include an acknowledgment that the dates for completion of the tasks may not be attained due to "...a third party's unreasonable or unduly burdensome request..." (Plaintiff's Petition, ¶A.5.2.A). The City's position is another example of a third-party "moving the goal-post" on the Defendants for their completion of the work required under the Consent Order. Plaintiff is aware that the City agreed to accepting the LOC at the moment the drinking

water is “turned on”, not at the time of signing. Arnold Engineering should not be penalized for another shift in a third party’s position.

B. A Performance Bond is Reasonable and Acceptable Financial Security

As noted above, the Consent Order contains exceptions to Defendants’ performance – specifically based on a “third party’s unreasonably or unduly burdensome request.” This is a logical exception as Defendants cannot control the acts of third parties and should not be penalized for them. Although this Court indicated that it was reasonable for the City to request financial security for Segment 1A, the Court did not specify the type of financial security. The City is demanding an LOC without considering other forms of security. This Court previously found that a performance bond was appropriate financial security to the State for specified hook up work required under the Consent Order. To the extent the City requires financial security, it should similarly be in the form of a performance bond for the work to complete Segment 1A.

C. Plaintiff’s Requested Relief is Beyond the Scope of the Consent Order and Applicable Law

Plaintiff lacks the authority to demand that one party to a Consent Order (Arnold Engineering) perform an action demanded by a third party (the City) without any basis in fact. (Plaintiff’s Petition, ¶ B.6). This expanded request for relief is beyond Plaintiff’s authority under either the Consent Order or the Illinois Environmental Protection Act. The Consent Order does not provide which Defendant will conduct the work or pay for the work at the Site; rather those decisions remain with the Defendants. Moreover, there is no provision in the Illinois Environmental Protection Act (“Act”), or applicable regulations that allows the State to dictate which party must conduct work required under the Illinois EPA’s program. 415 ILCS 5/et seq; 35 IAC 742.

The Consent Order describes the process by which the residential homes were to be hooked up to the City of Marengo Public Water Supply. (Consent Order, Sec. III.3). There is no provision that states which Defendant must conduct or fund the work, be it 300 West or Arnold Engineering. 300 West is the owner of the Site, is the ultimate benefactor of the Hook-Up Project and, pursuant to its obligations in its 2006 Purchase Agreement, has taken the lead in conducting the project. 300 West contracted with the engineers to plan and install the water lines and Arnold Engineering is not party to those contracts.

Plaintiff is well aware that 300 West is the entity that specifically assumed responsibility to remediate the Site when 300 West purchased the Site. Plaintiff deposed the owners/managers of 300 West on two occasions. At both his Feb. 25, 2015 deposition and his Nov. 1, 2017 deposition, John Daley, one of the owners of 300 West, stated that, pursuant to paragraph 18 of the 2006 Purchase Agreement, 300 West was going to perform the work, go in and “close off the property” and intended to continue to meet its obligations under the Consent Order. (Ex. 1, p. 88:15-19 and Ex. 9, 2015 Dep. of J. Daley, p. 99:15-24). Because 300 West has assumed the responsibility to conduct the requisite work, and has been performing that work, Plaintiff cannot dictate to the Defendants that another party take over. As described in Section D.ii. below, Plaintiff has no basis to assume that 300 West is unable to obtain the financial security required by the City.

D. 300 West Must Obtain the Financial Security

300 West should be the party required to obtain the financial security because 300 West controls all the contracts to conduct the requisite work for the Hook-Up Project. Moreover, installation of Segment 1A is solely for the benefit and improvement of the 300W Property, and 300 West, as owner, should be responsible for insuring that the work will be completed. The significant lease payments 300 West has collected from Arnold Engineering are sufficient to cover

all the work required to provide permanent drinking water to residents, including securing financial assurance. Finally, 300 West is contractually obligated to complete the Hook-Up Project, including obtaining all financial insurance.

i. 300 West Controls the Contracts for the Work and is the Sole Benefactor of the Work

300 West has and controls all the contracts for the work related to conducting the Hook-Up Project and also coordinates the work with the City – a separate party. The LOC or other financial security demanded by the City is simply another tool of insurance for the work to be conducted. Arnold Engineering cannot insure the work that 300 West is controlling. In other words, Arnold Engineering cannot give a “blank check” in form of a LOC for 300 West that incentivizes 300 West to simply stop paying its contractors. It is not logical or efficient at this late stage to change contractors or suddenly have Arnold Engineering control work that it has not previously directly supervised or negotiated.

Moreover, the installation of Segment 1A of the City Water Connection is an improvement on the 300W Property. (See Ex. 6, City Agreement Map). Only 300 West will reap the ultimate benefit of the capital improvement of its Property due to a permanent connection to City water. It would be inequitable for Arnold Engineering to be required to fund 300 West’s improvements of its property, when Arnold Engineering will receive no compensation or long-term benefit.

ii. 300 West has Sufficient Funds to Obtain Financial Security and Has Not Presented Any Basis that it Cannot

Arnold Engineering has made significant lease payments over the years which have more than funded all the necessary work for the Hook-Up Project to date. Since it purchased the Property in 2006, 300 West has collected at least \$5.7 million in rent payments from Arnold Engineering.³

³ The total amount paid does not include the lease payments from the third, unknown, lessee paying rent to 300 West.

(Ex. 3, Affidavit of Larry Cozart). Because the lease is a Net Lease, 300 West has very little expenses related to owning and controlling the 300W Property. Arnold Engineering pays all the expenses for the Property's utilities, property taxes, operating condition, upkeep and repair, including snow removal, which has cost a total of approximately \$5,159,131 in excess of the lease payments. (Ex. 3, Affidavit of Larry Cozart). These are costs for maintenance and permanent updates to 300 West's Property which will ultimately and only benefit 300 West.

300 West has made the claim, without any supporting documentation, that it is "unable" or cannot afford to obtain the LOC. Plaintiff appears to be accepting the claim at face value without any supporting documentation. (Plaintiff's Petition, ¶ B.3). In most cases when a party makes a claim of inability to pay to Illinois EPA, the State demands copies of the entity's tax returns and other financial statements to prove the claim. Plaintiff should hold 300 West to the same standard. The Segment 1A work is estimated to cost approximately \$340,000. Assuming that is true and assuming an estimated fee of between .25-2% for a letter of credit, the actual amount to secure the LOC is small, approximately \$850-\$6,800. 300 West's "sole purpose is to own the property...and it has no other purpose than that." (Ex. 2, Dep of J. Daley, Nov. 1, 2017, p. 42:11-15).⁴ Considering that Arnold Engineering pays all the expenses related to the operation and rental of the Property, 300 West has few expenses other than the work to remediate the Site. (Ex. 5). 300 West has given no reasonable basis that it cannot secure the LOC for the work it is required to conduct.

⁴ Marc Realty manages the financial accounts of 300 West, including collecting the rent checks and paying 300 West's bills. (Ex. 2, Dep of J. Daley, Nov. 1, 2017, pp. 72:16-73:8). Mr. Nudo, an owner/manager of 300 West, stated that Cindy Harwardt, an employee in his office, pays 300 West's bills, keeps 300 West's books, and deposits the lease payments. (Ex. 4, Dep. of Nudo Nov. 1, 2017, pp. 10:23-11:2, 23:2-12)

iii. 300 West is Contractually Obligated to Obtain the NFR Letter which includes the Hook-Up Project

300 West is contractually obligated to remediate the 300W Property through the Illinois EPA's site remediation program. When 300 West purchased the property in 2006, 300 West agreed to promptly undertake and diligently pursue all actions to obtain an NFR letter from the Illinois EPA. (See Ex. 1, Property Purchase Agreement, ¶18). In fact, the owners/managers of 300 West personally guaranteed this obligation. (See Ex. 1, Exhibit F of Purchase Agreement, Purchaser Guaranty, ¶1.1). 300 West purchased the Property with the Arnold Engineering lease already in place – thus fully aware that the rental funds would be available for the Site remediation.

To get the NFR Letter, 300 West must demonstrate that environmental conditions at the 300W Property do not present a significant risk to human health or the environment. 415 ILCS 5/58.10. This includes providing permanent City drinking water to the residents. In this case, in order to supply the water, 300 West must be the party to comply with the City's requests for financial security. *Id.*

IV. Conclusion

Because Plaintiff's petition is not ripe, the Petition should be denied. Even if the Court finds the dispute ripe, the State has no authority under the Consent Order, the Act or Illinois regulations to dictate which Defendant conducts the work under the Consent Order, including obtaining an LOC. The Court should find that a performance bond, similar to the bond obtained by 300 West in 2017 that was approved by this Court, is reasonable and sufficient financial security for the installation of Segment 1A. There is no reason for Arnold Engineering to obtain the LOC when 300 West is contractually obligated to complete the work and its owners/managers have consistently stated that they intend to complete the work under the Consent Order. The amount of rent collected by 300 West coupled with the absence of any expenses for the Property is funding

the remediation and should be sufficient for 300 West to obtain an LOC. Finally, it would be unfair and unjust for Arnold Engineering to be compelled to obtain the LOC for work that is contracted by 300 West and in effect fund 300 West's improvements of its property, when Arnold will receive no compensation or long-term benefit.

Respectfully submitted,
The Arnold Engineering Co.

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

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Jennifer T. Nijman, ARDC#: 6195951
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 702-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

847/294-4000
847/294-4083 Fax

FEB 28 2008

Arnold Magnetic Technologies
300 N. West Street
Marengo, IL 60152

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7004 1350 0003 1611 1531

Attention: Al Kalaczinski

RECEIVED
MAR 06 2008
IEPA/BOL

Re: Violation Notice, L-2008-01057
LPC #1110650003 - McHenry County
Marengo/Arnold Magnetic Technologies
Compliance File

Dear Mr. Kalaczinski:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the [Illinois] Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on a record review completed on February 26, 2008 by representatives of the Illinois Environmental Protection Agency (Illinois EPA).

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations, or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. The written response will constitute a proposed Compliance Commitment Agreement (CCA) pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject it within 30 days of receipt.

EXHIBIT

C

RELEASABLE

MAY 14 2008

RECEIVED MD

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 545 Sixth State, Elgin, IL 60121 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 7125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 242-2000
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

Arnold Magnetic Technologies
Page 2

If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet provided by Section 31(a) of the Act, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

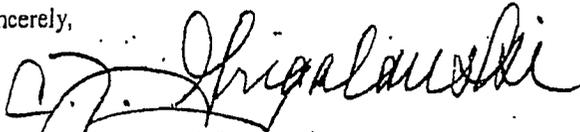
Written communications should be directed to:

Illinois EPA – Bureau of Land
Attn: Charles Grigalauski
9511 West Harrison Street, 3rd Floor
Des Plaines, Illinois 60016

All communications must include reference to this Violation Notice Number, L-2008-01057.

The text of the Act referenced herein is available at www.ipcb.state.il.us. If you have questions regarding this matter, please contact Thomas Rivera at 847/294-4079.

Sincerely,



Charles T. Grigalauski, Regional Manager
Field Operations Section
Bureau of Land

Enclosure

cc: Bureau of Land File
Des Plaines Region File

RECEIVED

MAR 05 2008

ATTACHMENT A

IEPA/BOL

1. Pursuant to Section 12(a) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(a)), no person shall cause, 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 under this Act.

A violation of Section 12(a) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(a)) is alleged for the following reason: The discharge of contaminants was caused and allowed in a way that caused water pollution. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within 1/2 mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.

1,1,1-Trichloroethane (1,1,1-TCA) was detected as high as 4,900 ppb, in 1999, in on site groundwater monitoring well MW-3. More recently in 2007, 1,1,1-TCA was detected as high as 501 ppb in on site groundwater monitoring well MW-A7. Tetrachloroethene (PCE) was detected as high as 18.8 ppb, in 2007, in onsite groundwater monitoring well MW-3. PCE contamination in MW-3 has steadily increased over the past approximately 6 years. Other on site groundwater monitoring wells have chlorinated solvent detections as well, but MW-3 and MW-A7 have shown the highest concentrations of 1,1,1-TCA and PCE.

2. Pursuant to Section 12(d) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(d)), no person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

A violation of Section 12(d) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(d)) is alleged for the following reason: Contaminants were deposited upon the land in such a place and manner that created a water pollution hazard. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within 1/2 mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.

1,1,1-TCA was detected as high as 4,900 ppb, in 1999, in on site groundwater monitoring well MW-3. More recently in 2007, 1,1,1-TCA was detected as high as 501 ppb in on site groundwater monitoring well MW-A7. PCE was detected as high as 18.8 ppb, in 2007, in on site groundwater monitoring well MW-3. PCE contamination in MW-3 has steadily increased over the past approximately 6 years. Other on site groundwater monitoring wells have chlorinated solvent detections as well, but MW-3 and MW-A7 have shown the highest concentrations of 1,1,1-TCA and PCE.

SUGGESTED RESOLUTIONS

1. Immediately determine the source(s) of 1,1,1-TCA, PCE and other related contaminants that are present in groundwater under the subject site by conducting an Investigation.
2. Immediately determine the extent of 1,1,1-TCA, PCE and other related contaminants in soil and groundwater, both on site and off site, by conducting an Investigation.
3. Collect representative groundwater samples from all down gradient residential/nonresidential private water wells (approximately 16) located within approximately 1/2 mile of the site, see the attached map. The private water well samples shall be collected from an unfiltered and unsoftened spigot, after an appropriate water system purge is conducted. The samples shall be analyzed for Volatile Organic Compounds at an Illinois EPA approved laboratory. Illinois EPA would like to oversee the sampling event.
4. Remediate, if necessary, to meet all applicable remediation objectives for soil and groundwater.
 - * Immediately manage the groundwater to mitigate impairment caused by the release of volatile organic compounds.
 - * All copies of receipts/manifests, and analytical reports must be submitted to the Illinois EPA that document the proper disposal of any waste (i.e. impacted soil, contaminated groundwater). The receipts/manifests must be submitted within 10 days after the off-site shipment.
 - * Within 45 days from the receipt of this letter, enroll in the Site Remediation Program.
 - * A Site Investigation Work Plan shall be submitted within 30 days of the Illinois EPA approval of the Site Remediation application.
 - * The Site Investigation shall be implemented within 30 days of the Illinois EPA approval of the Site Investigation Work Plan.
 - * The Site Investigation Report shall be submitted within 180 days of approval of the Site Investigation Work Plan.
 - * The Remediation Objectives Report shall be submitted within 30 days of approval of the Site Investigation Report.
 - * The Remedial Action Plan shall be submitted within 30 days of Illinois EPA approval of the Remedial Objectives Report.
 - * The remedial action shall be implemented within 30 days of Illinois EPA approval of the Remediation Action Plan.

- * **The Remedial Action Completion Report shall be submitted within 365 days of Illinois EPA approval of the Remedial Action Plan.**

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and must be submitted to the Illinois EPA by certified mail, within 45 days of receipt of this Violation Notice. The written response must also include a proposed Compliance Commitment Agreement that commits to specific remedial actions, includes specified times for achieving each commitment, and may include a statement that compliance has been achieved.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
 JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

847/294-4000
 847/294-4083 Fax

APR 15 2008

300 West LLC
 2340 River Road
 Suite 310
 Des Plaines, IL 60018

CERTIFIED MAIL
 RETURN RECEIPT REQUESTED
 7004 1350 0003 1611 1586

Attention: John Daley and Sam Mandarino

Re: Violation Notice, L-2008-01123
 LPC #1110650003 - McHenry County
 Marengo/Arnold Magnetic Technologies
 Compliance File

RELEASABLE

MAY 14 2008

REVIEWER MD

Dear Mr. Daley and Mr. Mandarino:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on a record review completed on February 26, 2008 by representatives of the Illinois Environmental Protection Agency (Illinois EPA).

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations, or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. The written response will constitute a proposed Compliance Commitment Agreement (CCA) pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject it within 30 days of receipt.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • Des PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
 ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
 BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
 SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
 MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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EXHIBIT

D

Packet Pg. 63

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

Arnold Magnetic Technologies
Page 2

If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet provided by Section 31(a) of the Act, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

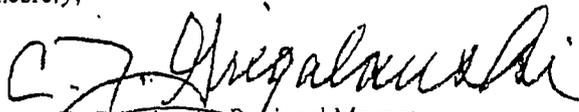
Written communications should be directed to:

Illinois EPA – Bureau of Land
Attn: Charles Grigalauski
9511 West Harrison Street, 3rd Floor
Des Plaines, Illinois 60016

All communications must include reference to this Violation Notice Number, L-2008-01123.

The text of the Act referenced herein is available at www.ipcb.state.il.us. If you have questions regarding this matter, please contact Thomas Rivera at 847/294-4079.

Sincerely,



Charles L. Grigalauski, Regional Manager
Field Operations Section
Bureau of Land

Enclosure

cc: Bureau of Land File
Des Plaines Region File

ATTACHMENT A

1. Pursuant to Section 12(a) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(a)), no person shall cause, 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 under this Act.

A violation of Section 12(a) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(a)) is alleged for the following reason: The discharge of contaminants was caused and allowed in a way that caused water pollution. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within ½ mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.

1,1,1-Trichloroethane (1,1,1-TCA) was detected as high as 4,900 ppb, in 1999, in on site groundwater monitoring well MW-3. More recently in 2007, 1,1,1-TCA was detected as high as 501 ppb in on site groundwater monitoring well MW-A7. Tetrachloroethene (PCE) was detected as high as 18.8 ppb, in 2007, in onsite groundwater monitoring well MW-3. PCE contamination in MW-3 has steadily increased over the past approximately 6 years. Other on site groundwater monitoring wells have chlorinated solvent detections as well, but MW-3 and MW-A7 have shown the highest concentrations of 1,1,1-TCA and PCE.

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A violation of Section 12(d) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(d)) is alleged for the following reason: Contaminants were deposited upon the land in such a place and manner that created a water pollution hazard. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within ½ mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.

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SUGGESTED RESOLUTIONS

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 2. Immediately determine the extent of 1,1,1-TCA, PCE and other related contaminants in soil and groundwater, both on site and off site, by conducting an Investigation.
 3. Collect representative groundwater samples from all down gradient residential/nonresidential private water wells (approximately 16) located within approximately ½ mile of the site, see the attached map. The private water well samples shall be collected from an unfiltered and unsoftened spigot, after an appropriate water system purge is conducted. The samples shall be analyzed for Volatile Organic Compounds at an Illinois EPA approved laboratory. Illinois EPA would like to oversee the sampling event.
 4. Remediate, if necessary, to meet all applicable remediation objectives for soil and groundwater.
- * Immediately manage the groundwater to mitigate impairment caused by the release of volatile organic compounds.
 - * All copies of receipts/manifests, and analytical reports must be submitted to the Illinois EPA that document the proper disposal of any waste (i.e. impacted soil, contaminated groundwater). The receipts/manifests must be submitted within 10 days after the off-site shipment.
 - * Within 45 days from the receipt of this letter, enroll in the Site Remediation Program.
 - * A Site Investigation Work Plan shall be submitted within 30 days of the Illinois EPA approval of the Site Remediation application.
 - * The Site Investigation shall be implemented within 30 days of the Illinois EPA approval of the Site Investigation Work Plan.
 - * The Site Investigation Report shall be submitted within 180 days of approval of the Site Investigation Work Plan.
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 - * The Remedial Action Plan shall be submitted within 30 days of Illinois EPA approval of the Remedial Objectives Report.
 - * The remedial action shall be implemented within 30 days of Illinois EPA approval of the Remediation Action Plan.

* The Remedial Action Completion Report shall be submitted within 365 days of Illinois EPA approval of the Remedial Action Plan.

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and must be submitted to the Illinois EPA by certified mail, within 45 days of receipt of this Violation Notice. The written response must also include a proposed Compliance Commitment Agreement that commits to specific remedial actions, includes specified times for achieving each commitment, and may include a statement that compliance has been achieved.

300 WEST LLC
2340 RIVER ROAD, SUITE 310
DES PLAINES, ILLINOIS 60018
FAX (847) 257-8888

June 17, 2008

VIA FEDERAL EXPRESS

IEPA – Bureau of Land
9511 West Harrison Street, 3rd Floor
Des Plaines, Illinois 60016
Attention: Thomas Rivera

Re: Violation Notice Number, L-2008-01123

Dear Mr. Rivera:

This letter shall serve as a written response to Violation Notice Number L-2008-01057 on behalf of 300 West LLC, owner of the property at 300 N. West Street, Marengo.

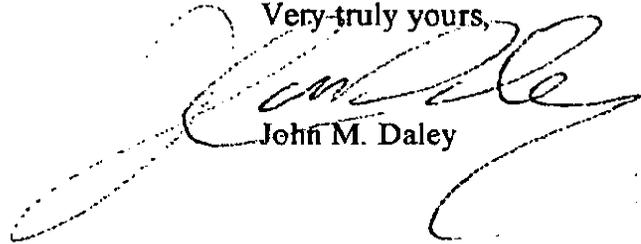
1. The source of 1,1,1-TCA and PCE detected in the groundwater monitoring wells along the northwestern portion of the subject property was reportedly related to historical operations conducted in that area. A historical subject building (“Building #6”) was located at the northwestern corner of the subject property and was reportedly demolished approximately 10-20 years ago. Historical industrial operations conducted within Building #6 reportedly utilized chlorinated solvents in production processes. The historical utilization of chlorinated solvents in this area is believed to be the source of elevated levels of 1,1,1-TCA and PCE in the groundwater.
2. 300 West LLC has engaged Environmental Group Services Limited (“EGSL”), and EGSL currently is working with Mr. Thomas Rivera of the IEPA regarding off-site groundwater sampling. Addresses were obtained from all of the northern, western, and northwestern properties that are possibly utilizing groundwater wells for potable purposes. Mr. Rivera sent letters to all of the neighboring addresses requesting access to the properties in order to sample the groundwater wells for each of the sites. At this time, Mr. Rivera and EGSL are awaiting for responses from the neighboring properties. Upon receipt of any and all responses, neighboring wells will be sampled, and all groundwater samples will be submitted to an accredited laboratory of analysis of VOCs. It is anticipated that the on-site sampling will be complete in approximately one month.
3. The subject property has been enrolled into the IEPA’s Site Remediation Program (SRP). Tim Zook has been assigned as the project manager for the site. Upon submittal of the Remedial Action Completion Report (RACR), a Comprehensive NFR for residential properties will be requested for the entire subject property. The RACR is anticipated to be complete by December 2008.

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

Thomas Rivera
June 17, 2008
Page 2

Do not hesitate to call me (312.420.6046) with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John M. Daley', written over a dotted line.

John M. Daley

Enclosures



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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PAT QUINN, GOVERNOR

JOHN J. KIM, INTERIM DIRECTOR

(217) 524-3300

August 27, 2012

CERTIFIED MAIL

7010 2780 0002 1164 9646

Mary Crandall
Property Manager
MPR Management Inc.
2340 South River Road, Suite 310
Des Plaines, Illinois 60018

Re: LPC #1110650003 – McHenry County
Marcngo – Arnold Magnetic Technologies
300 West LLC
Site Remediation Program/Technical Reports

Dear Ms. Crandall:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the *Site Investigation Report* (dated March 27, 2012, and received April 11, 2010/Log 12-50483), prepared by Environmental Group Services, Ltd. (EGSL) for the above remediation site. The document is denied. For your consideration, attached is a list of comments regarding the *Site Investigation Report*.

Item 1. Before a Site Investigation Report can be approved, it is required that a thorough evaluation of the site be conducted, with specific information provided on Recognized Environmental Conditions (RECs) and related contaminants of concern. This has not yet taken place. General requirements for Site Investigations are given in 35 Illinois Admin. Code 740.415, with specific requirements for Comprehensive Site Investigations in 740.420 and 740.425.

The Illinois EPA review letters of December 8, 2009 (on the *Phase I Environmental Site Assessment*) and September 17, 2010 (on the *Phase II subsurface Investigation Report*) included items that were intended to provide guidance in the development of an approvable Site Investigation Report. However, the responses to the 2009 and 2010 review letters (which were not responded to until the March 27, 2012, *Site Investigation Report*) are mostly just statements that the information will be provided later, in the Remedial Action Completion Report.

Note that while a combined Site Investigation Report/Remedial Objectives Report/Remedial Action Plan/Remedial Action Completion Report can be submitted, this is generally done for simple sites that are not heavily contaminated – or for which the remedial actions are at least straightforward. The Arnold Magnetic Technologies site is large with a complex history – in fact it still has lots of unknowns. *The Illinois EPA therefore recommends that the site be handled a step or two at a time.*



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Packet Pg. 70

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

August 27, 2012
LPC #1110650003 – McHenry County
Marengo – Arnold Magnetic Technologies
Page 2

Item 2. On page 5, it is stated that the purpose of the *Site Investigation Report* is to compile all of EGSL’s soil and groundwater investigations, and to present all AOCs that contain contaminants above Tier 1 ROs. Upon agreement that the vertical and horizontal extent of impacts have been adequately defined, EGSL is to “. . . begin Tier 2 analysis and the associated Remedial Action Completion Report. *When is it intended to prepare a Remediation Objectives Report and a Remedial Action Plan? As indicated in Item 1, an approvable Site Investigation Report has not yet been submitted. Until this is performed, it cannot be concluded that the extent of impacts has been adequately defined.*

Item 3. Borings GP-40* through GP-50 were performed in December 2011. Brief narrative descriptions on Figure 1 describe the approximate locations of the borings – “adjacent to. . .” However, the locations are not shown on any drawings or maps. Appropriate drawings and/or maps should be provided that show the locations of all borings/sampling activities.

Item 4. PCBs – On page 10, an excursion of the Residential Ingestion, Industrial/Commercial Ingestion and Construction Worker Ingestion SRO (1.0 mg/kg for all) is listed. Please note that all PCBs concentrations greater than 1.0 mg/kg that are to remain on site must receive approval from USEPA. For documentation purposes, copies of any formal inquiries made to USEPA, together with USEPA responses, should be forwarded to Illinois EPA.

Item 5. The Tables of Groundwater VOCs results in Appendices D, E and F do not include Acetone. This appears to be an oversight, as the laboratory results sheets include Acetone results.

Item 6. The Tables of Inorganics results in Appendices D and E do not include Aluminum. This appears to be an oversight, as the laboratory results sheets include Aluminum results.

The Illinois EPA requests a written response to the items just described. Note that two (2) copies are required of all future correspondence regarding the site.

If you have any questions or desire additional information, please contact me at (217) 557-8085.

Sincerely,

NW

Timothy D. Zook
Project Manager
Remedial Project Management Section
Bureau of Land

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

cc: Bill Lennon, Project Manager
Environmental Group Services, Ltd.
557 West Polk Street, Suite 201
Chicago, Illinois 60607

Karen Katamay, IEPA/BOW/DWPC – Des Plaines
Tom Rivera, IEPA/BOL/DLPC/FOS – Des Plaines
Bureau of Land File

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

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Mary Crandall
Property Manager
MPR Management, Inc.
2340 South River Road, Suite 310
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Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

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Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

(217) 524-33000

January 21, 2014

7012 0470 0001 2973 3161

John Daley
MPR Management Inc./300 West LLC
2340 South River Road, Suite 310
Des Plaines, Illinois 60018

Re: LPC #1110650003 – McHenry County
Marengo – Arnold Magnetic Technologies
300 West LLC
Site Remediation Program/Technical Reports

Dear Mr. Daley:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the *Focused Site Investigation Report* (dated November 18, 2013, and received November 20, 2013/Log 13-55324) prepared by Environmental Group Services, Ltd. (EGSL) for the above remediation site. It is noted that, due to weather and travel issues at the time, the Site Remediation Program Form (DRM-2) submitted with the *Report* was not signed by the Remediation Applicant. A signed DRM-2 Form was subsequently received (Remediation Applicant signature dated November 25, 2013, document received December 4, 2013/Log 13-55424). The *Focused Site Investigation Report*, which concerns only Volatile Organic Compounds (VOCs), is denied, primarily because the extent of contamination has not been defined and due to the lack of detailed information concerning recognized environmental conditions and areas of concern.

Though the *Focused Site Investigation Report* is denied, the Illinois EPA agrees with EGSL conclusions that the extent of contamination – both vertically and horizontally – has not been defined for certain compounds. As a result, investigations of both soil and groundwater impacts should be expanded to include the residential area north of the Northern Portion of the Site, as well as the southern portion of the property. (Per the Agreed Preliminary Injunction Order Dated August 23, 2013, Northern Portion of the Site refers to the northern half of the subject property.) A proposal for additional sampling, to adequately define the extent of VOCs contamination, is requested at this time. The Illinois EPA notes that the Agreed Order only addresses VOCs. The Arnold Site has been utilized long-term for a variety of industrial activities, and substantial impacts by substances other than VOCs are likely.

EXHIBIT

F

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January 21, 2014
LPC #1110650003 – McHenry County
Marengo – Arnold Magnetic Technologies
Page 2

The following Items 1 through 10 are provided for consideration in developing an expanded sampling plan to define VOCs contamination. Item 11 concerns sampling for other substances, particularly in regard to polychlorinated biphenyls (PCBs).

Item 1. A Site Investigation Report will be required which combines information in the *Focused Site Investigation Report* with any applicable additional report(s).

Item 2. Surface Soil Samples – When the Illinois EPA approved (via a letter dated August 21, 2013) the *Site Investigation Work Plan* (dated August 8, 2013) for the Northern Portion of the Site, it was noted that soil samples should be collected from various depths, so that the horizontal as well as vertical extent of contamination can be adequately defined. Per the *Focused Site Investigation Report*, soil samples were collected and analyzed at multiple depths (typically depths such as 5-7 feet or 12-14 feet), but very little surface sampling (depths of 0-3 feet) was performed. Future sampling events should include more surface samples than were collected and analyzed in the sampling performed in September and October 2013. This is particularly important given the history of manufacturing and storage activities at the site, from which surface contamination can reasonably be expected.

Item 3. Private Well Sampling – When the Site Investigation Report referenced in Item 1 is developed, it should include information obtained from the ongoing quarterly private well sampling program that is taking place north of the Northern Portion of the Site. This information includes both analytical results and the depths of the wells, as this information is necessary in attempting to define both the horizontal and vertical extent of the contamination plume(s).

Item 4. The *Focused Site Investigation Report* is lacking in the identification of recognized environmental conditions and areas of concern, characterizing exposure routes, and other items typically included in such reports. Refer also to the requirements in Attachments A and B in the August 23, 2013, Agreed Order. The Illinois EPA previously requested this information in letters dated December 8, 2009, and September 17, 2010, and August 27, 2012. A satisfactory response has not been received for any of these letters. *The adequacy of sampling cannot be determined until appropriate background information has been provided.*

Item 5. Appendix C of the *Focused Site Investigation Report* consists of three reports (dated December 2004, March 2006 and April 2008) prepared by ENVIRON International Corporation. Taken together, these reports contain substantially more historical information than anything previously submitted. For example, page V-3 of the 2004 document refers to a 1993 PRC report (which was not submitted) that indicates spent mineral spirits, TCE and 1,1,1-TCA were generated at former Building 1 (likely built in late 1800s or early 1900s, demolished in 2002) in the northeast portion of the site. The same page indicates that electrical transformers were built in Building 1 until the 1950s. Given the time, this obviously raises concerns regarding PCBs. As another example, page V-13 of the 2004 report describes a concrete pad underneath PCBs-containing transformers outside of Building 5.

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Though the ENVIRON reports contain much useful information, portions are blacked out – including almost five of the total six pages of the 2006 report (practically everything under a heading “On-site Soil and Ground Water Conditions” is redacted.)

As normally required in the Site Remediation Program – and in this situation as further required in the Attachments of the Agreed Order – reasonably obtainable records relevant to recognized environmental conditions and areas of concern are to be reviewed. The Illinois EPA requests that all records in this regard be reviewed, with copies as appropriate submitted to the Illinois EPA; this includes the documents referred to in the ENVIRON reports. It appears likely that there is much more information than has been provided thus far. There is a fairly unusual aspect to the Arnold Site, in that Arnold and predecessors conducted manufacturing operations for years, with a relatively new owner acting as the Remediation Applicant while Arnold continues operations. Even though Arnold is not the Remediation Applicant, its cooperation in allowing for an adequate site investigation is of paramount importance.

Item 6. Soil Boring Logs/Monitoring Well Completion Reports – The *Focused Site Investigation Report* includes soil boring logs and monitoring well completion reports for the borings performed and wells installed in September and October 2013. However, this information was not provided for all previous wells and borings. Care should be taken to ensure that proper boring logs and well completion reports are prepared and included in all future submittals. Also, it is noted that even in the *Focused Site Investigation Report*, the boring logs often stop at depths more shallow than monitoring wells installed at the same locations. For example, Soil Boring Log GP-106 indicates the boring was terminated at 15 feet. Monitoring Well MW-31 was installed to 30 feet in the same borehole. Later, Monitoring Well MW-41 was installed adjacent to MW-31. No information is given concerning soil conditions deeper than 15 feet. In the future, boring logs should be provided to the depths of the monitoring wells installed.

Item 7. Groundwater Contour Maps – Based on local geography (proximity to the Kishwaukee River) and previous investigation, it is believed that groundwater flow is to the north/northwest. Regardless, the Site Investigation Report referenced in Item 1 should include groundwater contour maps, based on the most recent information following the expanded sampling program. (Enough new wells will exist to provide additional information regarding groundwater elevations throughout a fairly large area.)

Item 8. Geological Model of the Site – When the Site Investigation Report referenced in Item 1 is prepared, it should include a geological model of subsurface soil conditions. Having adequate documentation in soil boring logs – as described in Item 6 – will be crucial in this regard.

Item 9. Planned Installation of Monitoring Wells to 100 feet – In the conclusions section of the *Focused Site Investigation Report*, EGSL recommends the installation of new wells to depths of approximately 100 feet, adjacent to existing 50 foot wells MW-36, 37, 41, 44 and 46. This is proposed in an effort to define the extent of vertical contamination in those areas. *Procedures should*

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 LPC #1110650003 – McHenry County
 Marengo – Arnold Magnetic Technologies
 Page 4

be provided for how these wells will be installed, with emphasize on measures taken to preventing a pathway to contamination to the deeper groundwater.

Item 10. Addition of 1,4 Dioxane (P-Dioxane) to List of VOCs to be Analyzed – This compound, which is listed as P-Dioxane and indicated to be a carcinogen in Illinois Groundwater Quality Standards (both the Class 1 and Class II standards are 7.7 ug/l), has been historically used as a stabilizer for 1,1,1-TCA. It is requested that it be added to the list of VOCs to be analyzed (both soil and groundwater), in future sampling conducted to define the extent of contamination.

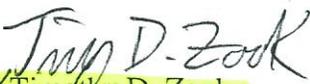
Item 11. *Sampling and Analyses for Items Other than VOCs; Request that PCBs be Sampled/Analyzed* – Illinois EPA comments to this point, regarding sampling, have been limited to VOCs since they are the subject of the *Focused Site Investigation Report* and the Agreed Order. However, the Arnold Site was enrolled in the Site Remediation Program in May 2008, with a Comprehensive No Further Remediation Letter sought. At some point, contaminants other than VOCs will need to be addressed.

As stated previously in Item 5, the ENVIRON Reports provided much more information concerning historical activities than had been previously submitted. Among the primary concerns are former Building 1, where transformers were manufactured, and Building 10 (historically used for drum storage, cleaning and crushing). An underground piping system existed between Building 10 and Building 2/3/4/7 (2008 ENVIRON Report, page III-12). Given the long term historical use of Buildings 1 and 10, for example, and related concerns regarding possible contamination with PCBs and other substances, the Illinois EPA requests that sampling and analyses for PCBs and any other contaminants of concern be performed in the near future – including in the residential area north of the Northern Portion of the Site, as well as the areas within the proposed Remediation Site boundaries.

It is requested that a Site Investigation Work Plan, to adequately define the extent of VOCs contamination, be submitted within 30 days of the date of this letter. In addition, a response to the 11 items previously described is requested within the same time frame.

If you have any questions, please feel free to contact me at (217) 557-8085, the address indicated on the letterhead, or by e-mail at Tim.Zook@Illinois.gov.

Sincerely,



Timothy D. Zook

Project Manager
 Voluntary Site Remediation Program
 Remedial Project Management Section
 Bureau of Land

cc: Bill Lennon, Project Manager
Environmental Group Services, Ltd.
557 West Polk Street, Suite 201
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300 West LLC
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Bureau of Land File



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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217/524-3300

June 17, 2016

CERTIFIED MAIL

John Daley
 300 West LLC
 c/o Dennis G. Walsh, Esq.
 Howard C. Jablecki, Esq.
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 20 North Wacker Drive, Suite 1660
 Chicago, Illinois 60606

The Arnold Engineering Company
 c/o Michael K. Ohm, Esq.
 Thor Ketzback, Esq.
 Bryan Cave LLP
 161 North Clark Street, Suite 4300
 Chicago, IL 60601-3315

Re: LPC #1110650003 – McHenry County
 Marengo – Arnold Magnetic Technologies
 300 West LLC
 Superfund/Technical Reports

Dear Mr. Daley:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the *Comprehensive Site Investigation Report and Remediation Objectives Report* (dated March 31, 2016 and received April 1, 2016, Log No. 16-61842) prepared by Weaver Consultants Group (Weaver) for the above site pursuant to the Third Agreed Preliminary Injunction Order (No. 13 CH 1046), filed December 14, 2015, in McHenry County. The *Comprehensive Site Investigation Report and Remediation Objectives Report* is disapproved with the following comments.

1. In accordance with Exhibit 1, Section 2(a)(3)(B) of the Third Agreed Preliminary Injunction Order, the Comprehensive Site Investigation must characterize the extent of contaminants of concern, identifying the three-dimensional configuration of contaminants of concern with the concentrations delineated. The investigation activities have not determined the horizontal and vertical extent of contamination in soil and groundwater with the concentrations delineated. A plan should be submitted to address the definition of the extent of soil and groundwater contamination, specifically in the following areas:

Horizontal groundwater off-site: North of monitoring wells cluster MW-83/MW-84/MW-89 and between monitoring well clusters MW-81/MW-82 and MW-79/MW-80, north and east of

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Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

monitoring wells MW-16 and MW-34 and north and northwest of monitoring wells MW-98, MW-99 and MW-126.

Vertical groundwater off-site: In the areas of monitoring wells M CCD-IR-S, M CCD-IR-N, MW-74, MW-76, MW-78, MW-98, MW-99, MW-126 and MW-89.

Horizontal and vertical soil off-site: North of the site in the areas of borings GP-384, GP-426, GP-425, GP-386 and GP-422.

Horizontal and vertical groundwater and soil on-site addressing the areas of identified Recognized Environmental Conditions (RECs) and Areas of Concern (AOCs) (see comment No. 2 and 3 below).

2. The December 31, 2014 response letter from the Illinois EPA included the following comment:

“Normally one of the first steps in the remediation process is the identification of Recognized Environmental Conditions (RECs) and Areas of Concern (AOCs), with detailed sampling plans subsequently developed. To date, it appears that the EGSL June 3, 2014, Response to Illinois EPA Comments Letter Dated April 22, 2014 has been the best source of RECs and AOCs. However the information contained therein was not satisfactorily used in the development of a sampling plan.

In the December 24, 2014, Proposed Site Investigation Work Plan, EGSL states that it is “. . . extremely difficult, if not impossible, to determine an exhaustive list . . .” of RECs and AOCs; EGSL therefore considers all current and historical operations areas as an AOC, “for all practical purposes.” The Illinois EPA does not necessarily agree with the position expressed by EGSL, regarding RECs and AOCs. However, since all soil and groundwater samples are to be analyzed for full Target Compound List contaminants, together with the need for expediency in the identification of contamination on both the site and surrounding areas, the Illinois EPA deems that this approach is acceptable.

When a Comprehensive Site Investigation Report is submitted, analytical results from the proposed sampling should be provided in a clear manner that shows sample locations in relation to RECs and AOCs identified in the EGSL June 3, 2014, Response to Illinois EPA Comments Letter Dated April 22, 2014 and any other applicable sources. Such information should be provided via appropriate drawings and tables.”

The Comprehensive Site Investigation Report did not include the relationship between the RECs and AOCs previously identified in the June 3, 2014 EGSL Response to Comments Letter or to any RECs identified since that time. The Report should be updated to include all known RECs and AOCs (located on site base maps), their relationship to current sampling locations and should include additional soil and groundwater sampling where necessary to address data gaps.

3. In addition to the RECs identified in the EGSL June 3, 2014 Response to Comments, the approximately 16 acre diked percolation field (Area 8) is considered a REC that has not been investigated (with the exception of four perimeter borings GP-402 to GP-405). The percolation

field collects overflow from Pond 5 and the ditch line which are known to have contained impacted water from the water treatment ponds and other facility runoff.

4. The agricultural field (Area 9) has not been investigated to date. Since the Defendant is also seeking a comprehensive NFR letter and agricultural activity is considered a REC for several constituents on the Target Compound List, soil and groundwater sampling must be conducted in this area of the site.
5. The Report included references to a Tier 3 proposal for development of remediation objectives for the “soil component of the Groundwater Ingestion Exposure route” for metals and PNAs to be submitted as addendums to the report at some future date. It should be noted that a Tier 3 exclusion of groundwater ingestion exposure routes under 742.925 must address both the soil component and groundwater component of the exposure route as a whole. One “component” of the exposure route cannot be excluded on its own. Please note that Consent Order No. 13 CH 1046 Section III(D)(4)(a) and (b) indicates applicable on and off-site soil and groundwater must meet 35 Ill Adm Code Part 742 Tier 1 or 35 Ill Adm Code Part 620 Class I standards, respectively, unless Illinois EPA agrees in writing.
6. The report includes a discussion for a Tier 3 exclusion of the groundwater component of the Groundwater Ingestion Exposure route for dissolved lead in MW-46. As discussed above, one component of an exposure route cannot be excluded. The exposure route must be treated as a whole addressing both components. In addition, it is not clear why this was presented as a Tier 3 exclusion when it appears that it is relying on a demonstration that the lead concentration would not be expected to migrate off-site based on R-26 modeling. Please note that Consent Order No. 13 CH 1046 Section III(D)(4)(a) and (b) indicates applicable on and off-site soil and groundwater must meet 35 Ill Adm Code Part 742 Tier 1 or 35 Ill Adm Code Part 620 Class I standards, respectively, unless Illinois EPA agrees in writing.
7. The report states that manganese in soil and groundwater will be addressed through a review of regional background groundwater conditions. If the applicant intends to rely on area background as remediation objectives for the site, then the area background concentrations must be determined in accordance with 35 IAC 742.405 and 742.410. The discussion included in Section 3.3.7.2 of the Report did not include calculations of an area background for soil or groundwater in accordance with the requirements of these Parts and is not approved as a demonstration that manganese exceedances of Tier 1 objectives are representative of background conditions.
8. When averaging soil sample results to demonstrate compliance relative to the soil ingestion and soil inhalation exposure routes, all samples must be collected within the contaminated area. It appears that the nickel results in boring GP-329 are the result of an anomalous contamination event that should not be averaged with more generalized site-wide data which is more representative of background or naturally existing concentrations. The GP-329 area should be considered as a hot-spot removal area.
9. The site specific average calculations for PNAs and metals were calculated based only upon sampling data from samples within the upper three feet of the soil column and therefore did not address exceedances beyond this depth. How will the exceedances of the objectives beyond three feet in depth be addressed?

10. The Tier 1 groundwater remediation objectives for metals are based on total concentrations. Using dissolved (filtered) concentrations to demonstrate compliance with these objectives is not allowable unless groundwater samples from the same well/location at the same time are collected with one sample unfiltered and the second sample filtered and an argument is presented demonstrating that the sediment within the unfiltered sample was resulting in elevated concentrations. The Report appears to discount all of the total metals exceedances identified in groundwater.
11. Section 2.8.1 of the Report states that, "...12 USTs, several ASTs, PCB containing transformers and hazardous waste storage areas have been identified at the site." The locations of these RECs were not included on the site base maps and a demonstration has not been made that existing sampling has adequately addressed potential soil and groundwater impacts from the RECs. Site base maps should be developed showing the locations of all RECs as well sampling points which address potential impacts from the RECs. Additional sampling should be proposed to investigate RECs which have not been addressed to date.
12. Section 2.8.1 of the Report states that, "...while identification of many closed in place and removed USTs is known, the location of all such USTs has not been fully defined at this time." A Comprehensive Site Investigation Report must include the locations of all tanks including all known past and current product and waste underground tanks and piping (740.425(b)(D)(iii)). The locations of all current and historic tanks (the Illinois State Fire Marshal documents 17 USTs currently or historically located on-site) must be identified on site base maps, properly closed if no longer in use and investigated for potential soil and groundwater impacts.
13. Section 2.8.4.9 of the report states that there were no identified exceedances of Tier 1 groundwater remediation objectives for the Indoor Inhalation Exposure Route. According to Table 6, tetrachloroethene was detected at a concentration of 1.3 mg/l on-site in monitoring well MW-37 exceeding the industrial/commercial indoor inhalation remediation objective of 0.34 mg/l. And according to Table 16, tetrachloroethene was detected at a concentration of 0.19 mg/l off-site in monitoring well MW-83 exceeding the residential indoor inhalation remediation objective of 0.091 mg/l. Based on these concentrations the indoor inhalation exposure route must be evaluated both on-site and off-site.
14. Several typographical mistakes were identified in the Report which should be corrected in future submittals. These include the following:
 - Section 2.4.1 GROUNDWATER SAMPLE ANALYSIS, page 68 and 70 of the report repeatedly references "soil" samples rather than groundwater samples and improperly references the number of groundwater samples collected.
 - Section 2.5.2.1.3, the third bullet point does not include the parameter being discussed.
 - Section 2.6.2.1.3, the fourteenth and fifteenth bullet points do not include the parameter being discussed.
 - Table 6 improperly lists the groundwater remediation objective for the indoor inhalation exposure route for 1,1,1-trichloroethane as 4,400 mg/l rather than 1,300 mg/l.
 - Table 16 improperly lists the groundwater remediation objective for the indoor inhalation exposure route for 1,1,1-trichloroethane as 4,400 mg/l for industrial commercial and 4,400 mg/l for residential pathways rather than 1,300 mg/l and 1,000 mg/l respectively.

- Table 6 does not list the Indoor Inhalation remediation objectives for tetrachloroethene, 1,1-dichloroethene, cis-1,2-dichloroethene, cis-1,3-dichloroethene, trans-1,2-dichloroethene, trans-1,3-dichloropropene and trichloroethene.
 - Table 16 does not list the Indoor Inhalation remediation objectives for tetrachloroethene, 1,1-dichloroethene, cis-1,2-dichloroethene, cis-1,3-dichloroethene, trans-1,2-dichloroethene, trans-1,3-dichloropropene and trichloroethene.
 - Figures 24 through 26 which illustrate the concentrations of contaminants in groundwater monitoring wells list the concentrations in units of “mg/kg” rather than “mg/l”.
15. It should be noted that when Polychlorinated Biphenyl’s (PCB’s) are detected above 1 mg/kg at a site the United State Environmental Protection Agency (USEPA) must be notified and a remediation plan must be developed per USEPA regulations. The Illinois EPA requires that a copy of the approved USEPA plan be provided as part of a Remedial Action Completion Report.
 16. Illinois EPA Bureau of Water records include a 1989 Water Pollution Control Permit for the Arnold Recycle Water System (Permit No. 1989-EO-3870) and related documents. The application package for that permit contains a three-page “DESCRIPTION OF THE ARNOLD RECYCLE WATER SYSTEM Update – 1989”. At the bottom of the first page the following reference is made, “Our shallow monitoring well (150’ deep – Bldg. #6) is used to periodically check water bearing strata water quality.” Is this well still located on the site? Is groundwater data available from this well? The location of this well and any sampling data should be included as part of the evaluation of conditions at the site.
 17. In Section 4.0 of the Report, the defendant states that the groundwater Ingestion Exposure Route is proposed to be addressed through active remediation and implies that the municipal water main hook-ups to off-site residences will be part of the proposed active remediation. The municipal water hook-up is not considered active remediation for purposes of meeting the Tier 1, Class 1 remediation objectives.
 18. Appendix L of the report included the laboratory reporting data on CD ROM. At least one hard copy of all laboratory data must be provided for inclusion in the Illinois EPA permanent file.

Pursuant to Consent Order No. 13 CH 1046, If the Illinois EPA requires additional soil and/or groundwater sampling, the Defendants shall undertake such sampling pursuant to the Illinois EPA’s schedule and incorporate the sample results into an amendment to the Comprehensive Site Investigation and Remediation Objectives Report or a revised Comprehensive Site Investigation and Remediation Objectives Report along with necessary modifications interpreting the new data. The schedule is as follows:

- a. Submit a Supplemental Investigation Plan to address the deficiencies noted in the comments above by July 8, 2016.
- b. Begin implementation of the Supplemental Investigation Plan within 21 days of Illinois EPA approval.
- c. Submit the revised Comprehensive Site Investigation and Remediation Objectives Report within 75 days of Illinois EPA approval of the Supplemental Investigation Plan.

General Comments

1. While the Reports consistently reference the Site Remediation Program (SRP), please note that the Defendants (300 West and Arnold Engineering Co) are required to submit the Comprehensive Site Investigation and Remediation Objectives Report in accordance with the Third Preliminary Injunction Order. All future reports should indicate that they are being submitted pursuant to Consent Order No. 13 CH 1046, not just the Site Remediation Program.
2. The Third Agreed Preliminary Injection Order requires both Defendants to submit the Comprehensive Site Investigation and Remediation Objectives Report. The Report was submitted only by 300 West. Both Defendants are responsible for all compliance measures required under the Court's Orders and this did not occur with submittal of the Comprehensive Site Investigation and Remediation Objectives Report.
3. Page 154, the certification statement is not the same as required by Exhibit 1, Section 1(d) of the Third Agreed Preliminary Injunction Order (Exhibit F, Section 1(d) of the Final Consent Order). Please submit the correct certification statement in future reports.
4. Please note that while the Comprehensive Site Investigation and Remediation Object Report indicates that the contaminants of concern consist of the Illinois EPA Target Compound List, 1,4 dioxane must be included in this list.
5. The figure numbers in the table of contents do not match the figure titles for many of the figures and many of the figure numbers are incorrectly referenced in the text. Please make sure that all figures are correctly labeled and referenced in future submittals.
6. The boring logs for some of the monitoring wells were not provided. Please provide the missing boring logs in the revised Comprehensive Site Investigation and Remediation Objectives Report.
7. On future submittals, it would clarify data evaluation if all samples were included on figures rather than separating soil and groundwater results from different consultants onto separate figures.

Future submittals should be directed to my attention at the address indicated on the letterhead or via e-mail at Andrew.catlin@illinois.gov.

Sincerely,



NVL
Andrew M. Catlin, LPG
Project Manager
Remedial Project Management Section
Bureau of Land

cc: Carl R. Dawes
Naperville Operations Manager,
Environmental Practice Group
Weaver Consultants Group
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Michelle Ryan, Illinois EPA, Division of Legal Counsel
Tom Rivera, Illinois EPA/BOL/DLPC/FOS – Des Plaines
Bureau of Land File

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111103859
13CH001046
09/28/2017
McHenry County, Illinois
22nd Judicial Circuit

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
300 WEST LLC, an Illinois limited liability)
co., and THE ARNOLD ENGINEERING)
CO., an Illinois corporation,)
)
Defendants.)

No. 13CH1046

NOTICE OF PETITION

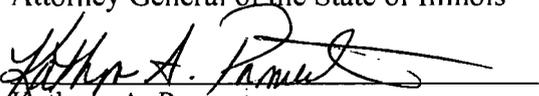
TO: **VIA EMAIL**
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Patrick.mckey@bryancave.com

YOU ARE HEREBY notified that on October 4, 2017, at 9:15 am, attorneys for the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, shall appear before the Honorable Judge Michael J. Chmiel in Courtroom 202 at the McHenry County Courthouse, McHenry County Government Center, 2200 North Seminary Avenue, Woodstock, Illinois and then and there present Plaintiff's Petition to Enforce Court Order and for Rule to Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report and September Monthly Report, a copy of which is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the State of Illinois

BY:


Kathryn A. Pamenter

Assistant Attorney General, Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
KPamenter@atg.state.il.us
Secondary Email: MCacaccio@atg.state.il.us

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)



IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 1711110385
13CH001046
09/28/2017
McHenry County, Illinois
22nd Judicial Circuit

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
300 WEST LLC, an Illinois limited liability)
co., and THE ARNOLD ENGINEERING)
CO., an Illinois corporation,)
)
Defendants.)

No. 13CH1046

**PLAINTIFF’S PETITION TO ENFORCE COURT ORDER
AND FOR RULE TO SHOW CAUSE REGARDING REVISED COMPREHENSIVE
SITE INVESTIGATION AND REMEDIATION OBJECTIVES REPORT
AND SEPTEMBER MONTHLY REPORT**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, pursuant to the court order referred to herein, petitions to have Defendants, 300 WEST LLC and THE ARNOLD ENGINEERING CO., comply with the terms of the Consent Order entered by this Court on June 1, 2016, as modified, and to show cause, if any, why they should not be held in contempt of court for violating this Court’s order. In support of this petition, Plaintiff states as follows:

1. On March 31, 2016, the Defendants submitted to the Illinois EPA, for review and approval, a Comprehensive Site Investigation and Remediation Objectives Report (the “March 31 Report”).
2. On June 1, 2016, the Court entered a Consent Order with 300 West LLC (“300 West”) and The Arnold Engineering Co. (“Arnold” and together with 300 West “the Defendants”),

in which the Defendants agreed to certain compliance provisions (“Consent Order”).¹

3. On June 17, 2016, the Illinois EPA disapproved the Defendants’ March 31 Report and required, among other things, that the Defendants submit a Supplemental Investigation Plan on or before July 8, 2016 addressing the items in the June 17, 2016 letter.

4. On July 7, 2016, one day before the Supplemental Investigation Plan was due, the Defendants, through their consultant Weaver Consultants Group (“Weaver”), requested an extension of the July 8th deadline. On July 8, 2016, the Illinois EPA granted an extension to July 29, 2016 for the submission of the Defendants’ Supplemental Investigation Plan. On July 28, 2016, one day before the Supplemental Investigation Plan was due after having already received an extension, the Defendants, through Weaver, requested an additional 30-day extension. On August 3, 2016, the Illinois EPA granted an extension to August 28, 2016 and stated that “no additional extension will be granted.”

5. On August 29, 2016, as August 28, 2016 was a Sunday, Weaver submitted the Defendants’ Supplemental Investigation Plan to the Illinois EPA.

6. On October 31, 2016, the Illinois EPA, among other things, conditionally approved the Defendants’ Supplemental Investigation Plan and required the submission of a revised Comprehensive Site Investigation and Remediation Objectives Report within 75 days of the Illinois EPA’s approval of the Supplemental Investigation Plan, namely January 17, 2017.

7. On January 12, 2017, the Defendants first notified the Illinois Attorney General’s Office that they had retained a new consultant, Environmental Logistics Information, LLC (the

¹ On July 5, 2016, the First Agreed Modification to Consent Order was filed with the Court. On August 30, 2016, the Second Agreed Modification to Consent Order was filed with the Court. On December 6, 2016, the Third Agreed Modification to Consent Order was filed with the Court. On March 22, 2017, the Fourth Agreed Modification to Consent Order was filed with the Court. On July 6, 2017, the Fifth Agreed Modification to Consent Order was filed with the Court. On September 21, 2017, the Sixth Agreed Modification to Consent Order was filed with the Court.

“Third Consultant”). Counsel to 300 West LLC also stated that “[d]iscussions with the new consultant began in October, and documents and files were transferred to them in early November to begin analysis on the plan and project.” The Third Consultant first contacted the Illinois EPA on January 13, 2017.

8. On January 13, 2017, the last State business day prior to the revised Comprehensive Site Investigation and Remediation Objectives Report submission deadline, the Defendants, through the New Consultant, submitted a request for extension to July 1, 2017.

9. On January 20, 2017, Plaintiff filed a Petition to Enforce Court Order and for Rule to Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report (the “January 20 Petition”).

10. On March 22, 2017, the Fourth Agreed Modification to Consent Order was filed with the Court which, in part, addressed the January 20 Petition. Paragraph III.D.5.a. of the Consent Order, as modified, provides as follows:

5. **Comprehensive Site Investigation and Remediation Objectives Report.**

a. Subject to Sections III.E. and F. herein, the Defendants shall comply with the following deadlines in conducting the work under the Supplemental Investigation Plan approved by the Illinois EPA on October 31, 2016, as may be modified from time to time, provided that the Illinois EPA approves of such modifications in writing at least twenty-one (21) days in advance of the respective deadline set forth below, provided however that the Illinois EPA and the Illinois Attorney General’s Office may, in their sole discretion, consider proposed modifications within twenty-one (21) days of the respective deadline set forth below if the Defendants submit justification as to why the proposed modification could not have been requested sooner:

- i. All supplemental on-Site groundwater and soil investigations shall be completed on or before June 28, 2017;²

² The June 28, 2017 deadline was extended by agreement of the parties to July 12, 2017. See Fifth Agreed Modification to Consent Order.

- ii. All supplemental off-Site groundwater and soil investigations shall be completed on or before July 19, 2017; and
- iii. The revised Comprehensive Site Investigation and Remediation Objectives Report shall be submitted to the Illinois EPA, pursuant to Section III.H. herein, on or before September 13, 2017.

11. As of the date of the filing of this Petition, the Defendants have not submitted the revised Comprehensive Site Investigation and Remediation Objectives Report that was due on September 13, 2017, as required by the Consent Order, as modified.³

12. Paragraph III.D.8.b. of the Consent Order, as modified, provides that:

- b. With respect to all work required under Paragraphs III.4.-7. of the Consent Order, the Defendants shall submit Monthly Reports to the Illinois Attorney General's Office and the Illinois EPA by the tenth (10) day of the month following the end of each month after the date of entry of this Consent Order (i.e., July 10, August 10, September 10, etc.). Each Monthly Report shall describe, in detail, the work performed pursuant to this Consent Order during the month, the work anticipated during the next month, any delays in work that may be anticipated and any anticipated changes in environmental consultants or contractors.

13. To date, the Defendants have not submitted the September monthly report in accordance with Paragraph III.D.8.b. of the Consent Order, as modified.

14. The Court has retained jurisdiction over this matter and has jurisdiction to enforce its own order.

³ Plaintiff also contends that the Defendants have not completed all supplemental investigations, as all required laboratory sampling results have yet to be received.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court:

1. Issue an order requiring Defendants, 300 WEST LLC and THE ARNOLD ENGINEERING CO., to appear and show cause why they should not be held in contempt of court for their failure to comply with Paragraphs III.D.5. and 8.b. of the Consent Order, as modified;
2. Enter an order setting a hearing date on the rule to show cause;
3. Compel Defendants, 300 WEST LLC and THE ARNOLD ENGINEERING CO., to immediately comply with the terms of Paragraphs III.D.5. and 8.b. of the Consent Order;
4. Award stipulated penalties for failure to comply with Paragraphs III.D.5. and 8.b. of the Consent Order, as modified;⁴
5. Award Plaintiff attorneys' fees and costs in pursuing this Petition; and
6. Grant such other relief as the Court deems appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
 General of the State of Illinois

BY:


 KATHRYN A. PAMENTER
 STEPHEN J. SYLVESTER
 Environmental Bureau
 Assistant Attorneys General
 69 W. Washington St., Suite 1800
 Chicago, Illinois 60602
 312/814-0608
 KPamenter@atg.state.il.us
 SSylvester@atg.state.il.us

⁴ Plaintiff reserves all rights under the Consent Order, as modified, including with respect to any other stipulated penalties that have and continue to accrue.

CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served on the 28th day of September, 2017, the attached Notice of Petition and Plaintiff's Petition to Enforce Court Order and for Rule to Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report and September Monthly Report upon the persons listed on said Notice of Petition *via email*.



Kathryn A. Pamenter
Assistant Attorney General, Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
KPamenter@atg.state.il.us
Secondary Email: MCacaccio@atg.state.il.us

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111110533
13CH001046
10/27/2017
McHenry County, Illinois
22nd Judicial Circuit

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
300 WEST LLC, an Illinois limited liability)
co., and THE ARNOLD ENGINEERING)
CO., an Illinois corporation,)
)
Defendants.)

No. 13 CH 1046

DEFENDANT 300 WEST LLC'S RESPONSE TO PLAINTIFF'S PETITION TO ENFORCE COURT ORDER AND FOR RULE TO SHOW CAUSE REGARDING REVISED COMPREHENSIVE SITE INVESTIGATION AND REMEDIATION OBJECTIVES REPORT AND SEPTEMBER MONTHLY REPORT

NOW COMES, the Defendant, 300 WEST LLC, by and through its attorneys, KLEIN, THORPE AND JENKINS, LTD., and in Response to the Plaintiff's Petition To Enforce Court Order and For Rule To Show Cause (the "Petition"), hereby states as follows:

I. INTRODUCTION AND FACTS

This Court entered a Consent Order in this matter on June 1, 2016, which was subsequently modified in accordance with the terms set forth therein (the "Consent Order"). In accordance with prior Court Orders, 300 West, by and through its consultants, submitted a Comprehensive Site Investigation and Remediation Objectives Report ("CSIR/ROR") on March 31, 2016. (Petition at ¶1). On June 17, 2016, the Illinois EPA disapproved the CSIR/ROR and requested a Supplemental Investigation Plan be submitted on or before July 8, 2016. (Petition at ¶3). The Illinois EPA subsequently granted several extensions for submittal of the Supplemental Investigation Plan, which was later timely submitted on August 29, 2016. (Petition at ¶¶4-5).

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

On October 31, 2016, the Illinois IEPA conditionally approved the Supplemental Sampling Plan, and indicated a revised CSIR/ROR must be submitted within 75 days (or a total of less than 11 weeks), by January 17, 2017. (Petition at ¶6). On March 22, 2017, after discussions between 300 West (including its consultants) and the State, a Fourth Modification to Consent Order was filed, which extended the deadline to submit a revised CSIR/ROR by September 13, 2017. (Petition at ¶¶10-11).

300 West admits that it failed to timely submit the revised CSIR/ROR in accordance with the September 13, 2017 deadline, and in fact advised the State that said deadline would not be met, requesting a modification to the Consent Order to extend the deadline in an email dated September 13, 2017. See **Exhibit A**. 300 West LLC is a single-asset entity organized and existing solely for the ownership of the property located at 300 N. West Street, Marengo, Illinois. Work on this project, including work to complete and submit the revised CSIR/ROR by the September 13, 2017 deadline as set forth in the Consent Order, as modified, was forced to be suspended due to a funding issue for this single-asset entity. It is important to note that substantial payments to the laboratory, the environmental consultant, the drilling contractors and the water main contractors all came due at or around the same time period, which resulted in the aforementioned funding issue. As stated, this funding issue resulted in consultants being unable to perform their work, and ultimately deadlines being missed.

Nonetheless, 300 West has worked to resolve said funding issues. All analytical lab results (aside from one monitoring well that needs to be resampled and one pore sample of the Kishwaukee River that will be taken once conditions allow) have been released by the lab to the consultant and construction on the water main has commenced. Further, the required monthly reports from September and October have been submitted (see **Exhibit B**), and 300 West's

environmental consultant has submitted a letter to the IEPA regarding a deadline to complete the revised CSIR/ROR. (See **Exhibit C**).¹

The State has filed the current Petition seeking to hold 300 West in contempt for not meeting the September 13, 2017 deadline to submit the revised CSIR/ROR, and for failure to submit the required September monthly report. For the reasons set forth below, the Petition should be denied.

II. ARGUMENT

The exercise of the power of contempt of court is a delicate one, and care is needed to avoid arbitrary and oppressive conclusions. *People v. Ernst*, 141 Ill.2d 412, 421 (1990). In order to exercise the power of contempt, the contemnor must demonstrate willful conduct to the court. *Id.* at 424. Civil contempt proceedings are not punitive in nature, but rather are instituted to compel or coerce certain conduct. *Hoga v. Clark*, 113 Ill.App.3d 1058, 1058 (5th Dist. 1983). Here, the Petition itself demonstrates no willful disregard for this Court's Orders, and actions taken to date demonstrate either compliance or attempts towards compliance. As such, the State's Petition should be denied.

A. 300 West Did Not Willfully Disregard The Court's Orders.

The Petition itself makes no allegations that 300 West willfully disregarded the Court's Orders, specifically the September 13, 2017 deadline to submit the revised CSIR/ROR and submittal of the September monthly report. Conversely, as indicated above, 300 West simply encountered a funding issue that resulted in the deadlines being missed. Therefore, at its core, the alleged violation of this Court's Order comes down to a failure to pay, or in this case, a failure to pay contractors so that deadlines could be met. Where the violation alleged involves

¹ The State has noticed the depositions of representatives from 300 West and its environmental consultant set to occur on November 1 and 2, 2017, and therefore 300 West reserves the right to supplement this Response with citations to sworn testimony from these witnesses as necessary to support or elaborate on these factual allegations.

the failure to pay money, the disobedience shown must be willful, and to which the inability to pay is a valid defense. *In re Marriage of Logston*, 103 Ill.2d 266, 285 (1984).

Here, 300 West, being a single-asset entity, encountered a funding issue that created an inability to pay its contractors and consultants so as to meet the requisite deadlines. Additional funding sources needed to be identified so that the matter could proceed, all of which has subsequently occurred. As such, no willful violation of this Court's orders can be demonstrated by 300 West, and therefore the Petition should be denied.

B. Compliance Has Been Or Is The Process Of Being Achieved.

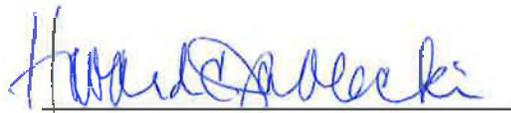
As indicated above, the purpose of a civil contempt proceeding is to obtain compliance and/or compel certain conduct. Despite the fact that, as argued above, 300 West has not willfully violated the Consent Order, the facts presented also indicate the conduct sought to be compelled is already ongoing. For that reason alone, the State's Petition should be dismissed.

The September monthly report has already been submitted (see Exhibit B). As such, compliance has been achieved as to that item. Further, 300 West's environmental consultant has submitted a request outlining a new deadline to submit the revised CSIR/ROR and the rationale therefore, specifically the recognition that the proposed new deadline allows for the same amount of time to complete the revised CSIR/ROR as had been previously contemplated by the Illinois EPA. (see Exhibit C). Therefore, given the fact that the conduct sought to be compelled is already completed and/or ongoing, the contempt proceedings are simply not warranted at this time. The only purpose on continuing these proceedings would be punitive in nature, which is inconsistent with the purpose of a civil contempt proceeding. Furthermore, the Consent Order already provides for the imposition of stipulated penalties, thereby further negating the need for any contempt proceedings and warranting denial of the Petition.

WHEREFORE, for the reasons set forth herein, the Defendant, 300 WEST LLC, hereby requests an order denying the Plaintiff's Petition to Enforce Court Order and For Rule to Show Cause, and for such further relief deemed fair and just.

Respectfully submitted,

300 WEST LLC



One of its attorneys

Howard C. Jablecki (6291655)
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20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
Ph: 312-984-6400
Fax: 312-984-6444
hcjablecki@ktjlaw.com

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

Howard C. Jablecki

From: Howard C. Jablecki
Sent: Wednesday, September 13, 2017 12:33 PM
To: Kathryn Pamenter
Cc: Stephen Sylvester; Thor Ketzback
Subject: People v. 300 West - Supplemental CSIR

Katie,

Per our conversations earlier today, the Defendants will not be in a position to submit the supplemental CSIR due today. We are in the process of getting all involved parties up to speed so that the report can be completed. I should have more information and detail in the coming days.

As such, we are requesting a modification of the consent order to extend the deadline for submission of the supplemental CSIR. As indicated, we will have additional details regarding proposed timing in the coming days.

Thanks,
Howie

Howard C. Jablecki
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Fax: 312-984-6444

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)





October 12, 2017

Ms. Kathryn Pamerter
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., Suite 1800
 Chicago, Illinois 60602

Re: Monthly Report – August and September 2017
 People of the State of Illinois v. 300 West LLC, et al. - Case No. 13 CH 1046

Dear Ms. Pamerter:

This August and September report summarizes work performed during these months, planned activities for October, and anticipated delays as appropriate.

Work Performed – August and September 2017

- Forwarded IEPA and AG ten sets of laboratory analytical data received July 31 on August 1;
- Teleconferenced with the IEPA and AG on August 2;
- Evaluated Kishwaukee River stage for access to collect the pore water sample on August 8;
- Forwarded IEPA and AG laboratory analytical data received August 1 and 8 on August 9;
- Completed laboratory analysis of soil, groundwater, and soil gas samples; and
- Coordinated with 300 West and KT&J to re-start project in August and September following a project management-related work interruption.

Work Planned – October 2017

- Evaluate access to collect off-site pore water sample PWS1 from the bed of the Kishwaukee River;
- Coordinate and perform land survey of permanent and temporary on-site groundwater monitoring wells;
- Sample groundwater at residential wells for vocs and 1,4-dioxane;
- Evaluate soil and groundwater analytical results;
- Work on CSI-ROR; and
- Coordinate, prepare for, and commence water main construction and related activities.

Anticipated Delays

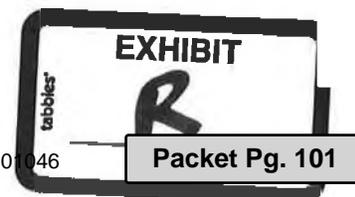
- Collecting pore water sample PWS1 may be delayed due to the stage of the Kishwaukee River;
- Finalizing CSI-ROR has and will be delayed due to a project management-related work interruption; and
- Constructing the water main may be delayed due to material availability and property access.

Please let me know if you have any questions.

Sincerely,
 Environmental Information Logistics

Joseph D. Miller, P.G.
 Project Manager

cc: Steven Sylvester – Illinois AG (SSylvester@atg.state.il.us)
 Andrew Catlin, IEPA (Andrew.Catlin@illinois.gov)
 Michelle Ryan, IEPA (Michelle.Ryan@illinois.gov)
 Michael Ohm (michael.ohm@bryancave.com)
 Thor Ketzback (thor.ketzback@bryancave.com)





Fed Ex Tracking No. 7705 8703 2132

October 25, 2017

Andrew M. Catlin, LPG
 Project Manager
 Remedial Project Management Section
 Bureau of Land
 1021 North Grand Avenue East
 Springfield, Illinois 62794

Re: Additional Information - Supplemental Investigation Estimated Duration
 LPC# 1110650003 – McHenry County
 Marengo/Arnold Magnetic Technologies

Dear Mr. Catlin:

This correspondence addresses the estimated duration of the supplemental investigation at the 300 West/Arnold Magnetics site in Marengo, Illinois as requested by the Illinois EPA and AG. The DRM-2 form is attached.

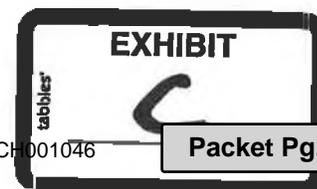
Work on the supplemental investigation was temporarily suspended in mid-August after a loss of funding for the project. Suburban Laboratories had provided 59% of the soil and 84% of the groundwater analytical results at the time work on the project was interrupted. No effort on the CSI-ROR, other than preparing final soil boring logs and groundwater sampling forms, had been expended at the time work on the project was suspended since the laboratory analytical results were not complete. Indeed, the initial reference to work on the CSI-ROR in a monthly report was included in the July submittal as a planned activity for August. Work on the CSI-ROR had not been discussed during the biweekly conference calls.

The applicant and EIL agreed to resume work on the project on October 11. Since then EIL has worked to re-schedule key personnel who were re-assigned during the suspension. Our firm operates leanly without a surfeit of professionals awaiting resolution of project interruptions of uncertain duration. Personnel for the project will become available as the activities in which they are presently committed to are concluded. Project management functions are re-starting, and preparation of monthly reports and participation in conference calls has resumed. The survey of monitoring wells has been coordinated and a specific schedule for its completion is forthcoming. The residential wells have been sampled. EIL has forwarded laboratory analytical results to the Illinois EPA and AG. Well MW42 will need to be re-sampled due to laboratory error and the pore water sample from the Kishwaukee River still needs to be collected and the schedule for this work will be dependent on access/surface water stage.

Our March 9, 2017 correspondence identified a 16-week estimated duration for preparing the CSI-ROR following receipt of the analytical data and, unnoted, completion of the monitoring well survey. The 16-week estimated timeline for preparing the report was justified based on the significant scope and complexity of this undertaking. This estimated duration for preparing the CSI-ROR would have remained viable had work continued without interruption and key personnel not been re-assigned. A 20-week duration for preparing the CSI-ROR is now estimated as a result of these changes in the project sequencing. The earliest date EIL can commit to completing the CSI-ROR is March 23, 2018.

Recognition must exist that imposing an externally-derived, accelerated timeline shorter than the 16-week allowance for completing the CSI-ROR is inconsistent with the previous conclusion that this duration was appropriate. Thorough analysis of the data and careful development of conclusions and recommendations will assure the defensibility of this phase of the project and provide a solid foundation for future work if needed.

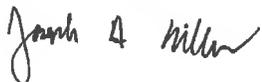
Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)



October 25, 2017
Mr. Andrew Catlin, LPG
Additional Information - Supplemental Investigation Estimated Duration
Page 2

Please contact me at 630.942.0652 should you have questions regarding this correspondence.

Sincerely,
Environmental Information Logistics



Joseph D. Miller, P.G.
Hydrogeologist

cc: Howard Jablecki - Klein, Thorpe and Jenkins, Ltd.
Robert Jaydos – 300 West

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

Katherine M. J
Clerk of the Circuit
***Electronically I
Transaction ID: 1711
13CH001046
10/27/2017
McHenry County Illinois
22nd Judicial Circuit

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PEOPLE OF THE STATE OF ILLINOIS,)	
)	
<i>Plaintiff,</i>)	Case No. 13-CH-1046
)	
v.)	
)	The Honorable Michael J. Chmiel
300 WEST LLC and THE ARNOLD)	
ENGINEERING CO.,)	
)	
<i>Defendants.</i>)	
)	

ARNOLD ENGINEERING’S RESPONSE TO PLAINTIFF’S PETITION TO ENFORCE COURT ORDER AND FOR RULE TO SHOW CAUSE REGARDING REVISED COMPREHENSIVE SITE INVESTIGATION AND REMEDIATION OBJECTIVES REPORT AND SEPTEMBER MONTHLY REPORT

Defendant The Arnold Engineering Co. (“Arnold”), by and through its attorneys Bryan Cave LLP, and in Response to Plaintiff’s Petition to Enforce Court Order and for Rule to Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report and September Monthly Report (the “Petition”), states as follows:

ARGUMENT

Arnold hereby incorporates and adopts as its own, by reference as though fully set forth herein, the Response to Plaintiff’s Petition to Enforce Court Order and for Rule to Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report and September Monthly Report filed by 300 West LLC on October 27, 2017, including all arguments and attachments thereto.

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

CONCLUSION

WHEREFORE, for the reasons set forth herein, Defendant, The Arnold Engineering Co., hereby requests an order denying the Plaintiff's Petition, and for such further relief deemed fair and just.

Dated: October 27, 2017

Respectfully submitted,
BRYAN CAVE LLP
s/ S. Patrick McKey

Thor W. Ketzback, ARDC #: 6229578
thor.ketzback@bryancave.com
S. Patrick McKey, ARDC #: 6201588
patrick.mckey@bryancave.com
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
(312) 602-5000
*Attorneys for Defendant The Arnold
Engineering Co*

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing **Arnold Engineering's Response To Plaintiff's Petition To Enforce Court Order And For Rule To Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report and September Monthly Report** was served by regular electronic and U.S. Mail, postage prepaid, on the 27th day of October, 2017 upon the following:

Kathryn A. Pamerter
 Stephen Sylvester
 Evan McGinley
 Ryan Rudich
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., Suite 18th Floor
 Chicago, IL. 60602
Attorneys for Plaintiff

Dennis G. Walsh
 Howard Jablecki
 Klein, Thorpe and Jenkins, Ltd.
 20 N. Wacker St., Suite 1660
 Chicago, IL. 60606
Attorneys for Defendant 300 West LLC

s/ S. Patrick McKey _____

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois.)

Plaintiff,)

v.)

No. 13 CH 1046)

300 WEST LLC, an Illinois limited liability)
co., and THE ARNOLD ENGINEERING)
CO., an Illinois corporation,)

Defendants.)

NOTICE OF FILING

TO: **VIA EMAIL**

Howard C. Jablonski, Esq.
Dennis G. Walsh, Esq.
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
hjablonski@ktjlaw.com
dgwalsh@ktjlaw.com

VIA EMAIL

Jennifer T. Nijman, Esq.
Susan M. Franzetti, Esq.
Kristen L. Gale, Esq.
Nijman Franzetti LLP
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603
jn@nijmanfranzetti.com
sf@nijmanfranzetti.com
kg@nijmanfranzetti.com

PLEASE TAKE NOTICE that on November 22, 2017, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed with the McHenry County Circuit Court Clerk, the Reply in Support of Plaintiff's Petition to Enforce Court Order and For Rule to Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report and September Monthly Report, a true and correct copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

BY:


Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0608
KPamerter@atg.state.il.us

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 22nd day of November, 2017, the attached Notice of Filing and Reply in Support of Plaintiff's Petition to Enforce Court Order and for Rule to Show Cause Regarding Revised Comprehensive Site Investigation and Remediation Objectives Report and September Monthly Report upon the parties set forth on the Notice of Filing *via email*.



Kathryn A. Pamenter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0608
KPamenter@atg.state.il.us
Secondary Email: MCacaccio@atg.state.il.us

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
300 WEST LLC, an Illinois limited liability)
co., and THE ARNOLD ENGINEERING)
CO., an Illinois corporation,)
)
Defendants.)

No. 13CH1046

**REPLY IN SUPPORT OF PLAINTIFF’S PETITION TO ENFORCE COURT ORDER
AND FOR RULE TO SHOW CAUSE REGARDING REVISED COMPREHENSIVE
SITE INVESTIGATION AND REMEDIATION OBJECTIVES REPORT AND
SEPTEMBER MONTHLY REPORT¹**

The Defendants admit that the revised Comprehensive Site Investigation and Remediation Objectives Report (“Revised CSIR-ROR”) has not been submitted to the Illinois Environmental Protection Agency (the “Illinois EPA”) in accordance with Paragraph III.D.5. of the Consent Order entered on July 1, 2016, as modified (the “Consent Order”). While it took some steps to attempt to comply as described herein, 300 West has emphatically stated that “we won’t” “ensure that there will be no further stoppages or suspensions of work going forward due to funding issues”. (Deposition Transcript of John Daley, personally and as 300 West’s Rule 206(a)(1) representative, a true and correct copy of the cited pages of which is attached hereto as Exhibit 1 (“Daley Transcript”), at p. 60, line 23 – p. 61, line 4.) The Arnold Engineering Co. (“Arnold”) has taken no steps to ensure timely compliance with the obligations under Paragraph III.D.5. of the Consent

¹ Since the filing of the Petition on September 28, 2017, 300 West LLC (“300 West”), through its consultant, Environmental Information Logistics, LLC (“EIL”), has submitted a September monthly report.

Order. Arnold has not (i) hired any consultants, drilling contractors or laboratories to conduct any of the work under Paragraph III.D.5. of the Consent Order (the “Work”), (ii) executed, as a co-obligor, any contracts that 300 West entered into with the companies it retained to conduct the Work or (iii) paid any amounts toward the completion of the Work. Rather, Arnold simply made some phone calls to, sent a few emails to and attended a couple meetings with, 300 West and/or its counsel telling 300 West that it needed to complete and submit the Revised CSIR-ROR. Because the Defendants remain in contempt and have failed to show their inability to comply with the Consent Order, the September 28, 2017 Petition should be granted.

BACKGROUND

300 West has been attempting to investigate the environmental contamination at issue in this case since it acquired the property in May 2006. (Daley Transcript at p. 87, lines 3-17.) The original deadline to submit the Revised CSIR-ROR, which document is part of that investigation, was January 17, 2017. (300 West Response at p. 2; Arnold Response at p. 1 (adopting 300 West’s Response).) On January 20, 2017, Plaintiff filed a Petition to Enforce Court Order and for Rule to Show Cause regarding the Defendants’ failure to timely submit the Revised CSIR-ROR by the original deadline (the “January 20 Petition”). As 300 West states, “[o]n March 22, 2017, after discussions between 300 West (including its consultants) and the State, a Fourth Modification to Consent Order was filed, which extended the deadline to submit a revised CSIR/ROR by September 13, 2017” and resolved the January 20 Petition. (300 West Response at p. 2; Arnold Response at p. 1.) As a result of that agreement, the Defendants had nearly nine additional months from the original deadline to submit the Revised CSIR-ROR. The Defendants admit that they failed to submit the Revised CSIR-ROR by the extended deadline of September 13, 2017. (300 West Response at p. 2; Arnold Response at p. 1.)

ARGUMENT

Contempt proceedings, although called “civil” or “criminal” are neither, as they may include the characteristics of both. *County of Cook v. Lloyd A. Fry Roofing Co.*, 59 Ill.2d 131, 135 (1974). Civil contempt, though, generally seeks to “compel compliance with [a court’s] orders.” *Id.* “[T]he intent of the defendant is not relevant in determining whether it should be adjudged in civil contempt of the agreed order.” *Id.* at 137 (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949) (“[t]he absence of wilfulness does not relieve from civil contempt. . . . Since the purpose (of civil contempt) is remedial, it matters not with what intent the defendant did the prohibited act.”); *see also Round Lake Sanitary District v. Basic Electronics Manufacturing Corp.*, 60 Ill. App. 3d 40, 43-44 (2d Dist. 1978) (finding trial court erred in requiring “willful” showing for civil contempt); *City of Chicago v. Drovers Nat’l Bank, Trustee*, 36 Ill. App. 3d 296, 297-98 (1st Dist. 1976) (willfulness is not an element of civil contempt). Because it is undisputed that the Defendants failed to submit the Revised CSIR-ROR to the Illinois EPA by the deadline of September 13, 2017, to counter a contempt finding, the Defendants are required to prove their inability to comply with the order. *Lloyd A. Fry Roofing*, 59 Ill.2d at 137. “The corollary to this rule, however, prevents assertion of the defense of inability where the contemnor has voluntarily created the incapacity.” *Id.*

I. 300 West LLC

300 West contends that “being a single-asset entity, [it] encountered a funding issue that created an inability to pay its contractors and consultants so as to meet the requisite deadlines. Additional funding sources needed to be identified so that the matter could proceed, all of which has subsequently occurred. As such, no willful violation of this Court’s orders can be demonstrated. . . .” (300 West Response at p. 4.) First, a finding of willfulness is not a prerequisite

to holding either Defendant in indirect civil contempt of court. *Lloyd A. Fry Roofing*, 59 Ill.2d at 137. 300 West's citations to *People v. Ernest*, 141 Ill.2d 412 (1990), and *Hoga v. Clark*, 113 Ill. App. 3d 1050 (5th Dist. 1983), are inapposite, as the former concerned direct criminal contempt and the latter concerned indirect criminal contempt, neither of which is applicable in this case. "[A] finding of willful disobedience is a prerequisite to enforcement by imprisonment for civil contempt." *Drovers Nat'l Bank*, 36 Ill. App. 3d at 297. Similarly, *In re Marriage of Logston*, 103 Ill.2d 266, 285 (1984), is inapplicable as it concerned the enforcement of an order to pay a maintenance obligation, which required a finding of a willful refusal to obey the court's order. Here, the contempt concerns a failure to satisfy injunctive relief, namely the submission of the Revised CSIR-ROR, as opposed to an order to pay money.

Second, 300 West "voluntarily created the incapacity" to timely satisfy Paragraph III.D.5. of the Consent Order and thus is "prevent[ed] [from] assert[ing] the defense of inability". *Lloyd A. Fry Roofing*, 59 Ill.2d at 137. 300 West has always been a single-asset entity, including when it executed the Consent Order and agreed to timely perform all of the obligations thereunder. (Daley Transcript at p. 43, line 7 – p. 44, line 3.) As such, any funding issues were of 300 West's own making, as it failed to ensure that sufficient funds existed to timely pay its consultants and contractors so as to meet the deadlines under Paragraph III.D.5. of the Consent Order.² In addition, 300 West was responsible for retaining, and failed to retain, a contractor in July 2017 to survey the new groundwater monitoring wells. (Miller Transcript at p. 42, line 20 – p. 43, line 4; *id.* at p. 44, lines 3-16;³ *id.* at p. 44, line 21 – p. 45, line 21; p. 53, lines 15-18.) Without the survey data,

² Joseph Miller of EIL, 300 West's consultant, testified that Mr. Daley did not indicate that an issue with funding sources was the basis for 300 West's failure to timely pay EIL the amounts owed in August 2017. (Transcript of Joseph Miller, a true and correct copy of the pertinent pages of which are attached hereto as Exhibit 2 ("Miller Transcript"), at p. 63, line 20 – p. 64, line 12; *id.* at p. 71, line 23 – p. 72, line 1.)

³ Since Mr. Miller's deposition, 300 West has advised that the surveying work has been completed but that

300 West's consultant contends that it has been unable to complete the well construction schematics, cross sections in geologic surfaces, spider diagrams, extent drawings and narrative of the Revised CSIR-ROR. (Miller Transcript at p. 49, line 6 – p. 50, line 9; p. 52, line 1 – p. 53, line 1; p. 53, line 19 – p. 54, line 10; p. 61, lines 5-10.) Because it failed to both ensure sufficient funds existed and retain a contractor to conduct the surveying work, 300 West may not assert the defense of inability. *Lloyd A. Fry Roofing*, 59 Ill.2d at 137.⁴

Finally, while 300 West did request an extension of the deadline, it remains in contempt. On September 13, 2017, 300 West's counsel advised that the Defendants would not be submitting the Revised CSIR-ROR, requested an extension of the deadline and stated that "we will have additional details regarding proposed timing *in the coming days*." (300 West Response at Exhibit A (emphasis added).) 300 West did not provide such additional details until October 25, 2017.⁵ The Consent Order does not guarantee an extension will be granted: "[t]he Parties to the Consent Order *may*, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court." (Consent Order at III.F.2 (emphasis in original).) Given 300 West's statement that it would not ensure that the Work would be timely completed (Daley Transcript at p. 60, line 23 – p. 61, line 4), Arnold's failure to do any Work as described below and Plaintiff having already granted an extension of the deadline from January 17, 2017 to

it had not yet received the results.

⁴ Of further note, in neither the parties' bi-weekly calls, nor the monthly reports did 300 West advise of any payment issues or potential delays in the submission of the Revised CSIR-ROR. (Miller Transcript at p. 72, line 5 – p. 74, line 2; *id.* at p. 82, line 9 – p. 84, line 15; *id.* at p. 84, line 19 – p. 86, line 19.)

⁵ EIL ceased working on the project for 300 West for approximately two months. (Miller Transcript at p. 65, lines 17-19.) Yet, EIL requests an additional six months beyond the original nine-month extension to complete and submit the Revised CSIR-ROR. (300 West Response at Exhibit C.) In addition, contrary to 300 West's allegation (*see* 300 West Response at p. 4), EIL's proposed new deadline adds four weeks to the amount of time to complete the Revised CSIR-ROR that EIL had originally estimated. (Miller Transcript at p. 78, line 13 – p. 80, line 7.)

September 13, 2017, no further agreement has been reached to extend the deadline. 300 West's contempt may only be purged through the submission of the Revised CSIR-ROR to the Illinois EPA.

II. Arnold

It is undisputed that:

- Arnold has not performed any of the work required under Paragraph III.D.5. of the Consent Order, other than making telephone calls, and sending emails, to 300 West, having its counsel attend bi-weekly calls with the Illinois Attorney General's Office and attending a few meetings. (Daley Transcript at p. 71, lines 14-20; Transcript of Larry Cozart, a true and correct copy of which is attached hereto as Exhibit 3 ("Cozart Transcript") at p. 41, lines 2-11.)
- Arnold did not retain, either individually or jointly with 300 West, a consultant, including EIL, in relation to the work to be performed under Paragraph III.D.5. of the Consent Order. (Miller Transcript at p. 8, line 23 - p. 10, line 13; Cozart Transcript at p. 9, lines 20-24; Cozart Transcript at p. 41, line 21 - p. 42, line 3.)
- Arnold did not retain, either individually or jointly with 300 West, a laboratory, including Suburban Laboratories, in relation to the work to be performed under Paragraph III.D.5. of the Consent Order. (Miller Transcript at p. 55, line 23 - p. 56, line 7; Cozart Transcript at p. 42, lines 13-20.)
- Arnold did not retain, either individually or jointly with 300 West, a drilling company in relation to the work to be performed under Paragraph III.D.5. of the Consent Order. (Cozart Transcript at p. 42, lines 4-12.)
- Arnold has not submitted monthly reports in accordance with the Consent Order, as Mr. Miller testified that the monthly reports he prepared were submitted on behalf of 300 West only. (Miller Transcript at p. 82, line 9 - p. 83, line 16; p. 84, line 19 - p. 85, line 7; *see also* Cozart Transcript at p. 47, line 8 - p. 48, line 7.)
- Arnold has not paid any amounts to any contractors, drilling companies or laboratories in relation to the work to be performed under Paragraph III.D.5. of the Consent Order. (Miller Transcript at p. 93, lines 4-8; Cozart Transcript at p. 44, line 9 - p. 45, line 7; *id.* at p. 46, line 21 - p. 47, line 2.)
- 300 West did not tell Arnold that it could not assist with the onsite and offsite investigation work required under the Consent Order or the preparation of the Revised CSIR-ROR. (Daley Transcript at p. 64, line 21 - p. 65, line 16.)

- Arnold has not agreed to provide any funds to EIL to ensure that the work on the project does not cease again in the future. (Cozart Transcript at p. 49, lines 8-17.)
- Arnold’s only steps to ensure compliance with the Consent Order in the future are that, “[w]e will continue through this path of communicating with 300 West and them taking the lead.” (Cozart Transcript at p. 55, lines 5-15.)

In its Response, Arnold simply incorporates and adopts as its own 300 West’s Response. (Arnold Response at p. 1.) Arnold does not contend that it had an inability to perform, or pay for, the work required to be completed under Paragraph III.D.5. of the Consent Order. (*Id.*; *see also* Cozart Transcript at p. 67, lines 3-24.) Rather, Arnold attempts to assert 300 West’s alleged inability to perform as a defense for its own failure to comply with the obligations of the Consent Order. (Arnold Response at p. 1; *see also* Cozart Transcript at p. 41, lines 2-15 (stating that 300 West is taking the lead on the project as part of a lease agreement between Arnold and 300 West, not any provision of the Consent Order); *see also id.* at p. 69, line 7 – p. 71, line 3.) This argument wholly ignores the express language of the Consent Order and each of the modifications thereto that both Defendants have an obligation to timely complete the required work. (*See, e.g.*, Consent Order at Section III.D.5; Fourth Agreed Modification to Consent Order at pp. 2-5; Fifth Agreed Modification to Consent Order at ¶ 7.) Like 300 West, Arnold “voluntarily created the incapacity,” and thus is “prevent[ed] [from] assert[ing] the defense of inability”. *Lloyd A. Fry Roofing*, 59 Ill.2d at 137.

CONCLUSION

To date, the Revised CSIR-ROR has not been submitted to the Illinois EPA and the Defendants have failed to show their inability to comply with the Consent Order. Accordingly, (a) the September 28, 2017 Petition should be granted; (b) the Court should make a finding that (i) each Defendant is in contempt of Paragraph III.D.5. of the Consent Order and (ii) stipulated penalties calculated under Paragraph III.B. of the Consent Order have accrued since September

13, 2017 and will continue to accrue until such time that the Defendants purge the contempt; (c) the Court should impose a fine against each Defendant individually payable to the Court until the Revised CSIR-ROR is submitted to the Illinois EPA; (d) Plaintiff's costs in pursuing the Petition should be reimbursed by the Defendants; and (e) the Court should award such other relief as it deems proper.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
 General of the State of Illinois

BY: 
 KATHRYN A. PAMENTER
 STEPHEN J. SYLVESTER
 Environmental Bureau
 Assistant Attorneys General
 69 W. Washington St., Suite 1800
 Chicago, Illinois 60602
 312/814-0608
 KPamenter@atg.state.il.us
 SSylvester@atg.state.il.us

EXHIBIT 1

Transcript of the Testimony of
JOHN DALEY

Date: November 1, 2017

Case: PEOPLE VS. 300 WEST

TOOMEY REPORTING

312-853-0648

toomeyrep@sbcglobal.net

www.toomeyreporting.com

JOHN DALEY
November 1, 2017

STATE OF ILLINOIS)
)
COUNTY OF M C H E N R Y) SS:

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of)
Illinois,)

Plaintiff,)

v.)

No. 13 CH 1046

300 WEST LLC, an Illinois)
limited liability company, and)
THE ARNOLD ENGINEERING CO., an)
Illinois corporation,)

Defendants.)

The deposition of JOHN DALEY, appearing both individually and as LLC representative, called by the Plaintiff for examination, taken pursuant to the provisions of the Code of Civil Procedure and the Rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KATHLEEN M. DUFFEE, a Notary Public, County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 1800, 69 W. Washington Street, Chicago, Illinois, on the 1st day of November, A.D. 2017 at 9:04 a.m.

TOOMEY REPORTING (312) 853-0648

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

TOOMEY REPORTING
312-853-0648

JOHN DALEY
November 1, 2017

Page 2

1 PRESENT:

2 OFFICE OF THE ATTORNEY GENERAL, STATE OF
3 ILLINOIS, ATTORNEY GENERAL LISA MADIGAN,
4 ENVIRONMENTAL BUREAU OFFICE,
5 69 West Washington Street, 18th Floor
6 Chicago, Illinois 60602

(312) 814-0608, by:

7 KATHRYN A. PAMENTER, ESQUIRE, and
8 STEPHEN J. SYLVESTER, ESQUIRE,
9 kpamenter@atg.state.ill.us,

10 appeared on behalf of the Plaintiff;

11 KLEIN, THORPE & JENKINS, LTD.,
12 20 North Wacker Drive, Suite 1660
13 Chicago, Illinois 60606-2903

(312) 984-6400, by:

14 HOWARD C. JABLECKI, ESQUIRE,
15 hcjablecki@ktjlaw.com,

16 appeared on behalf of Defendant
17 300 West LLC;

18 NIJMAN FRANZETTI LLP,
19 10 South LaSalle Street, Suite 3600
20 Chicago, Illinois 60603

(312) 251-5255, by:

21 JENNIFER T. NIJMAN, ESQUIRE, and
22 KRISTEN GALE, ESQUIRE,
23 jn@nijmanfranzetti.com,

24 appeared on behalf of Defendant
The Arnold Engineering Co.

REPORTED BY: KATHLEEN M. DUFFEE, CSR
TOOMEY REPORTING (312) 853-0648

TOOMEY REPORTING
312-853-0648

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

JOHN DALEY
November 1, 2017

Page 43

1 A. Uhm-hmm.

2 Q. -- and to dive a little bit deeper into some of
3 what you just said.

4 A. Certainly.

5 Q. I appreciate your response.

6 A. Sure.

7 Q. Let's start with 300 West LLC. Is that then a
8 single asset entity --

9 A. That's correct.

10 Q. -- according to you?

11 A. That's correct.

12 Q. Okay. That asset being the site?

13 A. Let's -- I know we defined the site. From the
14 aspect of the ownership, it's the site, the buildings,
15 you know, the site and the buildings and improvements
16 on the site.

17 Q. I appreciate that --

18 A. Yeah.

19 Q. -- clarification.

20 A. Yeah.

21 Q. Has 300 West always been a single asset entity?

22 A. Yes.

23 Q. That never changed?

24 A. No.

TOOMEY REPORTING (312) 853-0648

TOOMEY REPORTING
312-853-0648

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

JOHN DALEY
November 1, 2017

Page 44

1 Q. When 300 West signed the Consent Order in June
2 of 2016, it was a single asset entity then as well?

3 A. Yes.

4 Q. Okay. You stated that income comes from the
5 leases with respect to the site. Who are those leases
6 with?

7 A. Specifically or just in general?

8 Q. I'll take in general.

9 A. The Arnold corporation.

10 Q. Does anyone else have a lease at any point with
11 respect to any area of the site?

12 A. Yes. We have a third tenant, and I can't
13 recall their name, or a second tenant I should say.

14 Q. So both of those tenants pay rent under their
15 leases to 300 West?

16 A. That is correct.

17 Q. Is that the only income that 300 West LLC gets
18 on its own?

19 A. Yes.

20 Q. There's no other revenue source for 300 West
21 LLC other than you-all personally? We'll talk about
22 that in a second.

23 A. No.

24 Q. But there's no other revenue source other than
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1 A. Yes, it is.

2 Q. Was Northern Illinois owed any amounts during
3 August of 2017?

4 A. Not to my knowledge.

5 Q. Does 300 West maintain financial statements?

6 A. Yes.

7 Q. Does 300 West prepare tax returns?

8 A. Yes.

9 Q. How many bank --

10 A. Let me. I want to retract.

11 Q. Please clarify --

12 A. I've got to.

13 Q. -- or correct.

14 A. I'm not sure if -- I don't -- I have to answer
15 that as I don't know on the income tax question. I
16 don't know.

17 Q. Oh, okay. How many -- strike that.

18 You've stated that 300 West pays the
19 bills that correspond to this matter. Is there one
20 bank account from which it pays its bills, or does
21 300 West have multiple accounts?

22 A. I don't know.

23 Q. How will 300 West ensure that there will be no
24 further stoppages or suspensions of work going forward

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1 due to funding issues?

2 A. How will 300 West ensure?

3 Q. Uhm-hmm.

4 A. We won't.

5 Q. Who at 300 West has been responsible for
6 ensuring that the deadlines under the Consent Order,
7 as modified, are met? Is there a particular person?

8 A. No.

9 Q. Are you the person who is responsible for
10 ensuring that 300 West meets the deadlines under the
11 Consent Order, as modified?

12 A. No.

13 Q. Did 300 West assign any person to that role?

14 A. Robert Jaydos.

15 Q. Do you know of the steps, if any, that he's
16 taken to ensure that the deadlines are met?

17 MR. JABLECKI: Objection, foundation. You can
18 answer if you know.

19 THE WITNESS: Say that again.

20 MR. JABLECKI: You can answer if you know.

21 BY THE WITNESS:

22 A. Uhm, he will -- he stays in contact with, uhm,
23 Howard Jablecki.

24

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1 of 2017.

2 A. I have not.

3 Q. Have you participated on any calls during that
4 same time period with anyone from The Arnold
5 Engineering Company regarding the submission of the
6 Revised CSIR ROR to the Illinois EPA?

7 A. I have not.

8 Q. Have you had any in-person meetings with
9 The Arnold Engineering Company during that time period?

10 A. I have not.

11 Q. Have you at any time told The Arnold
12 Engineering Company that it could not assist with the
13 work that's required under the Consent Order,
14 specifically the onsite and offsite investigation work
15 and the submission of the Revised CSIR to the Illinois
16 EPA?

17 A. I didn't understand the question.

18 MS. NIJMAN: Vague. Objection, vague.

19 THE WITNESS: Can you unpack that question?

20 BY MS. PAMENTER:

21 Q. Sure. I'll break it into two. Have you at any
22 time told The Arnold Engineering Company that it could
23 not assist with the onsite and offsite investigation
24 work required under the Consent Order?

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1 MS. NIJMAN: Same objection, vague.

2 BY THE WITNESS:

3 A. Yeah, I need to understand. Once again, that
4 question is packed with a lot. Are you asking if I
5 have ever or 300 West has ever communicated to Arnold
6 that it cannot assist with the?

7 BY MS. PAMENTER:

8 Q. With the investigation.

9 A. With the investigation?

10 Q. Correct.

11 A. No, I have not.

12 Q. Have you at any time, or 300 West, communicated
13 to The Arnold Engineering Company that it could not
14 assist with the preparation of the Revised CSIR ROR and
15 submission to the Illinois EPA?

16 A. No, neither I or 300 West.

17 MS. PAMENTER: If we can take like a
18 five-minute break? Would that be okay? I just want to
19 make sure I'm not missing anything from that section.
20 Thank you.

21 (WHEREUPON, a recess was had from
22 10:19 a.m. to 10:27 a.m.)

23 MR. JABLECKI: Katie, if we could, before you
24 jump into some more questions, a couple of

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1 payments that they might have made that I don't know
2 about.

3 Q. Why has 300 West performed the work to date?

4 MR. JABLECKI: Objection to relevance. They've
5 entered into a Consent Order that says that they have
6 to.

7 MS. PAMENTER: I'll rephrase. Excellent point.

8 THE WITNESS: Can I get a glass of water?

9 MS. PAMENTER: Absolutely.

10 BY MS. PAMENTER:

11 Q. You stated that the work has been performed by
12 300 West, earlier.

13 A. Uhm-hmm.

14 Q. To your knowledge, has The Arnold Engineering
15 Company performed any of the work required under the
16 Consent Order other than participating in telephone
17 calls and meetings?

18 A. Not to my knowledge.

19 Q. Do you know why?

20 A. No, I don't know why.

21 Q. Before, you --

22 A. Actually, not to my knowledge. Thank you.

23 Q. Before, you testified that Robert Jaydos was
24 responsible for ensuring that payments are timely made

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1 MS. NIJMAN: Objection, foundation.

2 BY MS. PAMENTER:

3 Q. Do you recall how long 300 West has been
4 working on investigating the environmental
5 contamination at the site? How many years?

6 A. Since the first day we acquired the site.

7 Q. Do you recall when you purchased the site?

8 A. Oh, God, no, I don't. Want me to guess?

9 Q. No.

10 A. Okay. A long time ago.

11 Q. When we did the testimony before -- excuse me.
12 When we did the deposition before, it was established
13 to have occurred in May of 2006. Do you have any
14 reason to believe that wouldn't be --

15 A. No, that would be --

16 Q. -- correct?

17 A. Yeah, that sounds correct.

18 MS. PAMENTER: Okay. I have no additional
19 questions.

20 THE WITNESS: Okay.

21 MS. NIJMAN: No questions.

22 MR. JABLECKI: Just a couple of real quick
23 ones.

24 MS. PAMENTER: Yes.

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EXHIBIT 2

Transcript of the Testimony of
JOSEPH MILLER

Date: November 1, 2017

Case: PEOPLE OF THE STATE OF ILLINOIS v. 300 WEST LLC,
ET AL.

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November 1, 2017

STATE OF ILLINOIS)
)
COUNTY OF M C H E N R Y) SS:

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of)
Illinois,)

Plaintiff,)

v.) No. 13 CH 1046

300 WEST LLC, an Illinois)
limited liability company, and)
THE ARNOLD ENGINEERING CO., an)
Illinois corporation,)

Defendants.)

The deposition of JOSEPH MILLER, called by the Plaintiff for examination, taken pursuant to the provisions of the Code of Civil Procedure and the Rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KATHLEEN M. DUFFEE, a Notary Public, County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 1800, 69 West Washington Street, Chicago, Illinois, on the 1st day of November, A.D. 2017 at 1:01 p.m.

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1 PRESENT:

2 OFFICE OF THE ATTORNEY GENERAL, STATE OF
3 ILLINOIS, ATTORNEY GENERAL LISA MADIGAN,
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(312) 814-0608, by:

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11 KLEIN, THORPE & JENKINS, LTD.,
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14 HOWARD C. JABLECKI, ESQUIRE,
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16 appeared on behalf of Defendant
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23 appeared on behalf of Defendant
24 The Arnold Engineering Co.

REPORTED BY: KATHLEEN M. DUFFEE, CSR
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1 Q. When did you first get involved with the site?

2 A. Fall of last year, fall of 2016.

3 Q. How did you get involved with the site?

4 A. John Noyes, from Cabeno, telephoned me and let
5 me know that he had recommended me to 300 West for this
6 project.

7 Q. When you say "this project," what are you
8 referring to?

9 A. The site investigation.

10 Q. When Mr. Noyes -- is that, how do you spell
11 that by the way?

12 A. N-O-Y-E-S.

13 Q. Thank you. When he recommended, you said you
14 to 300 West. Was it you personally or a company
15 related to you?

16 A. Both, me personally and EIL.

17 Q. Who is EIL?

18 A. Environmental Information Logistics, LLC.

19 Q. For purposes of this deposition, can we agree
20 that we'll use the term "EIL" instead of stating
21 Environmental Information Logistics, LLC, each time?

22 A. Yes.

23 Q. Thank you. Did there come a time when EIL or
24 you were retained to do work with respect to the site?

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1 A. Yes.

2 Q. When was that?

3 A. I think October of 2016.

4 Q. Was EIL retained, or were you retained
5 personally?

6 A. EIL.

7 Q. Who retained EIL, what entity?

8 A. 300 West.

9 Q. Has EIL ever been retained by The Arnold
10 Engineering Company to do work with respect to the
11 site?

12 A. No.

13 Q. Do you know a company by the name Arnold
14 Magnetic Technologies Corporation?

15 A. I do.

16 Q. Has EIL ever been retained by Arnold Magnetic
17 Technologies Corporation to do work with respect to
18 the site?

19 A. No.

20 Q. Has any other entity besides 300 West LLC
21 retained EIL to do work with respect to the site?

22 A. No.

23 Q. Did EIL enter into a contract or a written
24 agreement with 300 West with respect to doing work at
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1 or around the site?

2 A. Yes.

3 Q. Did EIL enter into any contract with The Arnold
4 Engineering Company?

5 A. No.

6 Q. Same answer for Arnold Magnetic Technologies
7 Corporation?

8 A. Correct.

9 Q. Did EIL enter into any -- other than -- strike
10 that.

11 Did EIL enter into any other contracts
12 with any other entities relating to the site?

13 A. No.

14 Q. Who was EIL's contact person when discussing
15 EIL's retention with respect to the site? Was there
16 a particular person at 300 West?

17 A. John Daley.

18 Q. Did you have any conversations with anyone else
19 from 300 West with respect to EIL's retention?

20 MR. JABLECKI: I'd just object to form. Are
21 you talking about employed by 300 West or affiliated
22 with 300 West?

23 MS. PAMENTER: I wasn't differentiating. So we
24 can --

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1 from June 28th to July 12th?

2 A. Because of wet conditions in the infiltration
3 area and heavy storms, heavy rain.

4 Q. Going back to Revised CSIR Petition Exhibit 4
5 that we were just looking at, it provides for the
6 Revised CSIR ROR to be submitted on or before
7 September 13, 2017. Do you see that?

8 A. I do.

9 Q. And this was filed with the court on
10 March 22nd. So, again, I know you don't have a
11 calendar in front of you, but I believe that's
12 approximately 25 weeks between March 22nd and
13 September 13th to complete that work. Do you think I
14 might be close on that?

15 A. Yes.

16 Q. Okay. So the 25 weeks was consistent with your
17 request for 24 weeks for all of the work to be
18 completed in your March 9, 2017, letter. True?

19 A. Correct.

20 Q. Has the onsite groundwater and soil
21 investigation been completed?

22 A. The surveying work needs to be performed.

23 Q. What do you mean, just so that we all make sure
24 we're understanding the same terminology, what do you

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1 mean by "surveying work needs to be performed"?

2 A. The new groundwater monitoring wells that were
3 installed as part of the supplemental investigation
4 have to be located by land survey.

5 Q. These new groundwater monitoring wells, have
6 they already been sampled?

7 A. Correct.

8 Q. I'm sure there's a technical reason for this,
9 so I want to understand it. Why wasn't the land survey
10 completed at the time of sampling at these new
11 groundwater monitoring wells?

12 A. It's a separate contractor to conduct that
13 work. Wells will be surveyed by a registered land
14 surveyor, professional land surveyor, PLS.

15 MS. PAMENTER: Can we just go off the record?

16 (WHEREUPON, a discussion was had
17 off the record.)

18 BY MS. PAMENTER:

19 Q. Could a GPS system have been utilized to
20 determine the location or do the survey of the location
21 of the groundwater monitoring wells at the time the
22 sampling was performed?

23 A. That would not be consistent with standard
24 practice or Illinois EPA requirements.

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1 Q. Are these monitoring wells still there?

2 A. Correct.

3 Q. Has this work been contracted for?

4 A. It's being performed directly by 300 West.

5 Q. Do you know who from 300 West is conducting the
6 survey?

7 A. Well, they're contracting the work to --

8 Q. Oh.

9 MR. SYLVESTER: Oh.

10 BY THE WITNESS:

11 A. They're contracting the work to Schmidt
12 Engineering.

13 BY MS. PAMENTER:

14 Q. Do you know whether a date has been set for
15 this work to be done, the surveying work to be done?

16 A. A date has not been set.

17 MS. PAMENTER: Just one second.

18 (WHEREUPON, a discussion was had
19 off the record.)

20 BY MS. PAMENTER:

21 Q. Do you know why the land survey, not the GPS as
22 you're talking about now, was not done at the time the
23 sampling of the new groundwater monitoring wells
24 occurred?

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1 A. I don't know.

2 Q. Did EIL have any conversations with 300 West
3 about contracting for the land survey work to have been
4 done at the time the sampling was performed at those
5 wells?

6 A. To clarify, this is a distinctly separate task
7 from sampling the wells. They are separate field
8 activities. There is really no connection between
9 sampling the wells and surveying the wells.

10 In July we directed, set out the scope of
11 work for the survey, and coordinated that with the
12 surveyor and 300 West; and that work didn't get done in
13 July, has been re-sent to the surveyor within the last
14 week or two, and is pending completion.

15 Q. Do you know why it wasn't completed in July?

16 A. I don't.

17 Q. Other than the surveying work that we've been
18 discussing, is there anything else to be completed with
19 regard to the onsite groundwater and soil
20 investigation?

21 A. To the best of my knowledge, no.

22 Q. Okay. Has the offsite groundwater and soil
23 investigation been completed?

24 A. With the exception of collecting the poor water
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1 penetrated during subsurface exploration.

2 Q. Have those logs been completed?

3 A. They've been prepared.

4 Q. But not finalized. Is that true?

5 A. Correct.

6 Q. Okay. The next line is: Well construction
7 schematic. Do you see that?

8 A. I do.

9 Q. What does that refer to?

10 A. These are summary reports of the construction
11 of groundwater monitoring wells.

12 Q. Have those been completed?

13 A. They have not. They are pending receipt of the
14 survey data. The survey data provides the X and Y
15 coordinates for the wells and the elevations of the
16 ground surface and the top of casing. These data are
17 the essential elements of a well construction
18 schematic.

19 Q. Other than the receipt of the survey data and
20 completing the schematics based on that survey data, is
21 there anything else to be completed with respect to the
22 well construction schematic?

23 A. No.

24 Q. The next row concerns cross sections in
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1 geologic surfaces, as appropriate. Do you see that?

2 A. I do.

3 Q. What does that refer to?

4 A. Well, there's an example of cross section in
5 one of these exhibits, but a cross section is a
6 graphical representation of the geologic materials
7 present in the subsurface in XZ-space; and they have
8 not been prepared because they are based on the
9 surveyed locations of the wells.

10 Q. You used a term. I think it's XZ-space?

11 A. Correct.

12 Q. What does that mean?

13 A. Well, X is -- we remember our geometry. We
14 have the X coordinate and then we have the Y
15 coordinate, and the Z coordinate is the downward
16 coordinate, into the ground. So "X" is the space
17 across the ground. "Z," the coordinate, is the space
18 into the ground. So it's --

19 Q. Okay. Thank you.

20 A. We have a different language.

21 Q. Fair. Just to clarify, are none of the cross
22 sections in geologic surfaces completed?

23 A. The only geologic cross sections that have been
24 prepared were included in the May 22nd submittal of
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1 Q. The next line item refers to spider diagrams.
2 What are those?

3 A. Spider diagrams are exhibits, plan exhibits,
4 "plan" meaning looking down on the site in XY-space,
5 that show as boxes the exceedances of numeric
6 standards.

7 Q. Have the spider diagrams been completed?

8 A. They cannot be completed until receipt of the
9 lab analytical.

10 Q. I believe you indicated earlier that EIL has
11 received, now received all of the lab analytical except
12 for the location MW-42 that had to be resampled;
13 correct?

14 A. We received the lab analytical a week ago.

15 Q. No; I understand. I just want to make sure
16 that you have that now. So that's something that may
17 be able to be prepared --

18 A. Correct.

19 Q. -- in light of receiving that?

20 A. Correct. There again, though, those spider
21 diagrams will be tied to the XY coordinate of the
22 monitoring wells.

23 Q. Which ties us back to the surveying work that
24 we've been discussing?

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1 A. It all hinges on the survey.

2 Q. Where on your Estimated Task Durations Chart is
3 surveying work located?

4 A. It's not shown.

5 Q. Can I ask why?

6 A. I regret to say that it was an oversight from
7 being included on this chart, not to say that it was an
8 oversight in terms of our understanding of the work
9 that needed to be performed as part of a project like
10 this.

11 It is an absolutely essential and central
12 part of performing this type of a project. That is our
13 business. We are well familiar with it and we're
14 keenly aware that the wells needed to be surveyed.

15 Q. And I believe you indicated earlier that EIL
16 thought it was going to be completed in July of 2017.
17 True?

18 A. That is correct.

19 Q. Okay. Please correct me if I'm wrong, but I
20 think I'm on "Extent Drawings." Is that true?

21 A. That is true.

22 Q. What are extent drawings?

23 A. Extent drawings are exhibits that show the
24 extent in XY-space and potentially XZ-space of

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1 exceedances of Illinois EPA soil and groundwater
2 standards. So they provide an outline, if you will, of
3 where exceedances are present.

4 Q. Have the extent drawings been completed?

5 A. They have not.

6 Q. Is that because of the surveying work as well?

7 A. Primarily because the lab analytical has just
8 been received --

9 Q. Ah.

10 A. -- but also because of the surveying.

11 Q. The next line that you included in here or EIL
12 included in its estimated task durations is Tier 3
13 evaluations. Do you see that?

14 A. I do.

15 Q. What does that refer to?

16 A. The Site Remediation Program provides for
17 multiple levels of evaluating soil and groundwater
18 analytical data. The initial level is Tier 1.

19 The State of Illinois publishes numeric
20 standards against which soil and groundwater analytical
21 results can be compared.

22 Applicants have the option to perform
23 more-detailed evaluations of their data based on less
24 conservative assumptions. Applicants typically look at

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1 their Tier 1 exceedances and choose to evaluate them in
2 a more detailed way to limit the number of exceedances
3 that they witness. That exercise is a Tier 3
4 evaluation.

5 Q. Have the Tier 3 evaluations been completed for
6 the site?

7 A. They have not.

8 Q. Why not?

9 A. Because we just received the lab analytical
10 last week.

11 Q. Okay. Do you know why you just received the
12 lab analytical last week given that the sampling was
13 conducted in June and July of 2017?

14 A. I do.

15 Q. Why?

16 A. Suburban Laboratories refused to release their
17 lab results without payment.

18 Q. Does EIL have the contract with Suburban
19 Laboratories with respect to this work?

20 A. No.

21 Q. Do you know who does?

22 A. 300 West.

23 Q. Do you know whether The Arnold Engineering
24 Company has a contract with Suburban Labs with regard
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1 to this work?

2 MS. GALE: Ob --

3 BY THE WITNESS:

4 A. They do not.

5 MS. PAMENTER: I'm sorry. Did you want to put
6 an objection on the record?

7 THE WITNESS: Object to foundation.

8 MS. PAMENTER: Okay.

9 BY MS. PAMENTER:

10 Q. Are there any other laboratories working on
11 that project besides Suburban Labs?

12 MR. JABLECKI: Time frame. Are you talking
13 currently?

14 MS. PAMENTER: I am. So for the work that EIL
15 has been overseeing.

16 MR. JABLECKI: Okay.

17 BY THE WITNESS:

18 A. Suburban has subcontracted some of their lab
19 work, but from a contractual standpoint Suburban is the
20 only laboratory engaged in the project.

21 BY MS. PAMENTER:

22 Q. Do you know who the contact person is for 300
23 West with Suburban Labs? Is it you?

24 A. I have worked with Suburban to establish the
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1 A. EIL.

2 Q. Okay.

3 A. And we ceased to perform work on the project.

4 Q. Okay. Any other reasons?

5 I'm going to ask some additional
6 questions, but I want to make sure you have the
7 opportunity to list any other reasons for the Revised
8 CSIR ROR not being submitted on September 13th.

9 A. Not having had the survey data was an important
10 element. I think that completes the list.

11 Q. If you think of anything else, please let us
12 know as we continue. Okay?

13 A. I will do that.

14 Q. Okay. You indicated that the lab fell behind
15 in its ability to keep up with the influx of samples.
16 The lab that you're referring to, is that Suburban
17 Laboratory?

18 A. Correct.

19 Q. Why wasn't a second laboratory retained?

20 A. They subcontracted another lab. They
21 subcontracted First Environmental in Naperville,
22 Illinois, and they directed a sizable fraction of the
23 soil work to First Environmental. So a second lab was
24 involved.

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1 A. We did not.

2 Q. How did 300 West know the amount that was due
3 and owing to be paid?

4 A. We prepared on a weekly basis a summary of our
5 billings for the project and distributed that by email.

6 Q. To whom did you distribute those summaries?

7 A. To John Daley, Bob Jaydos, and we cc'd Howie.

8 Q. Did you send any emails to anyone associated
9 with The Arnold Engineering Company with regard to the
10 summaries of your billing?

11 A. No.

12 Q. Prior to mid-August, was 300 West timely paying
13 the amounts due to EIL?

14 A. Yes.

15 Q. Do you know why 300 West stopped paying EIL in
16 mid-August of 2017?

17 A. I do not.

18 MR. JABLECKI: Objection, foundation.

19 BY MS. PAMENTER:

20 Q. Did you have any conversations other than with
21 counsel for 300 West as to why 300 West stopped paying?

22 A. I had one conversation.

23 Q. With whom?

24 A. I spoke with John Daley.

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1 Q. Do you recall when?

2 A. Mid-September.

3 Q. Did Mr. Daley explain to you why they stopped
4 paying?

5 A. We discussed it in general terms.

6 Q. In general terms, what did you discuss?

7 A. John indicated there were health issues in his
8 family, and that was the reason for having fallen
9 behind in payment.

10 Q. Did Mr. Daley say anything about issues with
11 funding sources during your conversation?

12 A. He did not.

13 Q. Is -- strike that. Are EIL's invoices current?
14 Have you been currently paid?

15 A. Yes.

16 Q. When did EIL recommence work on that project?

17 A. Mid-September.

18 Q. Actually, let me go through with this. I know
19 I should have. I'm going to hand to you what has been
20 marked as Revised CSIR Petition Exhibit -- does it say
21 "16" on the bottom?

22 A. Yes.

23 (WHEREUPON, Exhibit No. 16 was
24 tendered to the witness.)

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1 BY MS. PAMENTER:

2 Q. This is a letter from EIL to Andrew Catlin of
3 the Illinois EPA, dated October 25, 2017. Do you see
4 that?

5 A. I do.

6 Q. Okay. We're going to talk a little bit further
7 about this letter, but I just want to get back to the
8 question that I asked.

9 In the third paragraph, the first
10 sentence, it states: The applicant and EIL agreed to
11 resume work on the project on October 11th. Do you see
12 that?

13 A. I do.

14 Q. Is October 11th the date that EIL resumed work
15 on this project?

16 A. It is.

17 Q. Between August 15, 2017, and October 11, 2017,
18 did EIL do any work on this project?

19 A. No.

20 Q. And just to clarify so that I don't lose this,
21 the applicant in this sentence, is that 300 West?

22 A. It is.

23 Q. Anyone else?

24 A. No.

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1 letter prior to its submittal?

2 MS. GALE: Objection, foundation.

3 BY THE WITNESS:

4 A. No.

5 BY MS. PAMENTER:

6 Q. Did EIL speak with anyone at The Arnold
7 Engineering Company regarding this letter prior to its
8 submittal?

9 A. No.

10 Q. Okay. Look at the second paragraph, first
11 sentence on the first page. It reads: Work on the
12 supplemental investigation was temporarily suspended in
13 mid-August after a loss of funding for the project. Do
14 you see that?

15 A. I do.

16 Q. Does this sentence refer to the outstanding
17 payments to EIL, Suburban Labs, Cabeno, and Cascade?

18 A. Yes.

19 Q. Does it refer to anything else in terms of
20 what -- I'm trying to just understand the loss of
21 funding to which you were referring.

22 A. That's what it refers to.

23 Q. Did 300 West advise you that it had a loss of
24 funding?

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1 A. No.

2 Q. So it was simply the failure to pay outstanding
3 invoices to the contractors and consultants?

4 A. Correct.

5 Q. Also in that second paragraph, last sentence:
6 Work on the CSI-ROR had not been discussed during the
7 biweekly conference calls. Do you see that?

8 A. Yes.

9 Q. Were the participants on the calls reminded of
10 the deadline to submit the Revised CSIR ROR under the
11 Consent Order?

12 A. They were.

13 Q. Were the participants on the calls reminded
14 that plaintiff, IEPA, would not agree to another
15 extension of the deadline to submit the Revised CSIR
16 ROR?

17 A. Yes.

18 Q. Were the participants on the calls given the
19 opportunity to express any issues or concerns relating
20 to the project?

21 A. Yes.

22 Q. Prior to the August 30, 2017, biweekly call,
23 which neither Mr. Jablecki nor you attended, that was
24 the first one that you-all didn't attend, did EIL

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1 advise of any payment issues relating to the project?

2 MR. JABLECKI: Objection to form. Advise who?
3 Are you talking about on the calls?

4 MS. PAMENTER: People on the calls, yes.

5 BY THE WITNESS:

6 A. No.

7 BY MS. PAMENTER:

8 Q. At any point on the biweekly calls prior to the
9 August 30, 2017, call when Mr. Jablecki and you did not
10 attend, did EIL, you, advise the participants on the
11 calls of any issue with meeting the deadline to submit
12 the Revised CSIR ROR?

13 A. No.

14 Q. We did, though, have a discussion earlier,
15 correct, just to be fair, that you did advise of issues
16 with regard to the laboratory results and the timing of
17 the receipt of those; correct?

18 A. We discussed as you indicated. Well, you
19 pointed out the lag in provision of lab results. So
20 this was a subject of discussion.

21 Q. The lab results and the timing of those was a
22 subject of discussion, but not -- there was no
23 discussion that there may be a delay in the submission
24 of the Revised CSIR ROR on those biweekly calls;

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1 correct?

2 A. Correct.

3 Q. We previously discussed the first sentence in
4 the first -- in the third paragraph, excuse me, and I
5 just had a couple of follow-up questions to that line
6 of questioning.

7 Did Cabeno also agree to resume work on
8 October 11, 2017, to your knowledge?

9 A. No, they have not.

10 Q. Who conducted the sample from yesterday that
11 you referred to?

12 A. EIL collected that sample.

13 Q. And we've already discussed, though, that
14 Suburban Laboratories agreed to resume the work;
15 correct?

16 A. Correct.

17 Q. Okay. Continuing in paragraph 3 of your
18 October 25th letter, the second sentence states: Since
19 then, EIL has worked to reschedule key personnel who
20 were reassigned during the suspension.

21 Who are the key personnel to whom you are
22 referring?

23 A. Well, one would be myself. Another would be
24 Dirk Wriedt. Another would be Erin Yargicoglu.

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1 progression in the orange tasks as you move down along
2 the graphical exhibits.

3 Q. Still in Exhibit 12, if you can flip back one
4 page for me.

5 A. (Witness complied.)

6 Q. We talked about this chart in a different
7 exhibit, but we've established that it's substantially
8 the same as the prior exhibit to which we spoke.

9 If you recall, the last row refers to
10 data evaluation, analysis, and reporting. Do you see
11 that?

12 A. I do.

13 Q. And you had indicated earlier in your
14 testimony, that corresponded to the preparation of the
15 Revised CSIR ROR. Still true?

16 A. Right.

17 Q. Okay. And the task duration for completing
18 that, if I go down the column for task duration and
19 over the row, is 90 days; correct?

20 A. Yes.

21 Q. So can you explain to me the apparent
22 difference between the charts where you indicated it
23 would take 90 days to do the report after the receipt
24 of a lab analytical versus this second chart on page 5

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1 that indicates it's 16 weeks after the lab analytical?

2 A. The graphical exhibit shows a longer time, and
3 the longer time is more consistent with my belief on
4 what completing this assignment will require.

5 Q. If I go back to Exhibit 16, your October 25th
6 letter, the second-to-last sentence of the fourth
7 paragraph reads: A 20-week duration for preparing the
8 CSI-ROR is now estimated as a result of these changes
9 in the project sequencing.

10 So are you seeking a 16-week extension or
11 a 20-week extension?

12 A. 20 weeks.

13 Q. And why the additional -- why is the additional
14 four weeks being requested?

15 A. Because we've had a two-month interruption in
16 this project, and during the course of that two-month
17 interruption the key personnel on this project have
18 been engaged in other projects and we have made
19 commitments to other clients; and it is not possible
20 for us to tell clients that we've been engaged with
21 that another customer will be put before them, and that
22 is an important component of this.

23 We also believe that having seen what has
24 transpired during the course of this project, that this
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1 gives us no reason to believe that this time it will
2 be any easier, as our presence here confirms, and it's
3 clear that there still remains work to be done.

4 So by adding four weeks to the estimated
5 duration, we are giving ourselves what we believe is
6 needed leeway in our time frame for getting this
7 project done.

8 Q. As of October 25, 2017, EIL was seeking until
9 March 23, 2018, to submit the Revised CSIR ROR?

10 A. That's right.

11 Q. How did you take into account the surveying
12 work that still needs to be done when coming up with
13 the March 23, 2018, date?

14 A. I think I assumed it would be done by the end
15 of this week.

16 Q. Is the surveying work, to your knowledge, going
17 to be done by the end of this week?

18 A. I have heard no confirmation that the surveying
19 work is going to be done by the end of this week.

20 Q. If the surveying work is not completed by the
21 end of this week, would EIL intend to seek a later date
22 for the completion of the Revised CSIR ROR?

23 A. That would hinge on the extent to which the
24 schedule for completing the survey was extended. If

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1 March 23rd or 16 weeks to March 23rd?

2 A. No. It's 20.

3 MR. JABLECKI: From November 3rd to March 23rd
4 is 20 weeks.

5 MS. PAMENTER: Okay. Great. Thank you.

6 (WHEREUPON, Exhibit No. 17 was
7 tendered to the witness.)

8 BY MS. PAMENTER:

9 Q. I'm handing to you what was previously marked
10 as Revised CSIR Petition Exhibit 17. This is a letter
11 from EIL to me dated July 7, 2017. Do you see that?

12 A. I do.

13 Q. Do you recognize this letter?

14 A. I do.

15 Q. Does your signature appear on page 2 of this
16 letter?

17 A. It does.

18 Q. Who prepared this letter?

19 A. I did.

20 Q. Did 300 West, other than counsel, review this
21 letter prior to its submittal?

22 A. No.

23 Q. Did you -- did EIL speak with anyone at 300
24 West regarding this letter, other than counsel, prior

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1 to its submittal?

2 A. No.

3 Q. Did The Arnold Engineering Company review this
4 letter prior to its submittal?

5 A. No.

6 MS. GALE: Objection, foundation.

7 BY MS. PAMENTER:

8 Q. Did EIL speak with anyone at The Arnold
9 Engineering Company regarding this letter prior to its
10 submittal?

11 A. No.

12 Q. Who did EIL submit this letter -- excuse me,
13 this monthly report on behalf of?

14 A. 300 West.

15 Q. Anyone else?

16 A. No.

17 Q. If we look down toward the bottom of this
18 page -- well, let me rephrase.

19 First of all, if you look at the Re line,
20 it says: Monthly report, June 2017. Do you see that?

21 A. I do.

22 Q. Okay. Is there a requirement to do a monthly
23 report under the Consent Order to your knowledge?

24 A. There is.

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1 Q. Okay. Is this the June monthly report that was
2 submitted per the Consent Order?

3 A. It is.

4 Q. Okay. There are three sections included in
5 your monthly report for June: work performed; work
6 planned; anticipated delays. Do you see those?

7 A. I do.

8 Q. Under "Anticipated Delays," you list two. To
9 your knowledge, based on your writing of this letter,
10 were there no payment issues as of July 7th of 2017?

11 A. That's correct.

12 Q. As of July 7, 2017, did EIL on behalf of 300
13 West express any concerns about the submission of the
14 Revised CSIR ROR by the September 13, 2017, deadline?

15 A. No.

16 (WHEREUPON, Exhibit No. 18 was
17 tendered to the witness.)

18 BY MS. PAMENTER:

19 Q. I'm handing to you what has been previously
20 marked as Revised CSIR Petition Exhibit No. 18. This
21 is a letter from EIL to me, dated August 8, 2017. Do
22 you see that?

23 A. I do.

24 Q. Do you recognize this document?
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1 A. I do.

2 Q. If you turn to page 2, is that your signature?

3 A. It is.

4 Q. Who did EIL submit this on behalf of?

5 A. 300 West.

6 Q. Anyone else?

7 A. No.

8 Q. If you look at the Re line, it says: Monthly
9 report, July 2017. Correct?

10 A. Yes.

11 Q. Is this the monthly report for July 2017
12 pursuant to the Consent Order?

13 A. Yes.

14 Q. Did 300 West review this letter prior to its
15 submittal, other than counsel?

16 A. No.

17 Q. Did EIL speak with anyone at 300 West other
18 than counsel prior to its submittal?

19 A. No.

20 Q. Regarding this letter.

21 A. No.

22 Q. Did The Arnold Engineering Company review this
23 letter prior to its submittal?

24 MS. GALE: Objection, foundation.
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1 BY THE WITNESS:

2 A. No.

3 BY MS. PAMENTER:

4 Q. Did EIL send this letter to The Arnold
5 Engineering Company to review prior to its submittal?

6 A. No.

7 Q. Did EIL speak with anyone at The Arnold
8 Engineering Company regarding this letter prior to its
9 submittal?

10 A. No.

11 Q. Again, looking at the "Anticipated Delays"
12 section of this letter, as of August 8, 2017, there
13 were no payment issues; is that correct?

14 A. That's correct.

15 Q. Okay. And as of August 8, 2017, you did not
16 express any concerns about the submission of the
17 Revised CSIR ROR by the September 13, 2017, deadline.
18 Is that true?

19 A. That is correct.

20 (WHEREUPON, Exhibit No. 19 was
21 tendered to the witness.)

22 BY MS. PAMENTER:

23 Q. Okay. I'm going to hand to you what has been
24 previously marked as Revised CSIR Petition Exhibit 19.

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1 Q. Has the Illinois EPA approved an extension of
2 the deadline to submit the Revised CSIR ROR to date?

3 A. No.

4 Q. Has The Arnold Engineering Company paid any
5 amounts to EIL to date?

6 MS. GALE: Objection, foundation.

7 BY THE WITNESS:

8 A. No.

9 BY MS. PAMENTER:

10 Q. Have you had any conversations with anyone at
11 The Arnold Engineering Company regarding your work on
12 this project other than with its counsel on the
13 biweekly calls?

14 A. No.

15 MS. PAMENTER: Okay. I just need to take like
16 a five-minute break just to see if I have anything
17 else.

18 THE WITNESS: Okay.

19 (WHEREUPON, a recess was had from
20 3:18 p.m. to 3:25 p.m.)

21 BY MS. PAMENTER:

22 Q. Back on Revised CSIR Petition Exhibit 22, is
23 this part of a new contract between EIL and 300 West?

24 A. This is a work order on our master services
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EXHIBIT 3

Transcript of the Testimony of
LARRY COZART

Date: November 14, 2017

Case: PEOPLE VS. 300 WEST, LLC

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LARRY COZART
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Page 1

IN THE CIRCUIT COURT OF THE TWENTY-SECOND
JUDICIAL CIRCUIT
MCHENRY COUNTY ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF)	
ILLINOIS, ex rel. LISA)	
MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Plaintiff,)	
)	
vs.)	No. 13 CH 1046
)	
300 WEST LLC, an Illinois)	
corporation, and THE)	
ARNOLD ENGINEERING CO.,)	
an Illinois corporation)	
a/k/a ARNOLD MAGNETIC)	
TECHNOLOGIES CORPORATION,)	
)	
Defendants.)	

This is the deposition of LARRY COZART, called by the Plaintiff for examination, taken pursuant to the provisions of the Code of Civil Procedure and the Rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before PEGGY A. ANDERSON, a Certified Shorthand Reporter of the State of Illinois, at 69 West Washington Street, Suite 1800, Chicago, Illinois, on November 14th, 2017, at 9:00 a.m.

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

LARRY COZART
November 14, 2017

1 A P P E A R A N C E S :

2
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15 THE LAW OFFICES OF:
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Appeared on behalf of the
Defendant, Arnold
Engineering Company.

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1 MS. NIJMAN: Or if you just want to
2 refer to Arnold Engineering as Arnold, we
3 can certainly agree to that.

4 MS. PAMENTER: Okay. We'll do that
5 then. We'll agree that the Arnold
6 Engineering Company is Arnold.

7 MS. NIJMAN: Uh-huh.

8 BY MS. PAMENTER:

9 Q Are you familiar with a company by
10 the name of Environmental Information
11 Logistics, LLC or EIL?

12 A Yes.

13 Q How do you know that company?

14 A Through the 300 West interaction with
15 them using them on the property.

16 Q And when you say "the property," is
17 that the site?

18 A 300 West, yes, the lease that we
19 have.

20 Q Has Arnold entered into a contract or
21 other agreement with EIL, Environmental
22 Information Logistics, relating to this case
23 since October 1st, 2016?

24 A No.

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1 BY MS. PAMENTER:

2 Q Other than what Counsel has done and
3 your attempts via phone and/or e-mail to
4 Mr. Daley, what has the Arnold Engineering
5 Company done to ensure compliance with
6 Paragraph 5 of the consent order as modified?

7 A Via use of our attorneys, they have
8 been in communication for updates and prodding.
9 300 West is taking the lead on this, and we are
10 following up to see that they're meeting the
11 requirement as they are.

12 Q Why is 300 West taking the lead on
13 this?

14 A It's part of our agreement through
15 the lease agreement.

16 MR. JABLECKI: I'll just object to
17 relevance in that that calls for a legal
18 conclusion since it's not subject to the
19 current petition.

20 BY MS. PAMENTER:

21 Q At any point since June 1st of 2016
22 when the consent order was entered, did the
23 Arnold Engineering Company retain a consultant
24 corresponding to the work that needed to be

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1 completed in accordance with Paragraph 5 of
2 that consent order?

3 A No.

4 Q At any point since June 1st of 2016
5 when the consent order was entered, did the
6 Arnold Engineering Company retain a drilling
7 company to take any soil or groundwater samples
8 that needed to be completed in accordance with
9 Paragraph 5 of the consent order as modified?

10 A No. As I mentioned, 300 West was
11 taking the lead, and there would be no reason
12 to double up on it.

13 Q At any point since June 1st, 2016
14 when the consent order was entered, did the
15 Arnold Engineering Company retain a laboratory
16 to analyze any of the soil or groundwater
17 samples that needed to be completed in
18 accordance with Paragraph 5 of the consent
19 order as modified?

20 A No, as I stated previous.

21 Q Is the Arnold Engineering Company
22 aware of whether a drilling company was
23 retained with respect to the work required
24 under Paragraph 5 of the consent order as

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1 Arnold Engineering Company participate on any
2 calls with the laboratory that was retained
3 corresponding to the analysis of any of the
4 soil or groundwater samples that needed to be
5 completed under the consent order as modified?

6 A I would say no, but I'm not sure was
7 there any representatives from the lab on that
8 February call.

9 Q At any point since June 1st, 2016
10 when the consent order was entered, did the
11 Arnold Engineering Company pay any invoices of
12 any consultant that was retained corresponding
13 to the work to be completed under Paragraph 5
14 of the consent order?

15 A No.

16 Q At any point since June 1st, 2016
17 when the consent order was entered, did the
18 Arnold Engineering Company pay any invoices of
19 any drilling company that was retained
20 corresponding to the soil and groundwater
21 samples that needed to be completed under
22 Paragraph 5 of the consent order as modified?

23 A No.

24 Q At any point since June 1st, 2016

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1 when the consent order was entered, did the
2 Arnold Engineering Company pay any invoices of
3 any laboratory that was retained to analyze any
4 of the soil or groundwater samples that needed
5 to be completed in accordance with Paragraph 5
6 of the consent order as modified?

7 A No.

8 Q Other than to its attorneys, has the
9 Arnold Engineering Company paid any amounts
10 associated with any of the work being performed
11 pursuant to Paragraph 5 of the consent order as
12 modified?

13 A We are paying our lease, our rent,
14 which is an all inclusive rent, which basically
15 pays the taxes, sales tax or property taxes, as
16 well as any upgrades of the property that needs
17 to be done, minor repairs. So we are providing
18 monthly revenue to 300 West that has gone up
19 twice in 2017.

20 Q Other than as you've testified, has
21 the Arnold Engineering Company paid any amounts
22 associated with the work to be performed
23 pursuant to Paragraph 5 of the consent order as
24 modified?

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1 MS. NIJMAN: When you say that, does
2 that include like the hookups, the water
3 hookups, everything?

4 MS. PAMENTER: No, Paragraph 5
5 corresponds to the site investigation, both
6 on site and off site as well as the Revised
7 CSIR-ROR by its terms.

8 MS. NIJMAN: Right, but broadly
9 speaking, that could include the work to be
10 done under the hookups, too, correct?

11 MS. PAMENTER: The hookup project is
12 a separate paragraph under the consent
13 order. It's a completely separate section.
14 So I have been referring solely to
15 Paragraph 5, which corresponds to the
16 petition pending before the Court.

17 BY MS. PAMENTER:

18 Q Would you like me to repeat the
19 question, Mr. Cozart?

20 A Yes.

21 Q Other than as you've testified, has
22 the Arnold Engineering Company paid any amounts
23 associated with the work to be performed
24 pursuant to Paragraph 5 of the consent order as

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Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

LARRY COZART
November 14, 2017

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1 modified?

2 A No.

3 Q If you'll turn in the fourth agreed
4 modification to the next page, page 5. On page
5 5, there is a Paragraph 8 entitled: Biweekly
6 and Monthly Reports; do you see that?

7 A Yes.

8 Q Are you familiar with the obligation
9 to submit reports to the Illinois EPA and our
10 office?

11 A Yes.

12 Q Has the Arnold Engineering Company
13 submitted any monthly reports to our office?

14 A Arnold?

15 Q Arnold.

16 A No.

17 MS. NIJMAN: Independently?

18 MS. PAMENTER: Yes.

19 BY THE WITNESS:

20 A No.

21 BY MS. PAMENTER:

22 Q Let me rephrase. Has the Arnold
23 Engineering Company submitted independently any
24 monthly reports to our office?

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1 A No.

2 Q Has the Arnold Engineering Company
3 submitted any monthly reports through any other
4 entity to our office?

5 A I don't know of any that they would
6 have reported since 300 West was taking the
7 lead on the consent order.

8 Q I'm handing you what was previously
9 marked as Revised CSIR Petition Exhibit 22.
10 This is the bottom half of a work order between
11 Environmental Information Logistics or EIL and
12 300 West. We agreed during the previous
13 deposition that we would redact the top portion
14 of that document.

15 I'm just curious. Have you seen
16 this, what remains, the bottom half of that
17 document, have you seen that before today?

18 MS. NIJMAN: Him personally?

19 MS. PAMENTER: Him personally, yes.

20 BY THE WITNESS:

21 A No.

22 BY MS. PAMENTER:

23 Q Was the Arnold Engineering Company
24 aware of whether EIL had stopped working on

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1 this project at any point?

2 A It was brought to my attention from
3 our attorneys, a conversation they were having
4 with weekly updates or biweekly updates.

5 Q Do you know whether EIL has agreed to
6 recommence working on the project?

7 A I believe they have.

8 Q If you look at Number 9 on this
9 document, you'll see the third sentence states:
10 On depletion of the retainer to \$20,000 or
11 less, work will cease until additional payment
12 is made. Has the Arnold Engineering Company
13 agreed to provide any funds to EIL to ensure
14 that the work does not cease on this project?

15 A We have -- The only thing that we
16 have made an obligation to is the lease of the
17 rent that is providing revenue to 300 West.

18 Q If we could go back to Revised CSIR
19 Petition Exhibit 16, which is the -- is EIL's
20 October 25th, 2017 letter.

21 So that -- If you look in the fourth
22 paragraph on the first page of that letter,
23 this speaks to --

24 MS. NIJMAN: The one that starts on

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1 BY MS. PAMENTER:

2 Q Can you answer that at all without
3 divulging privileged communications?

4 A No.

5 Q What's steps will the Arnold
6 Engineering Company take in the future to
7 ensure compliance with the consent order as
8 modified?

9 MS. NIJMAN: Same objection.

10 BY THE WITNESS:

11 A We will continue through this path of
12 communicating with 300 West and them taking the
13 lead.

14 Q Anything else?

15 A No.

16 Q I'm handing you what I have -- Well,
17 now I've marked this wrong. I thought I did
18 these right last night.

19 (WHEREUPON, Revised CSIR
20 Petitioner Exhibit No. 29 was
21 marked for identification.)

22 BY MS. PAMENTER:

23 Q I'm handing you what I have marked as
24 Revised CSIR Petition Exhibit 29, yes?

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1 **contracted.**

2 BY MS. PAMENTER:

3 Q Did the Arnold Engineering Company
4 have any issues with insolvency in August of
5 2017?

6 A No.

7 Q Do you understand the term
8 insolvency?

9 A Yes.

10 Q I just want to make sure.

11 A Yeah, I'm assuming you're talking
12 bankruptcy.

13 Q Well, bankruptcy is actually filing
14 something. A company can be insolvent without
15 actually having to file a bankruptcy. So I was
16 a little more broad than simply using the term
17 bankruptcy.

18 A Okay.

19 Q I will ask the question differently.
20 Was the Arnold Engineering Company able to pay
21 its bills as they came due in August of 2017?

22 A Arnold?

23 Q Yeah.

24 A We pay our bills, yes.

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1 Q Was that of Arnold Magnetic
2 Technologies Corporation or Arnold Engineering
3 Company or both?

4 A I work for Arnold Magnetics.

5 Q Okay.

6 A Yeah, on the corporate position.

7 Q You have several times during the
8 deposition used the phrase 300 West was taking
9 the lead with respect to the work under the
10 consent order. What does that mean to you?

11 A That means that they are taking the
12 lead, that they are the lead -- you know, like
13 anything, if we're not -- I'm not -- I have got
14 plenty to do; and knowing that somebody is
15 taking on that responsibility financially as
16 well as the actions behind it, that, to me, is
17 taking the lead.

18 Q If 300 West failed to take the lead
19 on compliance under the consent order, does the
20 Arnold Engineering Company intend to step in
21 and take the lead?

22 MS. NIJMAN: Objection to privilege,
23 joint common-interest privilege as well as
24 attorney-client privilege.

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1 BY MS. PAMENTER:

2 Q Can you answer that question without
3 divulging privileged information?

4 A If and when or if it -- I mean, we're
5 saying if -- it's an if thing --

6 MS. NIJMAN: I would also object to a
7 hypothetical scenario. He's not an expert
8 witness. He's not required to answer a
9 hypothetical.

10 BY THE WITNESS:

11 A From day-to-day operations, we make
12 business decisions. We will make a business
13 decision if the environment changes.

14 BY MS. PAMENTER:

15 Q Well, 300 West failed to take the
16 lead in August and September to ensure that the
17 Revised CSIR-ROR was completed by the deadline
18 of September 13, 2017.

19 Did Arnold Engineering Company step
20 in to take the lead in that instance?

21 MS. NIJMAN: Objection to asked and
22 answered. This witness has stated now
23 several times his response that there was a
24 delay, but they were still taking the lead.

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1 BY MS. PAMENTER:

2 Q Is that your answer, Mr. Cozart?

3 A Yes.

4 MS. PAMENTER: I just need a minute.

5 (WHEREUPON, a short break
6 was had.)

7 MS. PAMENTER: I don't have any more
8 questions.

9 MS. NIJMAN: Okay.

10 MR. JABLECKI: I don't have any
11 questions.

12 MS. NIJMAN: No questions. Reserve
13 signature.

14 MS. PAMENTER: Thank you.

15
16 FURTHER DEPONENT SAITH NOT.....
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22
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24



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

BRUCE RAUNER, GOVERNOR

ALEC MESSINA, DIRECTOR

217/524-3300

June 8, 2018

CERTIFIED MAIL

7015 0640 0004 7916 0062

John Daley
300 West LLC
c/o Dennis G. Walsh, Esq.
Howard C. Jablecki, Esq.
Klein, Thorpe & Jenkins, Ltd.
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Chicago, Illinois 60606

The Arnold Engineering Company
c/o Jennifer T. Nijman, Esq.
Susan M. Franzetti, Esq.
Kristen L. Gale, Esq.
Nijman Franzetti LLP
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603

Re: LPC #1110650003 – McHenry County
Marengo – Arnold Magnetic Technologies
300 West LLC
Superfund/Technical Reports

Dear Mr. Daley and the Arnold Engineering Company (or Counsel):

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the *Revised Comprehensive Site Investigation and Remediation Objectives Report* (dated March 1, 2018 and received March 13, 2018, Log No. 189-66673) prepared by Environmental Information Logistics, LLC for the above site pursuant to the Consent Order entered on June 1, 2016, as modified (Consent Order). The *Revised Comprehensive Site Investigation and Remediation Objectives Report* is disapproved with the following comments.

1. The report largely includes attachments consisting of previously submitted reports, many of which were previously disapproved and do not incorporate the results of sampling conducted since the historic reports were drafted; it offers no conclusions based on the totality of sampling conducted since investigative activities were initiated at the site and fails to present a cogent discussion that brings together the results of all investigative work to present a clear picture of conditions in a logical narrative that addresses all of the requirements of 35 IAC Section 740.420 and 740.425.
2. The report did not include site base maps (for both soil and groundwater) with concentrations delineated illustrating the extent of contaminants identified above the Tier 1 Remediation Objectives. These maps should show the sampling locations, indicate the depths of samples and

EXHIBIT

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identify constituents above objectives, their concentrations and indicate the extent of the concentrations above the applicable objectives with the locations of samples below objectives used to define this extent. These maps should be pathway specific so that a map is presented showing the extent of soil ingestion exceedances, the extent of soil inhalation exceedances, soil component of groundwater exceedances, etc. for each of the exposure routes listed in 35 IAC 742.

3. The locations of many soil borings have been changed on the figures in relation to site features from previously submitted reports. It is assumed that these were corrections to previous figures, but there is no discussion in the report concerning these changes and the impact they have to relationships between sampling locations and RECs.
4. The applicant is proposing to establish background concentrations for metals for soil and groundwater to exclude pathways or propose Tier 3 objectives. The sampling to determine background concentrations should have been conducted as part of the site investigation activities and the proposal for background objectives should have been included as part of the Remediation Objectives Report.
5. The applicant has proposed to determine the, “chemical character and extent of oil emanating from the floor of building 2/3/4/7.” This investigation should have been conducted as part of the site investigation activities and the results included in the report.
6. The data in the sampling results table, page 21 of 39, sheet 37 for GP505 is garbled. This table should be corrected.
7. The detection limits of samples for numerous chemical constituents at multiple sampling depths in boring GP466 exceeded the Tier 1 objectives. There is no discussion or explanation for these exceedances or plan to address them in the report.
8. The Remediation Objectives Report states that, “Monitored Natural Attenuation” will be the proposed remedial action to address both soil and groundwater exceedances of Tier 1 remediation objectives identified off-site. In accordance with 35 IAC 742.1105, natural attenuation is not an approvable remediation strategy and cannot be used to prevent direct human exposure to groundwater.

The following comments are from the Illinois EPA’s June 17, 2016 disapproval of the *Comprehensive Site Investigation Report and Remediation Objectives Report* (Illinois EPA Log No. 16-61842) and are re-stated since they were not addressed in the *Revised Comprehensive Site Investigation and Remediation Objectives Report* and/or because portions of the revised report were recycled in whole from the previously disapproved *Comprehensive Site Investigation Report and Remediation Objectives Report* (Note: The original comment numbers are set forth below for ease in cross-referencing them).

2. The December 31, 2014 response letter from the Illinois EPA included the following comment:

“Normally one of the first steps in the remediation process is the identification of Recognized Environmental Conditions (RECs) and Areas of Concern (AOCs), with detailed sampling plans subsequently developed. To date, it appears that the EGSL June 3, 2014, Response to Illinois EPA Comments Letter Dated April 22, 2014 has been

the best source of RECs and AOCs. However the information contained therein was not satisfactorily used in the development of a sampling plan.

In the December 24, 2014, Proposed Site Investigation Work Plan, EGSL states that it is “. . . extremely difficult, if not impossible, to determine an exhaustive list . . .” of RECs and AOCs; EGSL therefore considers all current and historical operations areas as an AOC, “for all practical purposes.” The Illinois EPA does not necessarily agree with the position expressed by EGSL, regarding RECs and AOCs. However, since all soil and groundwater samples are to be analyzed for full Target Compound List contaminants, together with the need for expediency in the identification of contamination on both the site and surrounding areas, the Illinois EPA deems that this approach is acceptable.

When a Comprehensive Site Investigation Report is submitted, analytical results from the proposed sampling should be provided in a clear manner that shows sample locations in relation to RECs and AOCs identified in the EGSL June 3, 2014, Response to Illinois EPA Comments Letter Dated April 22, 2014 and any other applicable sources. Such information should be provided via appropriate drawings and tables.”

The Comprehensive Site Investigation Report did not include the relationship between the RECs and AOCs previously identified in the June 3, 2014 EGSL Response to Comments Letter or to any RECs identified since that time. The Report should be updated to include all known RECs and AOCs (located on site base maps), their relationship to current sampling locations and should include additional soil and groundwater sampling where necessary to address data gaps.

5. The Report included references to a Tier 3 proposal for development of remediation objectives for the “soil component of the Groundwater Ingestion Exposure route” for metals and PNAs to be submitted as addendums to the report at some future date. It should be noted that a Tier 3 exclusion of groundwater ingestion exposure routes under 742.925 must address both the soil component and groundwater component of the exposure route as a whole. One “component” of the exposure route cannot be excluded on its own. Please note that Consent Order No. 13 CH 1046 Section III(D)(4)(a) and (b) indicates applicable on and off-site soil and groundwater must meet 35 Ill Adm Code Part 742 Tier 1 or 35 Ill Adm Code Part 620 Class I standards, respectively, unless Illinois EPA agrees in writing.
6. The report includes a discussion for a Tier 3 exclusion of the groundwater component of the Groundwater Ingestion Exposure route for dissolved lead in MW-46. As discussed above, one component of an exposure route cannot be excluded. The exposure route must be treated as a whole addressing both components. In addition, it is not clear why this was presented as a Tier 3 exclusion when it appears that it is relying on a demonstration that the lead concentration would not be expected to migrate off-site based on R-26 modeling. Please note that Consent Order No. 13 CH 1046 Section III(D)(4)(a) and (b) indicates applicable on and off-site soil and groundwater must meet 35 Ill Adm Code Part 742 Tier 1 or 35 Ill Adm Code Part 620 Class I standards, respectively, unless Illinois EPA agrees in writing.
7. The report states that manganese in soil and groundwater will be addressed through a review of regional background groundwater conditions. If the applicant intends to rely on area

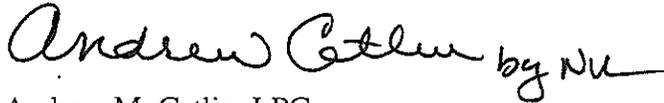
background as remediation objectives for the site, then the area background concentrations must be determined in accordance with 35 IAC 742.405 and 742.410. The discussion included in Section 3.3.7.2 of the Report did not include calculations of an area background for soil or groundwater in accordance with the requirements of these Parts and is not approved as a demonstration that manganese exceedances of Tier 1 objectives are representative of background conditions.

8. When averaging soil sample results to demonstrate compliance relative to the soil ingestion and soil inhalation exposure routes, all samples must be collected within the contaminated area. It appears that the nickel results in boring GP-329 are the result of an anomalous contamination event that should not be averaged with more generalized site-wide data which is more representative of background or naturally existing concentrations. The GP-329 area should be considered as a hot-spot removal area.
9. The site specific average calculations for PNAs and metals were calculated based only upon sampling data from samples within the upper three feet of the soil column and therefore did not address exceedances beyond this depth. How will the exceedances of the objectives beyond three feet in depth be addressed?
10. The Tier 1 groundwater remediation objectives for metals are based on total concentrations. Using dissolved (filtered) concentrations to demonstrate compliance with these objectives is not allowable unless groundwater samples from the same well/location at the same time are collected with one sample unfiltered and the second sample filtered and an argument is presented demonstrating that the sediment within the unfiltered sample was resulting in elevated concentrations. The Report appears to discount all of the total metals exceedances identified in groundwater.
11. Section 2.8.1 of the Report states that, "...12 USTs, several ASTs, PCB containing transformers and hazardous waste storage areas have been identified at the site." The locations of these RECs were not included on the site base maps and a demonstration has not been made that existing sampling has adequately addressed potential soil and groundwater impacts from the RECs. Site base maps should be developed showing the locations of all RECs as well as sampling points which address potential impacts from the RECs. Additional sampling should be proposed to investigate RECs which have not been addressed to date.
12. Section 2.8.1 of the Report states that, "...while identification of many closed in place and removed USTs is known, the location of all such USTs has not been fully defined at this time." A Comprehensive Site Investigation Report must include the locations of all tanks including all known past and current product and waste underground tanks and piping (740.425(b)(D)(iii)). The locations of all current and historic tanks (the Illinois State Fire Marshal documents 17 USTs currently or historically located on-site) must be identified on site base maps, properly closed if no longer in use and investigated for potential soil and groundwater impacts.
13. Section 2.8.4.9 of the report states that there were no identified exceedances of Tier 1 groundwater remediation objectives for the Indoor Inhalation Exposure Route. According to Table 6, tetrachloroethene was detected at a concentration of 1.3 mg/l on-site in monitoring well MW-37 exceeding the industrial/commercial indoor inhalation remediation objective of 0.34 mg/l. And according to Table 16, tetrachloroethene was detected at a concentration of

0.19 mg/l off-site in monitoring well MW-83 exceeding the residential indoor inhalation remediation objective of 0.091 mg/l. Based on these concentrations the indoor inhalation exposure route must be evaluated both on-site and off-site.

Future submittals should be directed to my attention at the address indicated on the letterhead and should include two hard copies and one e-mailed copy along with a completed DRM-2 Form if the submittal includes technical results or analysis. If you have any questions I can be contacted at the address and phone number listed above or at email: andrew.catlin@illinois.gov.

Sincerely,



Andrew M. Catlin, LPG
Project Manager
Remedial Project Management Section
Bureau of Land

cc: Joseph D. Miller
Environmental Information Logistics, LLC
jmillereil@comcast.net

Kathryn Pamenter
Stephen Sylvester
Assistant Attorneys General
Illinois Attorney General's Office
Environmental Bureau North

Michelle Ryan, Illinois EPA, Division of Legal Counsel
Tom Rivera, Illinois EPA/BOL/DLPC/FOS – Des Plaines
Bureau of Land File

encourages residents to follow the IDPH recommendations and use the bottled water provided as a requirement of the Injunctive Orders.

The OIAG and the Illinois EPA are seeking a long-term solution for contamination on the Site. This will require the comprehensive identification of on-site and off-site chemical contamination so that options may be evaluated regarding appropriate solutions. Our goal includes remediation of all contaminants that are present on-site at levels greater than state cleanup values and off-site at levels greater than safe drinking water standards for private well water use.

Quarterly sampling of private wells in the off-site investigation area, to the north/northwest of the site, will continue to provide information about contamination levels so that Illinois EPA can keep citizens informed. Further outreach to the public about the Site status or contamination levels will be made as new information is received.

If you have questions about the status of the Arnold Magnetic Technology site, you may contact Carol Fuller. Her contact information is below.

Sincerely,



Kurt Neibergall, Acting Bureau Chief
Illinois Environmental Protection Agency

Carol L. Fuller
Office of Community Relations
Illinois EPA
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Springfield, Illinois 62794-9276
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carol.fuller@illinois.gov

CC: Kathryn A. Pamenter, Assistant Atty. General
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 31, 2015

VIA E-MAIL AND REGULAR MAIL

Honorable Steven L. Weskerna, MBA
Supervisor
Marengo Township
4010 North State Route 23
Marengo, IL 60152

Dear Supervisor Weskerna:

We have received your letter of July 27, 2015 and the attached Resolution from Marengo Township dated July 20, 2015. The groundwater contamination in your area has been and will continue to be a top priority of the Illinois Attorney General's Office, as we pursue the pending legal action against 300 West, LLC and The Arnold Engineering Co. (the "Defendants"). The goal of our Office has been and continues to be to make sure that residents have permanent access to safe drinking water, and that the Defendants remediate the soil and groundwater contamination.

On June 7, 2013, our Office received an enforcement referral from the Illinois Environmental Protection Agency ("Illinois EPA") against the Defendants. We immediately contacted the Defendants to discuss the violations noted in the referral and to outline with the Defendants the immediate steps needed. On June 14, 2013, we filed a Verified Complaint for Injunction and Civil Penalties in McHenry County Circuit Court against the Defendants. On that same date, the Court entered an Agreed Immediate Injunction Order, which required the Defendants to provide bottled water to certain homeowners whose private well water was contaminated with chlorinated volatile organic compounds and to conduct quarterly sampling of certain private water wells located on Ritz Road and Railroad Street near the Defendants' site. On August 23, 2013, the Court entered an Agreed Preliminary Injunction Order, requiring the Defendants to (a) continue providing bottled water to such homeowners, (b) continue conducting the quarterly private water well sampling, (c) submit a site investigation work plan to the Illinois EPA for review and approval, and (d) submit a focused site investigation report to the Illinois EPA for review and approval.

On June 11, 2014, the Court entered a Second Agreed Preliminary Injunction Order, requiring the Defendants to (i) continue providing bottled water to certain homeowners, (ii) continue conducting the quarterly private water well sampling, (iii) submit a list of all "recognized environmental conditions" to the Illinois EPA, (iv) submit a supplement to the Defendants' November 20, 2013 Focused Site Investigation Report to the Illinois EPA that contained the results of an additional investigation of the site, including any soil and groundwater contamination extending beyond the boundaries of the site, (v) submit a "Remedial Objectives

EXHIBIT

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Supervisor Weskerna Letter
July 31, 2015
Page 2

Report” following receipt of Illinois EPA’s approval of the supplemental site investigation report, and (vi) submit a “Remedial Action Plan” following receipt of Illinois EPA’s approval of the Remedial Objectives Report. Thereafter, on March 12, 2015 and May 8, 2015, respectively, the First Agreed Modification and Second Agreed Modification to the Second Agreed Preliminary Injunction Order were filed with the Court. Each modification required the Defendants to conduct further supplemental on-site and off-site sampling of the soil and groundwater to fully delineate the boundaries of the contamination plumes. To date, the Defendants are continuing to conduct such sampling to define the plume boundaries.

In addition to the foregoing, the Attorney General’s Office has been aggressively preparing its case for trial against the Defendants for their alleged violations of the Illinois Environmental Protection Act, namely 415 ILCS 5/43(a) (2014) (substantial danger to the environment, public health and welfare), 415 ILCS 5/12(a) (2014) (water pollution) and 415 ILCS 5/22.2(f) (2014) (cost recovery). Illinois civil procedure rules allow each party to litigation to seek discovery from the other parties. The first phase in this case involves fact discovery. To date, we have taken 23 fact depositions, served subpoenas to consultants for documents, reviewed about 100,000 pages of documents, litigated motions to compel, filed two Petitions to Enforce Court Orders and filed a First Amended Complaint. We are continuing to receive documents from the Defendants and have approximately seven more fact depositions to complete. The Defendants intend to take at least three fact depositions. All of the fact discovery is scheduled to conclude by August 30, 2015. The Petition to Enforce Court Order which we filed on July 21, 2015, however, seeks to resolve Arnold Engineering’s refusal to turn over to the State certain documents regarding the contamination which it contends are privileged. Due to this pending document dispute, the Court may extend the fact discovery deadline.

When the fact discovery is completed, the case will proceed to the expert discovery phase. This phase will include the identification of testifying expert witnesses, the production of related documents and the taking of depositions. After expert discovery is completed, the parties may file various pre-trial motions before the case proceeds to trial. We do not have a trial date yet. We recognize that civil litigation can be time consuming with no certainty as to the result. We are committed to pursuing this litigation to conclusion and are striving to minimize the time necessary to complete it.

As you mention in your letter and Resolution to us, the State has been involved in attempting to negotiate a Court Order with the Defendants to address the violations, which would ensure a safe potable water supply for local residents. Such a negotiated resolution has been elusive. Absent an agreement by the Defendants to undertake a full remediation of the soil and groundwater and to install a safe potable water supply for those affected, our only recourse is to continue to pursue the needed injunctive relief through litigation.

Supervisor Weskerna Letter
 July 31, 2015
 Page 3

We fully understand the impact this ongoing contamination is having on your community and residents and are committed to pursuing this lawsuit as expeditiously as possible.

Please let me know if you have any questions.

Sincerely,

 Matthew J. Dunn, Chief
 Environmental Enforcement/Asbestos
 Litigation Division
 Illinois Attorney General's Office
 500 South Second Street
 Springfield, IL 62706

cc: Senator Pamela Althoff
 Representative Jack Franks
 Heather Greenquist, Town Clerk
 Tom Kearney, Marengo Township Trustee
 Robert Levin, Marengo Township Trustee
 Ray Jones, Marengo Township Trustee
 Mr. Jay Filler, Esq.
 Joseph Gottemoller, McHenry County Board Chairman
 Donald Lockhart, Marengo Mayor
 Mary McCann, District 6 County Board Member
 Michelle Aavang, District 6 County Board Member
 Diane Evertsen, District 6 County Board Member
 Larry Smith, District 6 County Board Member
 John Adamson, Highway Commissioner
 Jon Klick, Assessor
 Gary Boden, Marengo City Administrator
 Elizabeth Kessler, McHenry County Conservation District Executive Director
 Ed Weskerna, McHenry County Soil and Water Conservation District Manager
 Mrs. Ann Taggart
 Mr. Jeff Diver, Esq.
 Mr. Patrick Ries, P.E.
 John Kim, Illinois EPA Chief Legal Counsel
 Mary Morrissey-Kochanney, Deputy Chief of Staff, Policy
 Elizabeth Wallace, Bureau Chief
 Kathryn Pamenter, Assistant Attorney General

Stephen T. Grossmark
312-627-4017
sgrossmark@tresslerllp.com

Willis Tower
233 South Wacker Drive
61st Floor
Chicago, Illinois 60606

April 30, 2019

VIA E-MAIL TRANSMITTAL

Mr. Howard C. Jablecki
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hcjablecki@ktjlaw.com

Ms. Kristen Gale
Nijman Franzetti LLP
10 S, LaSalle St. #3600 A
Chicago, IL 60603
kg@nijmanfranzetti.com

Dear Ms. Gale and Mr. Jablecki,

The McHenry County Conservation District ("Conservation District") understands that Arnold and 300 West intend to obtain, and are actively pursuing at this time, a groundwater use restriction ordinance that would apply to property near the Arnold site in McHenry County, including Conservation District property, prohibiting use of groundwater. Arnold and 300 West then plan that such an ordinance would be the basis, at least in part, for an IEPA issued No Further Remediation ("NFR") letter.

Please advise if this, or any of this, is not correct. If this is correct in whole or in part, the Conservation District objects to such a groundwater use restriction ordinance and such an NFR letter. As you are aware, groundwater is the only source of water at the Conservation District property at this location. Such an ordinance, and a NFR letter on which it would be based, would be contrary to the purposes for which the Conservation District and all conservation districts were established by the Illinois legislature. Those purposes include promoting conservation of the natural environment and natural resources of Conservation District property and managing Conservation District property so as to leave it unimpaired for the benefit of future generations. The ordinance being suggested by Arnold and 300 West, and an NFR letter based on such an ordinance, would be contrary to and undermine these mandates of the Illinois legislature.

The suggested ordinance, and a NFR letter on which it would be based, would also be contrary to, and violate, Illinois law, which would include the Illinois Constitution as applied to the Conservation District, the Illinois Environmental Protection Act (Act) and regulations that implement the Act.

The Conservation District respectfully requests that Arnold and 300 West abandon attempts to obtain this type of ordinance and a NFR letter based in whole or in part on such an ordinance and meet their legal obligations in this regard in an appropriate, legal, professional and timely manner.

Very truly yours,



Stephen T. Grossmark

STG/tw2/4836-0896-5264

Communication: Steven Grossmark-Attorney for McHenry County Conservation District (Presentations)

EXHIBIT

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ATTACHMENT 2

18. No Further Action Response Determination. Upon closing of this transaction, Purchaser shall promptly undertake and diligently pursue, in accordance with this Section 18, all actions to obtain a focused "No Further Remediation" ("NFR") letter respecting the Known Environmental Conditions from the IEPA's Bureau of Land ("BOL"), using IEPA's Tiered Approach to Corrective Action ("TACO") as provided herein. In connection therewith and subject to the terms of this Section 18, Purchaser shall (a) investigate, characterize, cleanup, remove, treat, encapsulate, cap or otherwise remediate Known Environmental Conditions at the Property, including construction or implementation of land-use restrictions and engineering controls, and (b) respond to any government directives, orders, requests for information or other documents in any way relating to investigation, cleanup, removal, treatment or remediation or potential investigation, cleanup, removal, treatment or remediation of Known Environmental Conditions in the soils or groundwater on, in or under the Property to a level specifically required by applicable Environmental Laws and/or the IEPA to meet the applicable commercial/industrial cleanup standards under Environmental Laws (i.e., not the residential, school or child-care standards, or other more stringent standards not applicable to commercial/industrial use) to obtain the focused NFR, subject to Seller's obligation to indemnify Purchaser for Environmental Losses for any Unknown Environmental Conditions as provided in Section 16(a), above, and further subject to the terms and conditions of this Section 18. Purchaser, by written notice to Seller within twenty (20) days after the Effective Date of this Agreement, shall propose a scope of work (including a detailed sampling plan, recommendations, timetable and specifications) and detailed budget for such work required to obtain the NFR, which scope of work and budget are subject to Seller's prior written approval, which approval shall not be unreasonably withheld. Once the scope of work and budget are so approved by Seller (as approved, respectively, the "Work Plan" and "NFR Budget"), Purchaser shall promptly commence and diligently pursue the Work Plan to completion in strict accordance with its terms and obtain the NFR. At Closing, Title Company shall deposit the sum of Three Hundred Thousand Dollars (\$300,000.00) ("Reimbursement Amount") with GreatBank Chicago pursuant to the Post-Closing Hold-Back Agreement. The balance from time to time of the unused Reimbursement Amount held in escrow is referred to herein as the "Reimbursement Account." Purchaser shall be entitled to reimbursement from the Reimbursement Account for the reasonable and actual out-of-pocket expenses incurred by Purchaser in implementing the Work Plan consistent with the NFA Budget, in the cumulative not to exceed the Reimbursement Amount ("Qualified Expenses") as provided in the Post-Closing Hold-Back Agreement. If Purchaser obtains the NFR before incurring cumulative Qualified Expenses equal to or greater than the Reimbursement Amount, Purchaser shall be entitled only to reimbursement for those Qualified Expenses actually incurred in such efforts and shall not be entitled to further reimbursement from the Reimbursement Account, whether under this Agreement or otherwise, and the then balance of the Reimbursement Account shall be released to and belong to Seller. In no event shall Purchaser be entitled to any reimbursement for amounts in excess of the then balance of the Reimbursement Account. Purchaser's obligation to obtain the NFR is not limited to or by the amount of the Reimbursement Amount. Purchaser will be responsible for and shall pay when due all costs and expenses required to

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obtain the NFR that exceed the Reimbursement Amount and all costs and expenses that are not Qualified Expenses, subject to Seller's indemnification obligations under Section 16(a), above, with respect to Environmental Losses for Unknown Environmental Conditions. Purchaser shall not change the Work Plan without the prior written consent of Seller, which shall not be unreasonably withheld. Purchaser shall provide the Seller with copies of all draft proposals, work plans, reports and similar documents for Seller's review and reasonable, written approval (which shall be done on a timely basis, not to exceed five (5) business days after the date of receipt of the same by Seller) before implementing such proposals or work plans or submitting such documents or reports to any Governmental Agency. Purchaser shall keep Seller apprised on a quarterly basis, and shall provide the Seller copies of documents, relating to: (i) any discussions and agreements with any Governmental Agency concerning any remediation of the Property; (ii) any testing and remediation programs that Purchaser plans to implement pursuant to the Work Plan, (iii) the results of testing and cleanup pursuant to the Work Plan and (iv) any other information reasonably requested by the Seller with respect to the status of the Work Plan and/or NFR process. Purchaser shall promptly provide Seller a true and complete copy of the final NFR upon receipt of the same by Purchaser. The obligations of Purchaser under this Section 18 shall survive closing of this Agreement and delivery of the Deed and shall not be extinguished or merged in any circumstances.

ATTACHMENT 1

Suggested Agenda

October 10, 2013

1. Who Are the Marengo Concerned Citizens ?

Ray and Ruth Anthony
4106 Ritz Road
Marengo, IL 60152
(shale: 109 – 135')

Deb Kearney
4210 Ritz Road
Marengo, IL 60152
(limerock: 108 – 118')

Lydia Anthony
4501 Ritz Road
Marengo, IL 60152

Steve and Ann Anthony
4805 Ritz Road
Marengo, IL 60152
(gravel: 45 – 55')

Tom and Kathy Pace
4907 Ritz Road
Marengo, IL 60252
(gravel: 60 – 63')

Michael and Geneva Lewis
4913 Ritz Road
Marengo, IL 60152
()

David Gerber and
Danette and Julia Marshall
5010 Ritz Road
Marengo, IL 60152
()

Gertrude Randall
5011 Ritz Road
Marengo, IL 60152
(gravel: 35 – 40')

Lydia Anthony Trust, Ellen
Foley, Karen Nacke, and
Steven and Raymond Anthony
4805 Ritz Road
Marengo, IL 60152
(gravel: 45 – 55')

2. What Are They Concerned About ?

- A. Obtaining a reliable supply of clean, low-sodium water for all purposes: drinking, cooking, bathing/showering, washing of dishes, washing of clothes / fabrics and feeding of pets and farm animals.
- B. Adverse physiological impacts caused by past ingestion of contaminated water or inhalation of contaminated fumes or aerosols.
- C. Devaluation of their homes and property.
- D. The lack of, gaps in or questions about public information concerning, e.g., the source(s) of the contamination, the geology / hydrogeology on the Arnold / 300 West property, the characteristics of the upper aquifer, the distribution of contamination in the upper aquifer, the threat to the intermediate aquifer.
- E. The remedial intentions of Arnold / 300 West.
- F. The goals of Illinois EPA and the Attorney General's Office.

3. What Do They Want ?

- A. Ability to Participate in the Development of Plans for the Investigation, Delineation and Remediation of Soil and Groundwater Contamination.
- B. Accomplishment of the Following:
1. Clear demonstration that all sources of the contamination have been identified and treated to a clean state or removed. This includes remaining areas of contaminated soil on the Arnold / 300 West property.
 2. Clear demonstration of the extent of contamination of the upper aquifer and the contamination or threat of contamination to the lower aquifer in which some of the potable water wells are located. This would include definition of the horizontal and vertical extent of the groundwater contamination from the contaminant source area(s) and downgradient. Testing would be of *in situ* groundwater, not just water at the tap. And, as the aquifer is so thick, testing would be through nested wells.
 3. As an interim solution: (a) continued periodic groundwater testing until the permanent solution is reached; (b) provision, before winter, of reverse osmosis treatment systems at each residence whose well is screened in the contaminated groundwater zone; (c) post-installation testing of water treated in the systems; and, (d) agreement for payment of all system maintenance. The citizens do not want long-term bottled water or connection to the Marengo public water supply.
 4. For all testing to be done on citizens' properties, the tester's prearrangement for such testing and the presentation of credentials before testing.
 5. As a permanent solution: complete cleanup of the groundwater contamination on the Arnold/300 West property and the citizens' properties.
 6. Until the permanent solution is reached, a guarantee of the fair market value of the citizens' properties, without the groundwater contamination.
 7. Payment for medical examinations and consultations for each of the citizens who has been exposed to water from the contaminated groundwater aquifer, to obtain a medical opinion whether that exposure has caused bodily harm, and the payment of future medical costs if it is agreed such harm has been caused.

Jeffrey R. Diver
2S741 Crimson King Lane
Glen Ellyn, IL 60137

September 16, 2020

The McHenry County Board of Health

Re: Public Hearing on a Proposed Ordinance to Prohibit the Use of Drinking Water Wells

COMMENTS ON
PROPOSED ORDINANCE TO PROHIBIT THE USE OF WATER
FROM PRIVATE WELLS
FOR DRINKING, COOKING, BATHING, WASHING OR CLEANING

On June 6, 2013, a group of rural McHenry County homeowners were sent letters by the Illinois Department of Public Health, notifying them – out of the blue - that their drinking water wells are contaminated with chlorinated solvents, and they should stop drinking or cooking with the water. IDPH went so far as to tell some homeowners they should not take hot showers unless the bathroom windows were open. A week later, June 13, 2013, the homeowners were sent letters by the Illinois EPA, advising that groundwater at the Arnold property was contaminated with these solvents, that the contamination had migrated, that some of the chemicals are health- , even cancer-threatening, and showing a map of Ritz Road and Railroad Street in an “Area of Concern.” The next day, on June 14, 2013, the Illinois Attorney General sued 300 West, LLC and The Arnold Engineering Company, (“the Defendants”), for contaminating groundwater and directing Defendants to remedy the environmental insult and, in the meantime, to provide bottled water to many of the homeowners.

In July I met with the homeowners, and in August I began my representation. I am an environmental attorney, having practiced in that specialization area since 1973. At that early date, I was fortunate to have been the Acting Director of the Illinois EPA and, later, the IEPA’s Deputy Director. For the next 46 years, I was an environmental attorney.

I represented my Ritz Road and Railroad Street clients as their attorney from August 2013 until the end of April 2019, when I retired from the practice of law. However, as Defendants had not yet hooked the homeowners to the Marengo public water supply, I agreed to provide them non-legal consultation until hook-up occurred.

Little did I know that Defendants would, in the meantime, seek the current ordinance from McHenry County - to block any present or future usage of the homeowners' water wells as potable water sources.

This written response is being provided *pro bono* on behalf of the residents of Ritz Road and Railroad Street.

There are some things which need saying, and I think my involvement with this matter since July 2013 qualifies me for saying them.

The purpose of the requested groundwater use restriction ordinance is simply this: 300 West and Arnold , (the Defendants), want to avoid having to develop and implement a plan to cleanup the groundwater contamination which they caused and aggravated.

The bottom line is this: if Defendants cannot obtain the groundwater ordinance from McHenry County, they will have to follow Illinois Site Remediation Program requirements. These, in turn, require Defendants to develop Remedial Action Objectives and a Remedial Action Plan to clean up the contamination that began, as they put it, “decades ago,”¹ but which has continued year-after-year with no corrective action. Defendants clearly do not want to remediate the groundwater. And, except for feeding some glib, absolutely unsupported generalities, they do not even want to persuade you that it cannot be remediated.

Defendants say the ordinance is being proposed “to protect residents of McHenry County”² Putting aside the skepticism generated by the contaminators of groundwater saying they now want to “protect” those who had been drinking contaminated well water for “decades,” present and future owners of wells in the affected zone can be “protected” much more simply than with the ordinance proposed by Defendants. Remember, the ordinance does not prevent well owners from intentional or inadvertent potable use of water; and, it does not prevent a property owner from seeking a permit to install a potable water well. Rather, it puts notice in a document, recorded on title to the property , that the groundwater is contaminated or may become contaminated, and advises anyone who reads that notice that there is an ordinance which forbids property owners from installing a new well for potable purposes, and forbids using water from an existing well for potable purposes. The ordinance does not require the owners of drinking water wells, or local governments, to disconnect those wells from domestic water lines or to abandon such wells.

Given that, if McHenry County wanted to provide an equivalent “protection,” it could pass any requirement which would put some kind of notice on the title to property or otherwise,

¹ Technical and Regulatory Justification for Establishing a Groundwater Use Restriction Ordinance, Presentation to McHenry County Board of Health by Defendants, (“Proposal to Board of Health”), 12/9/19, p.3

² 300 West LLC and the Arnold Engineering Co. v. Jack Franks and McHenry County Board, p. 1.

which would tell the current and future owner of the property that their groundwater is in a zone of actual or threatened contamination, and that drinking the water could be hazardous.

Of course, such a “protective” notice is not what Defendants are looking for. They want a specific kind of ordinance with particular language which will allow Illinois EPA to grant them a “free pass” from the obligation to remediate the groundwater to drinking water quality.

What the homeowners want – to protect their health - has been clear from the beginning: Defendants should be required to clean up the groundwater to drinking water condition; and, in the meantime, Defendants should provide each home with a reliable interim source of clean water. And, once the groundwater has been remediated, the homeowners want the right to resume use of their well water for all of their potable purposes.

At an October 10, 2013 Chicago meeting with Defendants, their attorneys, representatives of the Attorney General’s Office and a collection of the homeowners, the homeowners handed the Defendants and AAGs a statement of what they wanted:³ “As a permanent solution: complete cleanup of the groundwater contamination” on Arnold’s property and their properties. And as “an interim solution”: installing a whole house water treatment system in each of their homes, allowing them to have clean water not just for drinking and cooking, but also for bathing, showering, washing of hands, washing of dishes and washing of clothing.⁴

What did they expressly not want? Hook-up to the Marengo public water supply.⁵

The homeowners were encouraged in their position by Illinois EPA. In a 2/11/14 letter, IEPA responded to a rural Marengo citizen’s complaints to Illinois EPA Director Lisa Bonnett about Arnold’s contamination of the groundwater. In its letter, IEPA referenced the McHenry County lawsuit being pursued by the Attorney General and supported by IEPA, and concluded:

“Our goal includes remediation of all contaminants that are present on-site at levels greater than state cleanup values and off-site at levels greater than safe drinking water standards for private well use.”

And, Defendants initially reacted positively to the homeowners’ desires.⁶ That enthusiasm continued through May 2015, when Defendants’ new environmental consultant sent Illinois EPA a 13-page summary of the activated charcoal / reverse osmosis treatment system that

³ 10/10/13, “Suggested Agenda” of the Marengo Concerned Citizens, Attachment 1

⁴ Defendants had been ordered to provide the residents with bottled water, but that was only to meet drinking and cooking needs.

⁵ Ibid., p. 2 (numbered para. 3)

⁶ 10/21/13 Atty for 300 West email to Jeff Diver.

Defendants were going to install in 6 houses whose well water exceeded federal drinking water standards.⁷ The consultant was not only high on the proposal, but clearly understood that these in-home treatment systems were an interim device: they would be used only until “the suspected sources “ of the contaminants in the wells would be remediated or mitigated.”⁸ The Attorney General’s Office scheduled a July 9, 2015, to discuss the whole house water treatment system, and I prepared a list of questions which were presented to the Defendants at the meeting.⁹ In my questions, I, again, advised that the in-home treatment system “will be in place until the groundwater contamination is eliminated,” and I further advised that the homeowners assume that “cleanup . . . will take multiple years to accomplish.”¹⁰

Everything was moving forward on providing homeowners with an interim supply of clean water, until the third week of July, when a homeowner representative was told “off the record,” by a local public servant, that the in-home treatment system “is NOT acceptable.” We did not learn to whom it was unacceptable until I received a September 14, 2015 motion from Defendants in the State’s lawsuit.¹¹ In their motion, they said:

“Defendants have withdrawn their proposal to install water filtration systems for use on an interim basis and are now working on an alternative remedy.”¹²

The homeowners have never been provided an explanation – good, bad or indifferent - for this unilateral withdrawal from 21 months of discussions.

But, they subsequently learned that the Attorney General’s Office and the Defendants were in the process of negotiating a settlement of the State’s 2013 lawsuit, which would include a requirement that Defendants build a water main to connect Ritz Road and Railroad Street with the City of Marengo public water supply. And, they learned that the City of Marengo and the Defendants were negotiating a memorandum of understanding through which Defendants would build a City water main to serve the Arnold property, a City water main to serve Ritz Road and Railroad Street, and annex the Arnold property into the City of Marengo.

The homeowners were denied any ability to participate in the State’s negotiations, although I did make telephone calls to the Assistant Attorneys General and expressly advised

⁷ 5/15/15 Weaver Consultants Group, “Summary of Proposed Drinking Water Remedial Design.”

⁸ Ibid., p. 2.

⁹ “QUESTIONS RAISED BY DEFENDANTS’ DESCRIPTIONS OF THE PROPOSED WHOLE HOUSE WATER TREATMENT SYSTEMS,” drafted 7/7/15 by Jeff Diver.

¹⁰ Ibid., Question 2, p. 1.

¹¹ 9/14/15 Defendants Emergency Motion to Extend Fact Discovery Deadline, State v. 300 West, LLC and The Arnold Engineering Co.,

¹² Ibid, p. 2

them that the homeowners want “(1) a temporary replacement supply” of water, and (2) the right to return to use their wells when the contamination is remediated.¹³ And, further, I advised that homeowners do not want to give up their wells, and the water main, in their eyes, is just a “temporary solution.”¹⁴

The City did not allow the homeowners to participate in their negotiations of the MOU, but the City Manager and City Attorney reviewed the concerns of one homeowner and responded, “If in fact there is a desire not to use the city water after a time and a desire to return [to] well water, I believe that you would be able to disconnect. . . .”¹⁵

It has been more than four years since Defendants agreed to hook the homeowners up to the Marengo water supply,¹⁶ and that has yet to happen. But, the owners of the contaminated and threatened wells have been consistent throughout. Groundwater should be actively remediated, and they should be allowed to return to their well water for potable purposes once it is.

Defendants are asking McHenry County for a huge favor, because there is nothing – no statute, regulation or anything else - which requires McHenry County to pass the ordinance proposed by Defendants. McHenry County has absolute discretion to deny the “free pass” Defendants are seeking, to avoid cleaning up their contamination of McHenry County groundwater.

The County may have the obligation to give 300 West and Arnold a hearing, but there is no federal or Illinois statute or regulation which requires the County to pass, or even to consider passing, an ordinance to enable a groundwater polluter to avoid having to clean up the mess it created. There are, for sure, requirements and standards for Illinois EPA to consider in deciding whether such an ordinance should provide that “free pass.” But, there is nothing telling a county or other local government what it must or should consider or give weight in deciding whether to pass the ordinance in the first place.

So, what are the kinds of things the County might want to consider in deciding whether Defendants have come before the County with what courts of equity call “clean hands?”

Did the entities asking for the ordinance have anything to do with the groundwater contamination which the ordinance is addressed to?

¹³ Notes, Jeff Diver November 30, 2015 telephone conference with AAG Katie Pamerter.

¹⁴ Notes, Jeff Diver December 9, 2015 telephone conference with AAG Pamerter and AAB Beth Wallace.

¹⁵ Feb. 22, 2016 email from City Manager Gary Boden to Ann Taggart, {one of the homeowners}, as well as the Major of Marengo, and other City officials.

¹⁶ June 1, 2016 Consent Order, in People v. 300 West LLC and The Arnold Engineering Co., Docket 13 CH 1046, 22nd Judicial Circuit, McHenry County

The answer is “yes.”

While Arnold has been operating at the Marengo site since 1895, its AlNiCo magnet production began at the Marengo facility in the mid-1930s.¹⁷ It has used perchloroethylene , (PCE), and trichloroethylene , (TCE) , and tetrachloroethane, (TCA), in its magnet production processes for many years.¹⁸ The property was inspected in 1992 , and reported to have been using trichloroethane and trichloroethene for degreasing in at least 8 of the plant buildings, and finding TCA contamination in the site holding pond and percolation field 1n 1990, and TCA contamination in a site monitoring well in 1992. ¹⁹ In 2004 and 2006, ENVIRON, a consultant hired by Arnold, investigated the site and reported elevated levels of trichloroethane, perchloroethylene and trichloroethylene had been detected in the groundwater monitoring wells at the NW corner of the Arnold property, very close to residential properties using private water wells: discovery of solvent concentrations in excess of federal drinking water standards were made in 2001, 2004 and 2005. ²⁰

300 West has had control of the Arnold property now for 14 years.

No serious investigation of the Arnold property, by either Defendant, occurred until they were sued by the Illinois Attorney General in June 2014.

Were one or more of the entities who are legally responsible for the groundwater cleanup suckered into buying the contaminated property with no knowledge of the contamination?

The answer is “no.”

I understand that at the June hearing, the issue was raised whether 300 West LLC acquired the Arnold property with little or no knowledge of the contamination on it. To the contrary, 300 West commissioned a pre-purchase Limited Phase II Subsurface Soil and Groundwater Investigation Report, 410 pp, and, in Schedule 16(a) of the Property Purchase Agreement of May 25, 2006, nine additional reports and communications were identified as describing the site contamination. All of this information was referred to in the Agreement as “Known Environmental Conditions.” And 300 West was required, by the Agreement, to investigate and remediate all such contamination under the direction of Illinois EPA.

¹⁷ CODI 10-K, p. 37.

¹⁸ Two 6000 gal underground storage tanks for 1,1,1-trichloroethane were installed in 1959. Environ, April 2008 Phase I Environmental Site Assessment, p. III-11.

¹⁹ PRC Environmental Management, Inc., Preliminary Assessment / Visual Site Inspection of the Arnold site, for USEPA, 3/18/93

²⁰ ENVIRON International Corp., Environmental Review of Nine Arnold Magnetics Facilities, Mar. 2004 ; ENVIRON International Corp., Update d Environmental Review of Six Facilities of Arnold Magnetics, Mar. 2006

Did the entities responsible for the problem move forward with due speed in trying to identify the size of the problem they created, and a plan for remediating that problem?

The answer is “no.”

300 West claims it “voluntarily” entered the 90-acre Arnold property into the Illinois EPA Site Remediation Program ²¹ That’s not true. Rather, when 300 West bought the Arnold property on May 25, 2006, the seller required, as a condition of the sale, that 300 West enter the property promptly into the Site Remediation Program and clean it up its soil and groundwater contamination.²² But, although 300 West claims that it then enrolled the site in the SRP in June, 2007,²³ it did not do that. No, it did not enter the Program until May 2008,²⁴ after IEPA sent two Notices of Violation to the Defendants , in February and April of 2008. IEPA cited Defendants with multiple violations of the Illinois Environmental Protection Act, related to contamination of soil and 20-year old groundwater contamination on the Arnold property and the threat it presented to nearby residential drinking water wells. The Agency strongly suggested Defendants should enter the Site Remediation Program within 45 days.²⁵

Defendants responded to the IEPA Notices of Violation with two separate written commitments to Illinois EPA , to complete the necessary Site Investigation Report, the Remediation Objectives Report, the Remedial Action Plan and the Remedial Action Completion Report by December 2008.²⁶ Here we are, twelve years later, and Defendants have still not presented Illinois EPA with an acceptable Site Investigation Report - a report which is supposed to provide a detailed description of the nature and extent of all soil and groundwater contamination on, and migrating from, the Arnold property. Defendants’ last commitment was to produce the SIR this year, but it now appears it will be presented in 2021 at the earliest.

Defendants have been sleep-walking their way through the Illinois Site Remediation Program, with one poor report after another and years between reports.

Have the entities which caused the contamination admitted to it, expressed any regret and offered to make the lives of those most adversely affected better?

²¹ “Proposal to Bd of Health”, 12/9/19, p.1.

²² 5/25/06 Property Purchase Agreement, Sec. 18. Attachment 2

²³ EIL letter, p. 1

²⁴ Site Remediation Program Application, dated 6/20/07, but not submitted to IEPA until May 12 , 2008, (see stamp at lower right of page 1.). Note, also, the Application contains , at p. 4, a Radius Map which had not been prepared until May 8, 2008. Attachment 3

²⁵ 2/28/08 IEPA Violation Notice L-2008-01057 and 4/15/08 IEPA Violation Notice L-2008-00123 . Attachments 4 and 5

²⁶ Site Remediation Program Application of May 12, 2008, p. 2; and 6/17/08 response by 300 West LLC to the two IEPA Notices of Violation earlier discussed. Attachment 6

The answer is “no.”

Neither Defendant has ever, to my knowledge, admitted to having caused, contributed to or aggravated the groundwater contamination to the north and north-west of the Arnold property. Their consultant speaks as though the problems just appeared one day . He says that “past owners and operators used solvents” at the property, as if those owners and operators were someone other than Arnold.²⁷ And the consultant never talks in the active voice – by saying that the actions or operations of Defendants caused the release of chlorinated solvents at the Arnold property which ultimately reached the groundwater under the Arnold property and then migrated away from the Arnold property to contaminate groundwater being used as a potable water supply by a group of residents N/NW of the Arnold property. Instead, we are told that the groundwater Defendants have contaminated is a “legacy groundwater use.”²⁸ And, that Defendants are working to address “legacy circumstances.”²⁹

The environmental contamination at and from the Arnold property did not present itself through a just –discovered will from a long-forgotten relative. It comes to us directly from those who caused it - those who may have begun to cause the contamination in the past, but who are present here and now, and available to correct the problems they created. There is nothing anonymous about who contaminated this groundwater and how.

Will this ordinance help the affected McHenry County properties to be developed or used for some higher purpose desired by the County?

The answer is “no.”

The ordinance will tell every future potential buyer of property, from Route 20 on the south to the Kishwaukee River on the north, and from West Street on the east to Thorne Road on the west, that they are buying “contaminated property,” that they will not have the ability to put a well on the property to use for potable water purposes, and that they might not be able to use an existing well for crop irrigation purposes.³⁰

Have the entities which caused the contamination presented a strong argument, supported by studies and testimony, that there is no way to actively remove the contaminants from this groundwater?

²⁷ Proposal to Bd of Health” , p. 1.

²⁸ Proposal to Bd of Health, p. 3

²⁹ EIL 6/9/19 letter to Chmn Franks, p. 2.

³⁰ IEPA has requested that the McHenry County Conservation District stop using its irrigation wells because of the contaminants in the water, and because the operation of the wells could be causing the contamination plume to change its course.

The answer is “no.”

Nothing has been presented.

Are the entities responsible for the needed groundwater remediation financially healthy?

Arnold has the financial resources needed to clean up the McHenry County groundwater it has contaminated.

300 West has told you that Arnold “is a privately-held manufacturer.”³¹ That is not true. For the past 74 years Arnold has been owned by a string of New York Stock Exchange publicly-held corporations.³²

It is Currently Owned by NYSE-listed Compass Diversified Holdings (CODI).³³ Compass had 2019 revenue of \$1,450,233,000, gross profits of \$519,443,000.³⁴ and total assets worth \$1,891,890,000, For 36 straight quarters, Compass has paid its shareholders an annual dividend of \$1.44.³⁵ Compass has only 8 subsidiary “Groups,” one of which is Arnold. Arnold has nine facilities worldwide, but “functions as one company and one team.”³⁶ Compass describes Arnold as “the largest and, we believe, the most technically advanced U.S. manufacturer of engineered magnetic systems.”³⁷

Additionally, Arnold reports in its 12/31/19 10-K Report that a group of large companies have contractually committed to indemnify and hold Arnold harmless for the cost of groundwater cleanup at the Arnold property.³⁸

CONCLUSIONS

I request that McHenry County deny Defendants’ proposal for a groundwater use restriction ordinance. Thank you.

Jeffrey R. Diver

³¹ 12/9/19 letter from Defendants’ environmental consultant, EIL, to County Board Chairman Franks , p.1

³² Allegheny Ludlum Steel Corporation (1946-1986), SPS Technologies, Inc. (1986-2003), Precision Castparts Corp. (2003-2005) , Audax Group, (2005-2012) and Compass Diversified Holdings, (2012 to present), CODI 10-K, pp. 37-38.

³³ Arnold 2019 Annual Report, “CODI Annual Report”, and 12/31/19 10-K filed with the SEC, (“CODI 10-K”)

³⁴ CODI 10-K, p. 57.

³⁵ Annual Report, p. 3

³⁶ CODI 10-K , p. 37

³⁷ CODI 10-K, p. 8.

³⁸ According to p. 68 of the CODI 10-K, SPS Technologies, LLC, SPS Technologies Ltd., Precision Castparts Corp. and Audax Private Equity Fund, L.P. all have the obligation to indemnify Arnold

08-37670

ATTACHMENT 3

Illinois Environmental Protection Agency
Bureau of Land
Remedial Project Management Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

FOR ILLINOIS 08/37670
LOG No. _____
\$500 Advance 1110650003
DRM-2 SRP F Arnold Magnetic Technologies
DRM-3 Reque SR/TECH

*Arnold Magnetic Technologies
1110650003*

Site Remediation Program Application and Services Agreement (DRM- 1) Form

I. Site Identification:

RELEASABLE

Site Name: 300 West LLC
Street Address: 300 N. West P.O. Box: _____ MAY 14 2008
City: Marengo ZIP Code: 60152 REVIEWER MD
County: Will Approximate Size of Site (Acres): 40.0
Illinois Inventory I.D. Number: 1110652003 USEPA I.D. Number: _____
Site Base Map Attached: Illinois EPA Permit(s): _____
LUST/IEMA Incident Number(s), if applicable: 20071279 ORIGINAL

II. Remediation Applicant ("RA"):

RA's Name: Mary Crandall Title: Vice President of Property Management
Company: MPR Management Inc
Street Address: 2340 S. River Road, Suite 310 P.O. Box: _____
City: Des Plaines State: IL ZIP Code: 60018
Phone: 847-376-2013 FEIN or SSN: 36-4478818
I hereby certify that I am authorized to sign this application and services agreement. I certify that the proposed project meets the eligibility criteria set forth in Section 58.1(a)(2) of the Environmental Protection Act (415 ILCS 5/58.1(a)(2)) and regulations promulgated thereunder and that this submittal and all attachments were prepared at my direction. In consideration for the Illinois EPA's agreement to provide (subject to applicable law, available resources, and receipt of the advance partial payment) review and evaluation services for activities carried out pursuant to Title 17 of the Illinois Environmental Protection Act (415 ILCS 5/58-58.12), I agree to:
(1) Conform with the procedures of Title 17 of the Illinois Environmental Protection Act (415 ILCS 5/58 - 58.12) and implementing regulations;
(2) Allow for or otherwise arrange site visits or other site evaluations by the Illinois EPA when requested;
(3) Pay any reasonable costs incurred and documented by the Illinois EPA in providing such services*; and
(4) Make an advance partial payment to the Illinois EPA for such anticipated services provided in Section V of this application.
As the Remediation Applicant, I understand that I may terminate this services agreement at any time, by notifying the Illinois EPA in writing that services previously requested under the services agreement are no longer wanted. Within 180 days after receipt of the notice, the Illinois EPA shall provide me with a final invoice for services provided until the date of receipt of such notification.
To the best of my knowledge and belief, this request and all attachments are true, accurate and complete. I hereby certify that I have the authority to enter into this agreement.
RA's Signature: *Mary Crandall* Date: 4/20/07
*In addition to the fees applicable under this Services Agreement, the recipient of a No Further Remediation Letter must pay to the Illinois EPA a No Further Remediation Assessment in the amount of the lesser of \$2500 or an amount equal to the costs incurred by the Illinois EPA under this Agreement (35 IAC 740.615).

RECEIVED

MAY 12 2008

IEPA/BOL

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

III. Project Objectives:

A.	Release Letter Requested. Please complete one of the subsections by checking applicable boxes and including other information (if necessary, additional information may be attached to this application form):	
<input checked="" type="checkbox"/>	Comprehensive No Further Remediation ("NFR") Letter	
<input type="checkbox"/>	Focused NFR Letter Identify the focused contaminants of concern by checking the applicable box(es): <input type="checkbox"/> Volatiles <input type="checkbox"/> BTEX <input type="checkbox"/> PCBs <input type="checkbox"/> Metals <input type="checkbox"/> Semivolatiles <input type="checkbox"/> PNAs <input type="checkbox"/> Pesticides <input type="checkbox"/> Other (identify): _____	
<input type="checkbox"/>	4(y) Letter Identify the focused contaminants of concern by checking the applicable box(es): <input type="checkbox"/> Volatiles <input type="checkbox"/> BTEX <input type="checkbox"/> PCBs <input type="checkbox"/> Metals <input type="checkbox"/> Semivolatiles <input type="checkbox"/> PNAs <input type="checkbox"/> Pesticides <input type="checkbox"/> Other (identify): _____ Identify the media of concern by checking applicable boxes: <input type="checkbox"/> Soil <input type="checkbox"/> Sediments <input type="checkbox"/> Other: _____ Identify the actions (e.g., drum removal, spill response, etc.): _____ _____ _____ _____	
B.	Identify any support services being sought from the Illinois EPA in addition to the review and evaluation services (if necessary, additional information may be attached to this application form):	
	<input checked="" type="checkbox"/> No additional support services are being sought <input type="checkbox"/> Assistance with community relations <input type="checkbox"/> Sample collection and analyses <input type="checkbox"/> Other (identify): _____	
C.	Anticipated Schedule	
	SRP Document	Projected Date of Receipt by Illinois EPA
	Site Investigation Report	December 2008
	Remediation Objectives Report	December 2008
	Remedial Action Plan	December 2008
	Remedial Action Completion report	December 2008
D.	Identify the current and post-remediation uses of the remediation site (if necessary, additional information may be attached to this application form):	
	Current Use: Industrial	
	Post-Remediation Use: Industrial and/or residential	

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

IV. Written Permission from the Property Owner (check one of the applicable boxes and provide additional information):

RA is the property owner of the remediation site identified in Section I of this application.

RA is not the property owner of the remediation site identified in Section I of this application.

Property Owner's Name: _____

Title: _____

Company: _____

Street Address: _____ P.O. Box: _____

City: _____ State: _____ ZIP Code: _____ Phone: _____

I hereby certify that the Remediation Applicant has my permission to enroll the site identified in Section I of this application into the Illinois EPA Site Remediation Program. I certify that the Remediation Applicant and designated representatives have permission to enter upon the indicated premises for the purpose of conducting remedial investigations or activities.

Owner's Signature: _____ Date: _____

For multiple property owners, attach additional sheets containing all the information above along with a signed, dated certification for each.

V. Advance Partial Payment:

The Remediation Applicant shall select **one** of the following advance partial payment plans:

Plan 1: A \$500 advance partial payment is included with this application. Please make the check payable to: "Illinois Environmental Protection Agency". Please include "For Deposit in the Hazardous Waste Fund" and the Remediation Applicant's FEIN or SSN on the check; or

Plan 2: Request that the Illinois EPA determine the appropriate partial payment (i.e., approximately one-half of the total anticipated costs of the Illinois EPA, not to exceed \$5,000). A completed DRM-3 form ("Request for Assessment of Advance Partial Payment for Anticipated Services") must accompany this application so that the Illinois EPA may determine the appropriate advance partial payment specific to the services requested.

NOTE: Illinois EPA cannot refund payments without a legislative appropriation. Payment under Plan 1 accelerates the review process but increases the risk of forfeiting the payment if the applicant is ineligible. Payment under Plan 2 may result in a larger advance partial payment when a final determination is made on the application, but it reduces the risk of forfeiture.

If this application contains plans and reports for review and evaluation by the Illinois EPA, a completed Form DRM-2 must also accompany this submittal.

The Illinois EPA is authorized to require this information under Section 415 ILCS 5/58-58.12 of the Environmental Protection Act and regulations promulgated thereunder. Disclosure of this information is required as a condition of participation in the Site Remediation Program. Failure to do so may prevent this form from being processed and could result in your application being rejected. This form has been approved by the Forms Management Center. All information submitted as part of this Application is available to the public except when specifically designated by the Remediation Applicant to be treated confidentially as a trade secret or secret process in accordance with the Illinois Compiled Statutes, Section 7(a) of the Environmental Protection Act, applicable Rules and Regulations of the Illinois Pollution Control Board and applicable Illinois EPA rules and guidelines.

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)



Environmental
Group
Services
Ltd.

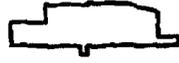
1110650003--McHenry County
Marengo/300 West LLC
300 West Street - Marengo, IL 60152

Drawing Title
1000ft Radius Map

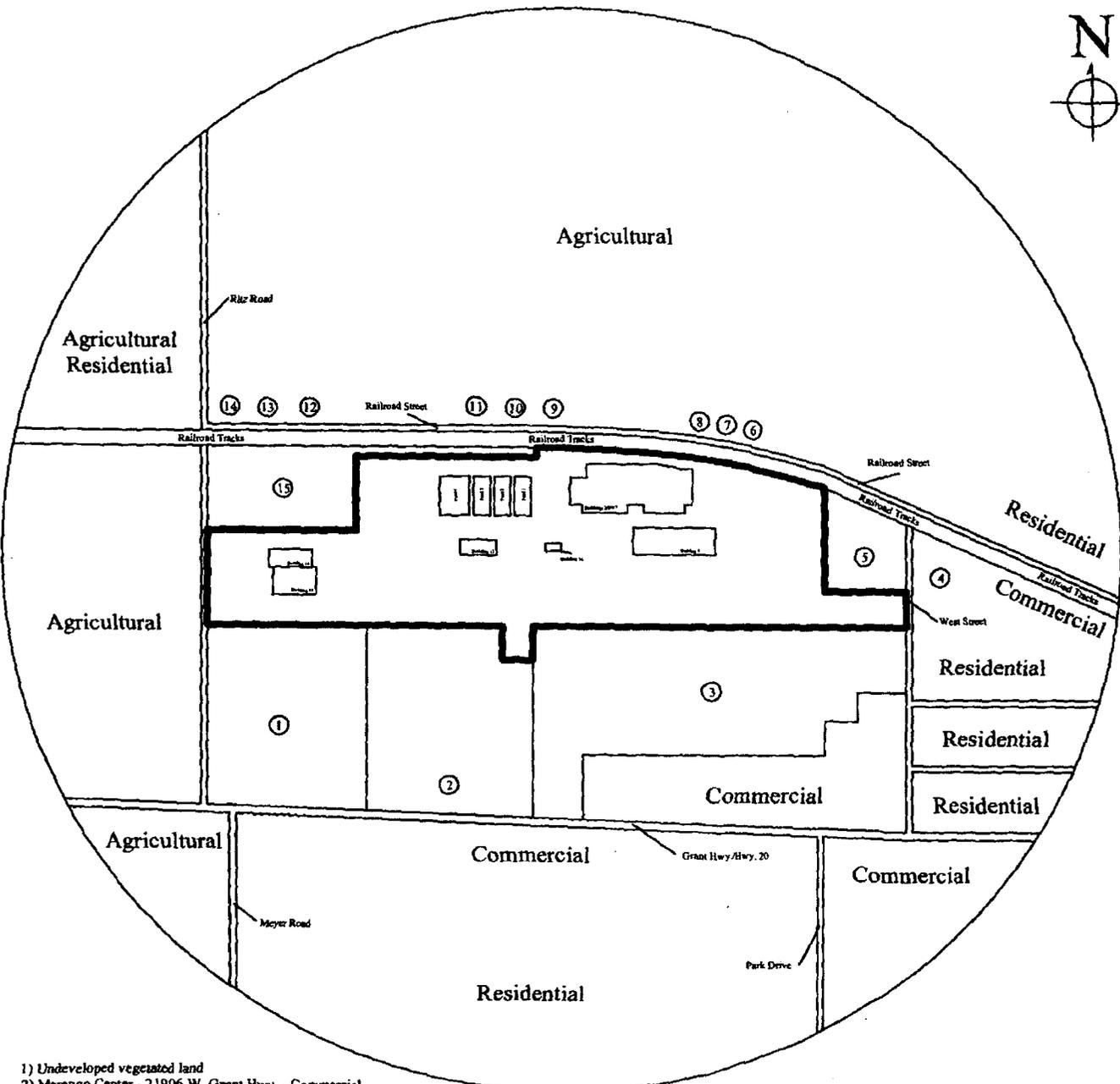
Date
05.08.08

Scale
1 inch : 780 feet

Legend



Remediation Site
Boundary



Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

- 1) Undeveloped vegetated land
- 2) Marengo Center - 21906 W. Grant Hwy. - Commercial
- 3) Agricultural farmland
- 4) 301 West Street - Residential
- 5) 312 West Street - Residential
- 6) 21606 Railroad St. - Agricultural/Residential
- 7) 21618 Railroad St. - Agricultural/Residential
- 8) 21820 Railroad St. - Agricultural/Residential
- 9) 21822 Railroad St. - Agricultural/Residential
- 10) 21824 Railroad St. - Agricultural/Residential
- 11) 21902 Railroad St. - Agricultural/Residential
- 12) 22012 Railroad St. - Agricultural/Residential
- 13) 22104 Railroad St. - Agricultural/Residential
- 14) 22110 Railroad St. - Agricultural/Residential
- 15) Commonwealth Edison Substation

RELEASABLE
MAY 14 2008
REVIEWER MD

300 WEST LLC
2340 S RIVER ROAD STE 310
DES PLAINES, ILLINOIS 60018
(847) 376-2043

CHASE
JPMorgan Chase Bank, N.A.
Chicago, Illinois
2-1/710

103:

8/8/2007

LPC # 1110650003

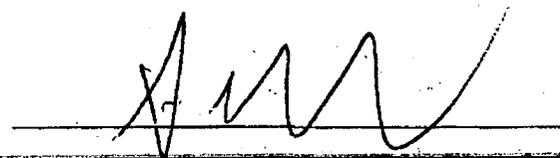
PAY TO THE ORDER OF I.E.P.A.

\$ 500.00

Five Hundred and 00/100

DOLLAR

I.E.P.A.



MEMO: 36-4478818
FOR DEPOSIT IN THE HAZARDOUS WASTE FUND
Application/Environmental Study

⑈001031⑈ ⑈071000013⑈ 711453571⑈

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

RELEASABLE

MAY 14 2008

REVIEWER MD



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

847/294-4000
847/294-4083 Fax

FEB 28 2008

Arnold Magnetic Technologies
300 N. West Street
Marengo, IL 60152

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7004 1350 0003 1611 1531

Attention: Al Kalaczinski

Re: Violation Notice, L-2008-01057
LPC #1110650003 - McHenry County
Marengo/Arnold Magnetic Technologies
Compliance File

Dear Mr. Kalaczinski:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the [Illinois] Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on a record review completed on February 26, 2008 by representatives of the Illinois Environmental Protection Agency (Illinois EPA).

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations, or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. The written response will constitute a proposed Compliance Commitment Agreement (CCA) pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject it within 30 days of receipt.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 545 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BENTON/ELGIN - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • CRACKSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5170
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

Arnold Magnetic Technologies
Page 2

If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet provided by Section 31(a) of the Act, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

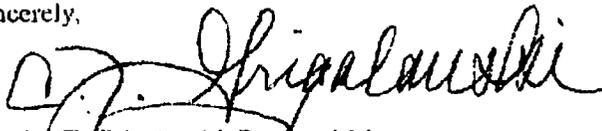
Written communications should be directed to:

Illinois EPA - Bureau of Land
Attn: Charles Grigalowski
9511 West Harrison Street, 3rd Floor
Des Plaines, Illinois 60016

All communications must include reference to this Violation Notice Number, L-2008-01057.

The text of the Act referenced herein is available at www.ipcb.state.il.us. If you have questions regarding this matter, please contact Thomas Rivera at 847/294-4079.

Sincerely,



Charles T. Grigalowski, Regional Manager
Field Operations Section
Bureau of Land

Enclosure

cc: Bureau of Land File
Des Plaines Region File

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

ATTACHMENT A

1. Pursuant to Section 12(a) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(a)), no person shall cause, 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 under this Act.

A violation of Section 12(a) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(a)) is alleged for the following reason: **The discharge of contaminants was caused and allowed in a way that caused water pollution. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within 1/2 mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.**

1,1,1-Trichloroethane (1,1,1-TCA) was detected as high as 4,900 ppb, in 1999, in on site groundwater monitoring well MW-3. More recently in 2007, 1,1,1-TCA was detected as high as 501 ppb in on site groundwater monitoring well MW-A7. Tetrachloroethene (PCE) was detected as high as 18.8 ppb, in 2007, in onsite groundwater monitoring well MW-3. PCE contamination in MW-3 has steadily increased over the past approximately 6 years. Other on site groundwater monitoring wells have chlorinated solvent detections as well, but MW-3 and MW-A7 have shown the highest concentrations of 1,1,1-TCA and PCE.

2. Pursuant to Section 12(d) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(d)), no person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

A violation of Section 12(d) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(d)) is alleged for the following reason: **Contaminants were deposited upon the land in such a place and manner that created a water pollution hazard. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within 1/2 mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.**

1,1,1-TCA was detected as high as 4,900 ppb, in 1999, in on site groundwater monitoring well MW-3. More recently in 2007, 1,1,1-TCA was detected as high as 501 ppb in on site groundwater monitoring well MW-A7. PCE was detected as high as 18.8 ppb, in 2007, in on site groundwater monitoring well MW-3. PCE contamination in MW-3 has steadily increased over the past approximately 6 years. Other on site groundwater monitoring wells have chlorinated solvent detections as well, but MW-3 and MW-A7 have shown the highest concentrations of 1,1,1-TCA and PCE.

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

SUGGESTED RESOLUTIONS

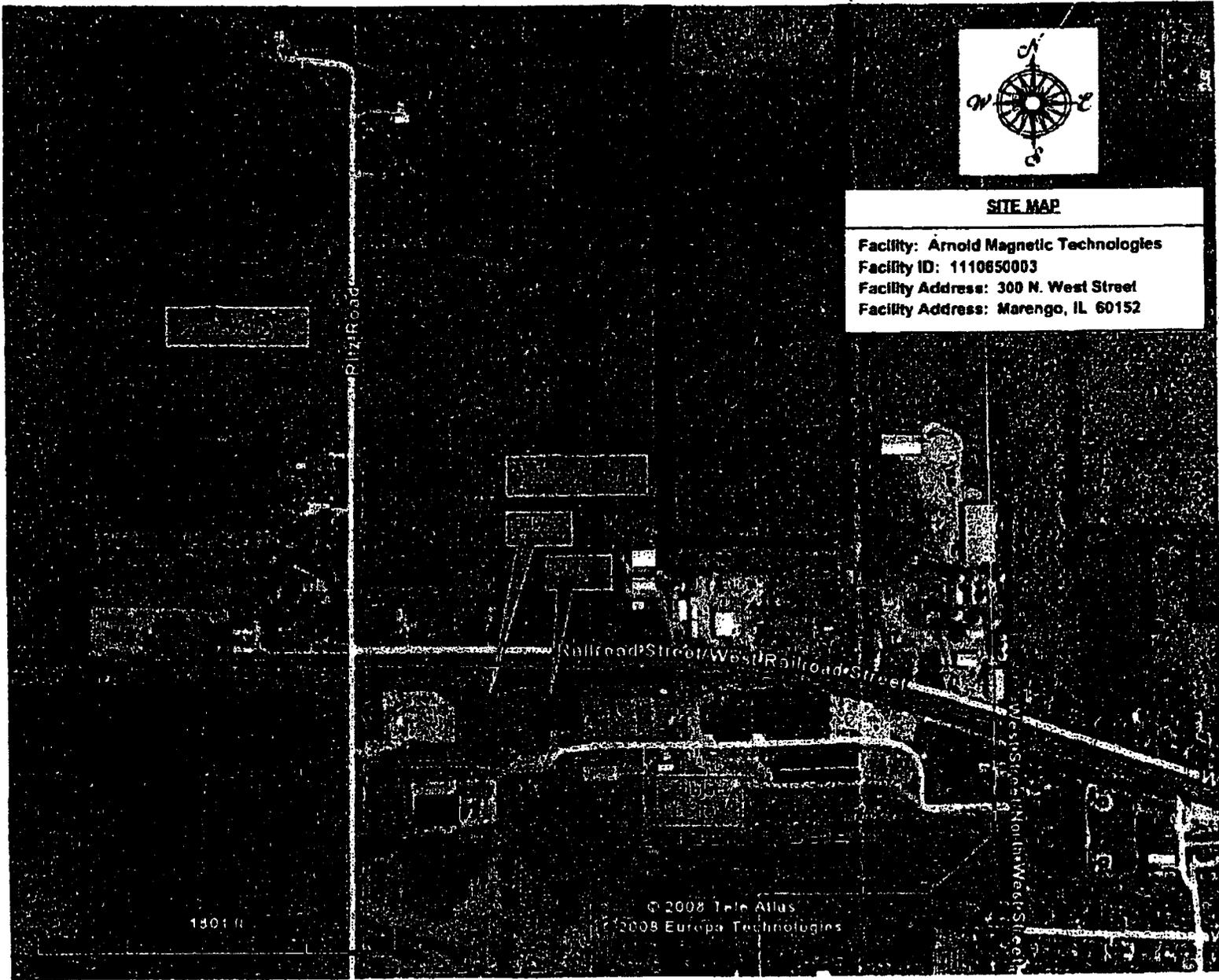
1. Immediately determine the source(s) of 1,1,1-TCA, PCE and other related contaminants that are present in groundwater under the subject site by conducting an Investigation.
 2. Immediately determine the extent of 1,1,1-TCA, PCE and other related contaminants in soil and groundwater, both on site and off site, by conducting an Investigation.
 3. Collect representative groundwater samples from all down gradient residential/nonresidential private water wells (approximately 16) located within approximately ½ mile of the site, see the attached map. The private water well samples shall be collected from an unfiltered and unsoftened spigot, after an appropriate water system purge is conducted. The samples shall be analyzed for Volatile Organic Compounds at an Illinois EPA approved laboratory. Illinois EPA would like to oversee the sampling event.
 4. Remediate, if necessary, to meet all applicable remediation objectives for soil and groundwater.
- * Immediately manage the groundwater to mitigate impairment caused by the release of volatile organic compounds.
 - * All copies of receipts/manifests, and analytical reports must be submitted to the Illinois EPA that document the proper disposal of any waste (i.e. impacted soil, contaminated groundwater). The receipts/manifests must be submitted within 10 days after the off-site shipment.
 - * Within 45 days from the receipt of this letter, enroll in the Site Remediation Program.
 - * A Site Investigation Work Plan shall be submitted within 30 days of the Illinois EPA approval of the Site Remediation application.
 - * The Site Investigation shall be implemented within 30 days of the Illinois EPA approval of the Site Investigation Work Plan.
 - * The Site Investigation Report shall be submitted within 180 days of approval of the Site Investigation Work Plan.
 - * The Remediation Objectives Report shall be submitted within 30 days of approval of the Site Investigation Report.
 - * The Remedial Action Plan shall be submitted within 30 days of Illinois EPA approval of the Remedial Objectives Report.
 - * The remedial action shall be implemented within 30 days of Illinois EPA approval of the Remediation Action Plan.

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

- * **The Remedial Action Completion Report shall be submitted within 365 days of Illinois EPA approval of the Remedial Action Plan.**

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and must be submitted to the Illinois EPA by certified mail, within 45 days of receipt of this Violation Notice. The written response must also include a proposed Compliance Commitment Agreement that commits to specific remedial actions, includes specified times for achieving each commitment, and may include a statement that compliance has been achieved.

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)



Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

847/294-4000
847/294-4083 Fax

APR 15 2008

300 West LLC
2340 River Road
Suite 310
Des Plaines, IL 60018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7004 1350 0003 1611 1586

Attention: John Daley and Sam Mandarino

Re: Violation Notice, L-2008-01123
LPC #1110650003 - McHenry County
Marengo/Arnold Magnetic Technologies
Compliance File

RELEASABLE

MAY 14 2008

Dear Mr. Daley and Mr. Mandarino:

REVIEWER MD

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the [Illinois] Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on a record review completed on February 26, 2008 by representatives of the Illinois Environmental Protection Agency (Illinois EPA).

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations, or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

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ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 967-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINGSVILLE - 2009 Mail Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

Arnold Magnetic Technologies
Page 2

If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet provided by Section 31(a) of the Act, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

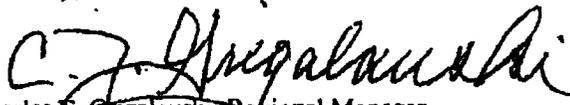
Written communications should be directed to:

Illinois EPA – Bureau of Land
Attn: Charles Grigalauski
9511 West Harrison Street, 3rd Floor
Des Plaines, Illinois 60016

All communications must include reference to this Violation Notice Number, L-2008-01123.

The text of the Act referenced herein is available at www.ipcb.state.il.us. If you have questions regarding this matter, please contact Thomas Rivera at 847/294-4079.

Sincerely,



Charles E. Grigalauski, Regional Manager
Field Operations Section
Bureau of Land

Enclosure

cc: Bureau of Land File
Des Plaines Region File

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

ATTACHMENT A

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A violation of Section 12(a) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(a)) is alleged for the following reason: The discharge of contaminants was caused and allowed in a way that caused water pollution. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within ½ mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.

1,1,1-Trichloroethane (1,1,1-TCA) was detected as high as 4,900 ppb, in 1999, in on site groundwater monitoring well MW-3. More recently in 2007, 1,1,1-TCA was detected as high as 501 ppb in on site groundwater monitoring well MW-A7. Tetrachloroethene (PCE) was detected as high as 18.8 ppb, in 2007, in onsite groundwater monitoring well MW-3. PCE contamination in MW-3 has steadily increased over the past approximately 6 years. Other on site groundwater monitoring wells have chlorinated solvent detections as well, but MW-3 and MW-A7 have shown the highest concentrations of 1,1,1-TCA and PCE.

2. Pursuant to Section 12(d) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(d)), no person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

A violation of Section 12(d) of the {Illinois} Environmental Protection Act (415 ILCS 5/12(d)) is alleged for the following reason: Contaminants were deposited upon the land in such a place and manner that created a water pollution hazard. Chlorinated solvent contamination above the Class 1 groundwater objectives is present in on site groundwater. The groundwater contamination has been present for approximately 20 years. Shallow groundwater flow under the site is to the north-northwest, towards the nearby Kishwaukee River. Residential/nonresidential private water wells are located to the north-northwest, directly down gradient of the site. The private wells are within ½ mile of the site and its unknown at this time if the private wells have been impacted by the chlorinated solvent groundwater contamination.

1,1,1-TCA was detected as high as 4,900 ppb, in 1999, in on site groundwater monitoring well MW-3. More recently in 2007, 1,1,1-TCA was detected as high as 501 ppb in on site groundwater monitoring well MW-A7. PCE was detected as high as 18.8 ppb, in 2007, in on site groundwater monitoring well MW-3. PCE contamination in MW-3 has steadily increased over the past approximately 6 years. Other on site groundwater monitoring wells have chlorinated solvent detections as well, but MW-3 and MW-A7 have shown the highest concentrations of 1,1,1-TCA and PCE.

SUGGESTED RESOLUTIONS

1. Immediately determine the source(s) of 1,1,1-TCA, PCE and other related contaminants that are present in groundwater under the subject site by conducting an Investigation.
 2. Immediately determine the extent of 1,1,1-TCA, PCE and other related contaminants in soil and groundwater, both on site and off site, by conducting an Investigation.
 3. Collect representative groundwater samples from all down gradient residential/nonresidential private water wells (approximately 16) located within approximately ½ mile of the site, see the attached map. The private water well samples shall be collected from an unfiltered and unsoftened spigot, after an appropriate water system purge is conducted. The samples shall be analyzed for Volatile Organic Compounds at an Illinois EPA approved laboratory. Illinois EPA would like to oversee the sampling event.
 4. Remediate, if necessary, to meet all applicable remediation objectives for soil and groundwater.
- * Immediately manage the groundwater to mitigate impairment caused by the release of volatile organic compounds.
 - * All copies of receipts/manifests, and analytical reports must be submitted to the Illinois EPA that document the proper disposal of any waste (i.e. impacted soil, contaminated groundwater). The receipts/manifests must be submitted within 10 days after the off-site shipment.
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 - * The Site Investigation shall be implemented within 30 days of the Illinois EPA approval of the Site Investigation Work Plan.
 - * The Site Investigation Report shall be submitted within 180 days of approval of the Site Investigation Work Plan.
 - * The Remediation Objectives Report shall be submitted within 30 days of approval of the Site Investigation Report.
 - * The Remedial Action Plan shall be submitted within 30 days of Illinois EPA approval of the Remedial Objectives Report.
 - * The remedial action shall be implemented within 30 days of Illinois EPA approval of the Remediation Action Plan.

-
- * **The Remedial Action Completion Report shall be submitted within 365 days of Illinois EPA approval of the Remedial Action Plan.**

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and must be submitted to the Illinois EPA by certified mail, within 45 days of receipt of this Violation Notice. The written response must also include a proposed Compliance Commitment Agreement that commits to specific remedial actions, includes specified times for achieving each commitment, and may include a statement that compliance has been achieved.

300 WEST LLC

2340 RIVER ROAD, SUITE 310
 DES PLAINES, ILLINOIS 60018
 FAX (847) 257-8888

June 17, 2008

VIA FEDERAL EXPRESS

IEPA – Bureau of Land
 9511 West Harrison Street, 3rd Floor
 Des Plaines, Illinois 60016
 Attention: Thomas Rivera

Re: Violation Notice Number, L-2008-01123

Dear Mr. Rivera:

This letter shall serve as a written response to Violation Notice Number L-2008-01057 on behalf of 300 West LLC, owner of the property at 300 N. West Street, Marengo.

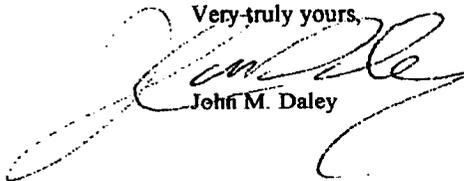
1. The source of 1,1,1-TCA and PCE detected in the groundwater monitoring wells along the northwestern portion of the subject property was reportedly related to historical operations conducted in that area. A historical subject building (“Building #6”) was located at the northwestern corner of the subject property and was reportedly demolished approximately 10-20 years ago. Historical industrial operations conducted within Building #6 reportedly utilized chlorinated solvents in production processes. The historical utilization of chlorinated solvents in this area is believed to be the source of elevated levels of 1,1,1-TCA and PCE in the groundwater.
2. 300 West LLC has engaged Environmental Group Services Limited (“EGSL”), and EGSL currently is working with Mr. Thomas Rivera of the IEPA regarding off-site groundwater sampling. Addresses were obtained from all of the northern, western, and northwestern properties that are possibly utilizing groundwater wells for potable purposes. Mr. Rivera sent letters to all of the neighboring addresses requesting access to the properties in order to sample the groundwater wells for each of the sites. At this time, Mr. Rivera and EGSL are awaiting for responses from the neighboring properties. Upon receipt of any and all responses, neighboring wells will be sampled, and all groundwater samples will be submitted to an accredited laboratory of analysis of VOCs. It is anticipated that the on-site sampling will be complete in approximately one month.
3. The subject property has been enrolled into the IEPA’s Site Remediation Program (SRP). Tim Zook has been assigned as the project manager for the site. Upon submittal of the Remedial Action Completion Report (RACR), a Comprehensive NFR for residential properties will be requested for the entire subject property. The RACR is anticipated to be complete by December 2008.

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

Thomas Rivera
June 17, 2008
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Do not hesitate to call me (312.420.6046) with any questions.

Very truly yours,



John M. Daley

Enclosures

Communication: Jeff Diver-Attorney for Residents (Documents Only) (Presentations)

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AGENDA ITEM

GROUNDWATER USE RESTRICTION ORDINANCE