

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.

Case 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.

**300 WEST LLC'S ANSWER TO FIRST AMENDED COMPLAINT FOR  
INJUNCTION AND CIVIL PENALTIES**

NOW COMES 300 WEST LLC, an Illinois Corporation, by and through its attorneys,  
KLEIN, THORPE AND JENKINS, LTD., and for its answer to Plaintiff's, PEOPLE OF  
THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of  
Illinois, First Amended Complaint for Injunction and Civil Penalties:

**COUNT I**

**SUBSTANTIAL DANGER TO THE ENVIRONMENT,  
PUBLIC HEALTH AND WELFARE**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA, against the Defendants, 300 West and Arnold, pursuant to the terms and provisions of Section 43(a) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/43(a)(2012), and is an action to restrain a substantial danger to public health and welfare and to the environment.

**RECEIVED  
ATTORNEY GENERAL**

MAY 13 2015

**ENVIRONMENTAL**

**ANSWER:** 300 West LLC (“300 West”) admits that the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois (“Plaintiff”), filed an action (“Complaint”) seeking relief under the Illinois Environmental Protection Act. The allegations of the Complaint speak for themselves, and 300 West denies that those allegations entitle Plaintiff to any relief. 300 West denies all other remaining allegations in Paragraph 1.

2. The Illinois EPA is an administrative agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2012), and charged, *inter alia*, with the duty of enforcing the Act.

**ANSWER:** 300 West admits the allegations of Paragraph 2.

3. At all times relevant to this Complaint, Defendant 300 West LLC was and is an Illinois corporation in good standing.

**ANSWER:** 300 West admits that it is an Illinois Limited Liability Company in good standing.

4. At all times relevant to this Complaint, Defendant The Arnold Engineering Co. was and is an Illinois corporation in good standing.

**ANSWER:** The allegations of Paragraph 4 are not directed at 300 West, and 300 West makes no response thereto. To the extent a response is required, 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4.

5. Between at least 1970 and January 2005, and on such dates better known to Arnold Engineering, Arnold Engineering owned the property located at 300 North West Street, Marengo, McHenry County, Illinois (the “Site”).

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5.

6. On or about May 25, 2006, and on such other dates better known to 300 West, 300 West purchased the Site and has since owned, and continues to own, the Site.

**ANSWER:** 300 West admits the allegations in Paragraph 6.

7. Since May 2006, Arnold Engineering has leased the Site from 300 West and conducted manufacturing operations at the Site.

**ANSWER:** 300 West admits that it leases the Site to several tenants, and that 300 West itself conducts no operations at the Site.

8. Between at least 1970 and the present, and on such dates better known to Arnold Engineering, Arnold Engineering operated a manufacturing facility at the Site. Arnold Engineering conducted its manufacturing operations in the following buildings at the Site:

- a. Building 1: Arnold Engineering utilized this building for magnet component manufacturing, pressing operations and heat treating. Building 1 was demolished in or about 2002, or on such date better known to Arnold Engineering.
- b. Building 2/3/4/7: Arnold Engineering utilized this building for tape-core, powder-core and winding operations associated with magnetic manufacturing, office space, maintenance, shipping and miscellaneous storage. Arnold Engineering ceased its manufacturing operations in this building in or about 2002, or on such date better known to Arnold Engineering.
- c. Building 5: Arnold Engineering currently utilizes and historically utilized this building for the manufacture of magnetic components.
- d. Building 6: Arnold Engineering conducted wet processing, mixed metal sludge pressing, iron powder compressing and baking/grinding operations in this building, which was demolished in or about 1993, or on such date better known to Arnold Engineering.
- e. Building 10: Arnold Engineering historically conducted drum storage, drum cleaning, and paint mixing in this building, and currently conducts drum and record storage in this building.
- f. Building 11/14: Arnold Engineering currently conducts, and historically conducted, rolling mill and finishing operations to produce thin-gauge rolled steel products in the building.
- g. Building 12: Arnold Engineering historically utilized this building as a warehouse.
- h. Building 16: Arnold Engineering currently utilizes, and historically utilized, this building as a hazardous and non-hazardous material storage area.

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

9. Prior to 2002, and on such dates better known to Arnold Engineering, Arnold Engineering utilized chlorinated solvents in its production processes at the Site, including, without limitation, 1,1,1-trichloroethane (also known as chloroethane or clorothene, "TCA"), perchloroethylene (also known as tetrachloroethylene, "PCE") and trichloroethylene ("TCE").

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9.

10. Between approximately 1950 and 1990, and on such dates better known to Arnold Engineering, Arnold Engineering utilized twelve (12) underground storage tanks at the Site for mineral oil, acetone, methanol, TCA, kerosene and gasoline. Arnold Engineering stored pure TCA at the Site in two 6,000 gallon underground storage tanks for approximately 30 years until 1990.

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

11. Four wastewater treatment ponds have been, and are currently located at the northwestern portion of the Site (the "Ponds").

**ANSWER:** 300 West admits the Ponds are currently located on the Site, but is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 as it relates to the history of the Ponds.

12. Between 1989 and 1991, and on such other dates better known to Arnold Engineering, Arnold Engineering personnel put solvents, including acetone, methanol, methyl ethyl ketone and TCA, down drains at the Site, which flowed into the Ponds.

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.

13. Between the mid-1980s and 2006, and on such other dates better known to Arnold Engineering, Arnold Engineering personnel dumped spent phosphoric acid into the Ponds.

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13.

14. Shallow groundwater flow under the Site is to the north-northwest.

**ANSWER:** 300 West admits that upon information and belief, shallow groundwater flow under the Site is to the north-northwest.

15. Seventeen private and non-community water wells are located within an area to the north-northwest, approximately one mile downgradient of the Site. The Kishwaukee River is located approximately 1.5 miles north-northwest of the Site.

**ANSWER:** 300 West admits that private water wells are located to the north-northwest of the Site and that Kishwaukee River is located north of the Site. 300 West is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in Paragraph 15.

16. On February 28, 2008, the Illinois EPA issued a Violation Notice numbered L-2008-01057 to Arnold due to chlorinated solvent groundwater contamination existing on-Site, including TCA, PCE and other related contaminations, for the prior approximately 20 years (the "February 28, 2008 Violation Notice"). A true and correct copy of the February 28, 2008 Violation Notice is attached hereto as Exhibit 1.

**ANSWER:** In response to Paragraph 16 of Count I, 300 West admits that a copy of Illinois EPA Violation Notice number L-2008-01057, dated February 28, 2008 addressed to Arnold Magnetic Technologies is attached to the Complaint. 300 West is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 16.

17. On April 15, 2008, the Illinois EPA issued a Violation Notice numbered L-200801123 to 300 West due to chlorinated solvent groundwater contamination existing on-Site (the "April 15, 2008 Violation Notice"). A true and correct copy of the April 15, 2008 Violation Notice is attached hereto as Exhibit 2.

**ANSWER:** 300 West admits that Illinois EPA issued a Violation Notice numbered L-2008-01123 dated April 15, 2008 to 300 West LLC and is attached to the Complaint. Further answering, 300 West states that the Violation Notice speaks for itself and denies that the Violation Notice entitled Plaintiff to any relief.

18. In or about June 2007, and on such date better known to 300 West, 300 West enrolled the Site in the Illinois EPA's "Site Remediation Program."

**ANSWER:** 300 West admits that the Site was entered into the Illinois EPA's "Site Remediation Program."

19. Since entering the Site Remediation Program, and on such dates better known to 300 West, 300 West has conducted limited on-Site and off-Site groundwater sampling from monitoring wells which were installed as follows: (a) Monitoring Wells 1-16 installed on-Site in May 2010; (b) Monitoring Well 17 installed on-Site in October 2010; (c) Monitoring Wells 18-21 installed off-Site in October 2010; (d) Monitoring Well 22 installed on-Site in February 2011; and (e) Monitoring Well 23 installed off-Site in February 2011.

**ANSWER:** 300 West admits that on-Site and off-Site sampling from monitoring wells occurred with respect to the Site and that, upon information and belief, Monitoring Wells 1 thru 16 were installed in May 2010, Monitoring Well 17 was installed on-Site in October 2010, Monitoring Wells 18-21 were installed off-Site in October 2010, Monitoring Well 22 was installed on-Site in February 2011, and Monitoring Well 23 was installed off-site in February 2011.

20. Since entering the Site Remediation Program, and on such dates better known to 300 West, 300 West has conducted limited on-Site soil sampling.

**ANSWER:** 300 West admits that as part of the Site Remediation Program it has conducted on-Site soil sampling.

21. Since entering the Site Remediation Program, and on such dates better known to 300 West, 300 West has obtained sampling results showing TCA and PCE contamination in on-Site soils.

**ANSWER:** 300 West states the sampling results speak for themselves, and deny any allegations inconsistent with the actual sampling results.

22. Since entering the Site Remediation Program, 300 West has failed to fully investigate and remediate the chlorinated solvent contamination on the Site.

**ANSWER:** 300 West denies the allegations in Paragraph 22, and further states that its participation in the Site Remediation Program for the Site has been ongoing.

23. Pursuant to the authority granted in Section 8(a) of the Illinois Groundwater Protection Act, 415 ILCS 55/8(a) (2012), the Illinois Pollution Control Board ("Board") has promulgated rules and regulations to establish comprehensive water quality standards which are specifically for the protection of groundwater and which are codified as 35 Ill. Adm. Code 620: Groundwater Quality Standards ("Board Groundwater Quality Regulations").

**ANSWER:** Paragraph 23 states a legal conclusion to which no reply is required. To the extent a reply is required, 300 West is without sufficient information and knowledge to determine the truth of the allegations of Paragraph 23.

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

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

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted a portion of regulations promulgated under the Act, but denies that the referenced regulation implicates liability for 300 West.

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

**ANSWER:** Paragraph 25 contains a statement of law and/or legal conclusions to which no response is required. To the extent that Paragraph 25 contains factual allegations, they are denied.

26. Section 620.410(b) of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410(b), provides as follows:

b) Organic Chemical Constituents

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

Constituent	Standard (1 mg/L = 1ppm = 0.001 ppb)
1,1-Dichloroethylene ("1,1-DCE")	7ppb
cis-1,2-Dichloroethylene ("cis-1,2-DCE")	70ppb
1,2-Dichloroethane ("DCA")	5ppb
trans-1,2-Dichloroethylene ("trans-1,2-DCE")	100ppb
Trichloroethylene ("TCE")	5ppb
Tetrachloroethylene ("PCE")	5ppb
Vinyl Chloride	2ppb

(1,1-DCE, cis-1,2-DCE, DCA, trans-1,2-DCE, TCE, PCE and Vinyl Chloride are chlorinated volatile organic compounds and are collectively referred to herein as the "Chlorinated VOCs.")

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted a portion of regulations promulgated under the Act, but denies that the referenced regulation implicates liability for 300 West.

27. TCE and PCE degrade chemically over time into cis-1,2-DCE, 1,2-DCA and trans-1,2-DCE, which can migrate through groundwater.

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

28. PCE degrades chemically over time into TCE, and TCA degrades chemically over time into 1,1-DCE. Both TCE and 1,1-DCE can migrate through groundwater.

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.

29. 1,1-DCE, cis-1,2-DCE, DCA, trans-1,2-DCE, TCE and PCE degrade chemically over time into Vinyl Chloride, which can migrate through groundwater.

**ANSWER:** 300 West is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29.

30. Vinyl Chloride is recognized by the United States Department of Health and Human Services, the United States Environmental Protection Agency ("U.S. EPA") and the International Agency for Research on Cancer as a known human carcinogen. Short term exposure to high levels of Vinyl Chloride can cause damage to the nervous system. Long term exposure can cause cancer and may damage the liver.

**ANSWER:** The recognitions, classifications and conclusions of the organizations, departments and agencies referenced in Paragraph 30 speak for themselves, and 300 West denies that those recognitions, classifications and conclusions implicate liability for 300 West.

31. TCE has recently been recognized as a known human carcinogen by the U.S. EPA and is reasonably anticipated to be a human carcinogen by the Agency for Toxic Substances and Disease Registries. Short term exposure to high levels of TCE can cause liver effects, and exposure during pregnancy may cause heart defects in the offspring. Long term exposure to lower levels of TCE can cause cancer, nervous and immune system effects and developmental effects.

**ANSWER:** The recognitions, classifications and conclusions of the organizations, departments and agencies referenced in Paragraph 31 speak for themselves, and 300 West denies that those recognitions, classifications and conclusions implicate liability for 300 West.

32. PCE is reasonably anticipated to be a human carcinogen by the Agency for Toxic Substances and Disease Registries, probably carcinogenic by the International Agency for Research on Cancer, and likely to be a human carcinogen by the U.S. EPA. Short term exposure to high levels of PCE can cause damage to the nervous system. Long term exposure to lower levels of PCE may cause cancer, nervous and respiratory system effects and developmental effects.

**ANSWER:** The recognitions, classifications and conclusions of the organizations, departments and agencies referenced in Paragraph 32 speak for themselves, and 300 West denies that those recognitions, classifications and conclusions implicate liability for 300 West.

33. Short term exposure to high levels of 1,1-DCE can cause damage to the liver and kidneys. Long term exposure to lower levels of 1,1-DCE can cause damage to the liver and kidneys, cardiovascular and nervous system effects and developmental effects.

**ANSWER:** 300 West is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33.

34. After May 2010, and on such dates better known to the Defendants, Environmental Group Services Limited ("EGSL"), an environmental consultant retained by 300 West, collected samples of groundwater from monitoring wells located on-Site. Analytical testing of the samples revealed the highest concentrations of 1,1-DCE, PCE and TCE to be as follows:

Constituent	Sample Location	Constituent Concentration	Class I Groundwater Standards in ppb (1 mg/L = 1ppm = 0.001 ppb)
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1,1-DCE	Monitoring Well-1	17 ppb	7 ppb
	Monitoring Well-2	44 ppb	
	Monitoring Well-4	36 ppb	
	Monitoring Well-5	13 ppb	
	Monitoring Well-6	12 ppb	
	Monitoring Well-7	31 ppb	
	Monitoring Well-13	12 ppb	
	Monitoring Well-17	10 ppb	
PCE	Monitoring Well-4	14 ppb	5 ppb
	Monitoring Well-7	12 ppb	
	Monitoring Well-8	10 ppb	
TCE	Monitoring Well-7	7.8 ppb	5 ppb

**ANSWER:** 300 West admits that after May, 2010, that Environmental Group Services Limited sampled groundwater from monitoring wells located on the Site and further answering states that the results speak for themselves.

35. After May 2010, and on such dates better known to the Defendants, EGSL collected samples of groundwater from monitoring wells located approximately fifty feet away from the northwest portion of the Site. Analytical testing of the samples revealed the highest concentrations of 1,1-DCE, PCE and TCE to be as follows:

Constituent	Sample Location	Constituent Concentration	Class I Groundwater Standards in ppb (1 mg/L = 1ppm = 0.001 ppb)
1,1-DCE	Monitoring Well-19	16 ppb	7 ppb
PCE	Monitoring Well-19	9.2 ppb	5 ppb
Vinyl Chloride	Monitoring Well-18	2.5 ppb	2 ppb

**ANSWER:** 300 West admits that after May 2010 that EGSL collected samples of groundwater from monitoring wells located near the northwest portion of the Site and further answering states that the results speak for themselves.

36. On May 14, 2013, EGSL, with oversight by the Illinois EPA, collected water samples from thirteen private wells located north-northwest and within one mile of the Site. Analytical testing of the samples revealed the presence of the Chlorinated VOCs in six of the private wells as follows:

Sample Location	Constituent Concentration (in ppb): (1 mg/L = 1ppm = 0.001 ppb)						
	1,1-DCE	cis-1,2-DCE	DCA	Trans-1,2-DCE	TCE	PCE	Vinyl Chloride
4907 Ritz Road	39.6*	19	1.34	5.84	2.37	-	1.52
4913 Ritz Road	22*	13.6		5.26	6.47**	1.28	-
4805 Ritz Road	3.05	1.48		-	-	-	-

5010 Ritz Road	2.62	-	-	-	-	0.54	
21902 Railroad St.	0.47	-	-	-	-		
21816 Railroad St.	2.01	2.23	-	-	4.47	-	

\*Denotes a class 1 groundwater exceedance above the 7ppb standard

\*\*Denotes a class 1 groundwater exceedance above the 5ppb standard

**ANSWER:** 300 West admits that EGSL collected water samples from private wells located north-northwest of the Site and further answering states that the results speak for themselves.

37. Section 43(a) of the Act, 415 ILCS 5/43(a) (2014), provides in pertinent part as follows:

- (a) In circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, the State's Attorney or Attorney General; upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an ex parte order and shall schedule a hearing on the matter not later than 3 working days from the date of injunction.

**ANSWER:** 300 West admits that Plaintiff has correctly quoted a certain subsection of Section 43 of the Act but denies that it is a liable party under this subsection.

38. The Chlorinated VOCs released at the Site have migrated through the groundwater and impacted residential potable water wells. The Chlorinated VOCs have exceeded the Board's Class I Groundwater Quality Regulations in at least two drinking water wells, thereby threatening the health and safety of the public.

**ANSWER:** 300 West denies the allegations of Paragraph 38.

39. The Defendants, by their actions or omissions as alleged herein, have created circumstances of substantial danger to the environment and the public health and welfare, by causing, threatening or allowing the discharge of the Chlorinated VOCs into the groundwater on-Site, which has migrated off-Site into at least six private drinking water wells.

**ANSWER:** 300 West denies the allegations of paragraph 39 to the extent it is directed at 300 West.

40. Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), provides as follows:

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues; such penalties may, upon order of the Board or a court of competent jurisdiction, be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act.

**ANSWER:** 300 West admits that Plaintiff has correctly quoted a certain subsection of Section 42 of the Act but denies that it is a liable party under this subsection.

41. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), provides the following definition:

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

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted the definition for a term found in the Act, but denies that the referenced term implicates liability for 300 West.

42. The Defendants are each a "person," as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

**ANSWER:** 300 West admits the allegations of paragraph 30 to the extent it is directed at 300 West, but denies that the referenced term implicates liability for 300 West.

43. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014), civil penalties can be assessed for violations of any provision of the Act.

**ANSWER:** Paragraph 43 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West states that the referenced Section to the Act speaks for itself and denies that the referenced Section of the Act implicates liability for 300 West.

44. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of immediate, and, after a hearing, preliminary injunctive relief.

**ANSWER:** 300 West denies the allegations of paragraph 32 and each of them to the extent the allegations are directed at 300 West.

## COUNT II

### WATER POLLUTION

1. This count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2014).

**ANSWER:** 300 West LLC (“300 West”) admits that the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois (“Plaintiff”) filed an action (“Complaint”) seeking relief under the Illinois Environmental Protection Act. The allegations of the Complaint speak for themselves, and 300 West denies that those obligations entitle Plaintiff to any relief. 300 West denies all other remaining allegations in Paragraph 1.

2-41. Plaintiff realleges and incorporates herein by reference paragraphs 2 through 36 and 38 through 42 of Count I as paragraphs 2 through 41 of this Count II.

**ANSWER:** 300 West realleges and incorporates by reference herein its answers to paragraphs 2 through 36 and 38 through 42 of Count I as its answers to paragraphs 2 through 41 of this Count II.

42. Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), provides, as follows:

No person shall:

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

**ANSWER:** 300 West admits that Plaintiff has correctly quoted a certain subsection of Section 12(a) of the Act but denies it is a liable party under this subsection.

43. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides the following definition:

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

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted the definition of a term found in the Act, but denies that the referenced term implicates liability for 300 West.

44. The Chlorinated VOCs both on- and off-Site are "contaminants," as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

**ANSWER:** Paragraph 44 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West denies the allegations contained in paragraph 44

45. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), provides the following definition:

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

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted the definition of a term found in the Act, but denies that the referenced term implicates liability for 300 West.

46. The groundwater underlying the Site and located off-Site constitutes "water[s]" of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2014).

**ANSWER:** Paragraph 46 states a legal conclusion for which no reply is required. To the extent a reply is required, upon information and belief, 300 West admits the allegations in Paragraph 46.

47. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), provides the following definition:

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

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted the definition for a term found in the Act, but denies that the referenced term implicates liability for 300 West.

48. On such dates better known to the Defendants, the Defendants caused, threatened or allowed the discharge and migration of the Chlorinated VOCs into groundwater at the Site. The Chlorinated VOCs were allowed to migrate into groundwater underlying the Site and into

off-Site groundwater, including into private water wells located in close proximity to the north-northwest boundary of the Site, impacting drinking water.

**ANSWER:** 300 West denies the allegations of Paragraph 48 to the extent they are directed at 300 West.

49. The Chlorinated VOCs migrating to groundwater at and near the Site created, or threatened to create, a nuisance and rendered the groundwater harmful to human health and the environment, which constitutes water pollution as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2014).

**ANSWER:** 300 West denies the allegations of Paragraph 49.

50. The Defendants, by their actions as alleged herein, caused, threatened or allowed water pollution, and thereby violated and continue to violate Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

**ANSWER:** 300 West denies the allegations of Paragraph 50 to the extent they are directed at 300 West.

51. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

**ANSWER:** 300 West denies the allegations of Paragraph 51.

### COUNT III

#### **COST RECOVERY**

1. This count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 22.2(f) of the Act, 415 ILCS 5/22.2(f) (2014), to recover the removal and/or remedial costs incurred by the State of Illinois.

**ANSWER:** 300 West LLC (“300 West”) admits that the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois (“Plaintiff”) filed an action (“Complaint”) seeking relief under the Illinois Environmental Protection Act. The allegations of the Complaint speak for themselves, and 300 West denies that those obligations entitle Plaintiff to any relief. 300 West denies all other remaining allegations in Paragraph 1.

2-41. Plaintiff realleges and incorporates herein by reference paragraphs 2 through 36 and 38 through 42 of Count I as paragraphs 2 through 41 of this Count III.

**ANSWER:** 300 West realleges and incorporates by reference herein its answers to paragraphs 2 through 36 and 38 through 42 of Count I as its answers to paragraphs 2 through 41 of this Count III.

42. Section 22(f) of the Act, 415 ILCS 5/22.2(f) (2014), provides, in pertinent part, as follows:

- f. Notwithstanding any other provisions or rule of law, and subject only to the defenses set forth in Subsection (j) of this Section, the following persons shall be liable for all costs of removal or remedial action incurred by the State of Illinois or any unit of local government as a result of a release or substantial threat of release of hazardous substance or pesticide:

\* \* \*

- 2. Any person who at the time of disposal, transport, storage or treatment of a hazardous substance or pesticide owned or operated the facility or vessel used for such disposal, transport, treatment or storage from which there was a release or substantial threat of release of any such hazardous substance or pesticide;

**ANSWER:** 300 West admits that Plaintiff has correctly quoted a certain subsection of Section 22(f) of the Act but denies it is a liable party under this subsection.

43. Sections 3.215, 3.395, 3.400, and 3.405 of the Act, 415 ILCS 5/3.215, 5/3.315, 5/3.395, 5/3.400, and 5/3.405 (2014), provide the following definitions:

Section 3.215

"Hazardous substance" means: (A) any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act (P.L. 92-500), as amended, (B) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended, (C) any hazardous waste, (D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (P.L. 92-500), as amended, (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act (P.L. 95-95), as amended, (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act (P.L. 94-469), as amended. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas.

### Section 3.395

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; (c) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and (d) the normal application of fertilizer.

### Section 3.400

"Remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the Governor and the Director determine that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare. The term includes offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials.

### Section 3.405

"Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, that may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access,

provision of alternative water supplies, temporary evacuation and housing of threatened individuals, and any emergency assistance that may be provided under the Illinois Emergency Management Agency Act or any other law.

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted the definitions for terms found in the Act, but denies that the referenced terms implicate liability for 300 West.

44. Sections 22.2(h)(1) and (2) of the Act, 415 ILCS 5/22.2(h)(1) and (2) (2014), provide, in pertinent part, the following definitions:

h. For purposes of this section:

1. The term “facility” means:

- a. Any building, structure, installation, equipment, pipe or pipeline including but not limited to any pipe into a sewer or publicly owned treatment works, well, put, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling rock, or aircraft; or
- b. Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

**ANSWER:** 300 West admits that the Plaintiff has correctly quoted the definitions for terms found in the Act, but denies that the referenced terms implicate liability for 300 West.

45. The Site constitutes a “facility” as that term is defined in Section 22.2(h)(1)(A) and (B) of the Act, 415 ILCS 5/22(h)(1)(A) and (B) (2014).

**ANSWER:** Paragraph 45 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West denies the allegations contained in paragraph 45.

46. Each of the Defendants constitutes an “owner or operator” of a facility as that term is defined in Section 22.2(h)(2)(A) of the Act, 415 ILCS 5/22.2(h)(2)(A) (2014).

**ANSWER:** Paragraph 46 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West denies the allegations contained in paragraph 46.

47. Each of the Chlorinated Solvents is a “hazardous substance” within the meaning of Section 3.215, and 22.2(f) of the Act, 415 ILCS 5/3.215, and 5/22.2(f) (2014).

**ANSWER:** Paragraph 47 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West denies the allegations contained in paragraph 47.

48. The release of hazardous substances from the Site into the soil and groundwater on-Site and into the drinking water wells located to the north and downgradient of the Site

constitutes a “release” within the meaning of Sections 3.395 and 22.2(f) of the Act, 415 ILCS 5/3.395 and 5/22.2(f) (2014).

**ANSWER:** Paragraph 48 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West denies the allegations contained in paragraph 48.

49. The State of Illinois has and/or continues to incur costs for performing “remedial actions” and/or “removal actions” as those terms are defined by Sections 3.400, 3.405 and 2.2(f) of the Act, 415 ILCS 5/3.400, 5/3.405, and 5/22.2(f) (2014).

**ANSWER:** Paragraph 49 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West denies the allegations contained in paragraph 49.

50. Each of the Defendants is a person who, as an owner or operator of a facility, is liable pursuant to Section 22.2(f) of the Act for all costs of removal and remedial actions as a result of the release or substantial threat of release of hazardous substances from the Site.

**ANSWER:** Paragraph 50 states a legal conclusion for which no reply is required. To the extent a reply is required, 300 West denies the allegations contained in paragraph 50.

### **AFFIRMATIVE DEFENSES**

In addition to the denials and defenses set forth hereinabove in this Answer, Defendant 300 West states the following as additional affirmative defenses, to wit:

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff’s injuries and the pollution for which Plaintiff complains were not caused by any act or omission of 300 West, but were proximately caused, to the extent they occurred, solely or in part, by the acts or omissions of others over which this Defendant had no control, no right of control, and for whose actions this Defendant is not and cannot be held liable under the Act. Based on the allegations in the Complaint and in the notice of violation letter, the groundwater contamination has been present for approximately 20 years and was caused by contaminants that were deposited upon the land in such a place and manner that created a water pollution hazard. Defendant 300 West did not take ownership of the Site until May of 2006 and had no control of or right of control over the property or operations on the Site before that date.

### **SECOND AFFIRMATIVE DEFENSE**

To the extent that Plaintiff is seeking relief against the Defendants for Plaintiff's injuries or the pollution that is alleged to have occurred by acts or omissions of Arnold after Defendant 300 West LLC purchased the Site, and Arnold became a tenant, Defendant 300 West is not liable for Plaintiff's injuries or the pollution for which Plaintiff complains under 415 ILCS 5/58.9(a)(2)(B) because 300 West as the landlord did not know and could not have reasonably known, of the acts or omissions of a tenant that caused or contributed to, or were likely to have caused or contributed to, a release of regulated substances.

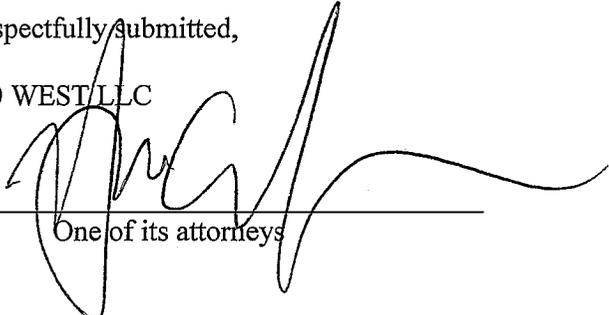
### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of laches. As alleged by the Plaintiff in its Violation Notice L-2008-01057, the unlawful acts that give rise to Plaintiff's Complaint began approximately 20 years prior to the date of the Violation Notice (February 28, 2008) which would be around 1988. On information and belief, the People of the State of Illinois, by the Environmental Protection Agency, were on notice of the alleged contamination as early as 1988 and that 1,1,1,-TCA was detected as high as 4,900 ppb, in 1999 in on-site groundwater monitoring well MW-3. Plaintiff has been aware of the matters alleged in the Complaint for many years and did nothing.

**WHEREFORE**, having answered Plaintiff's Verified Complaint for Injunction and Civil Penalties, 300 West respectfully prays for judgment in 300 West's favor, that the Complaint be dismissed, that Plaintiff recover nothing from 300 West, and that the Court order such other and further relief as this Court deems just and proper.

Respectfully submitted,

300 WEST/LLC

By: 

One of its attorneys

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