

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

People of the State of Illinois,

Plaintiff,

v.

300 WEST LLC and THE ARNOLD
ENGINEERING CO.,

Defendants.

Case No. 13 CH 1046

Hon. Judge Michael Chmiel

**ANSWER OF DEFENDANT THE ARNOLD
ENGINEERING CO. TO FIRST AMENDED COMPLAINT
FOR INJUNCTION AND CIVIL PENALTIES**

Defendant The Arnold Engineering Co. ("Arnold") answers Plaintiff's First Amended Complaint For Injunction and Civil Penalties as follows:

COUNT I

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

1. In response to Paragraph 1 of Count I of the Complaint ("Count I"), Arnold admits Plaintiff People of the State of Illinois, *ex rel.* Lisa Madigan (the "State" or "Plaintiff") purports to bring an action against Arnold and Defendant 300 West, LLC ("300 West") under the Illinois Environmental Protection Act. Arnold further states that the remainder of Paragraph 1 of Count

I contains allegations to which no response is required, but denies there exists a substantial danger to public health and welfare and to the environment.

2. In response to Paragraph 2 of Count I, Arnold admits Illinois EPA is an administrative agency of the State of Illinois created pursuant to 415 ILCS 5.4 and that Illinois EPA has the authority to enforce the Illinois Environmental Protection Act (the "Act") to the extent provided in the Act; and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of Count I, and on that basis they are denied.

3. Arnold is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of Count I.

4. In response to Paragraph 4 of Count I, Arnold admits that it was and is an Illinois corporation in good standing; and denies the remaining allegations contained in Paragraph 4 of Count I.

5. In response to Paragraph 5 of Count I, Arnold admits that it once owned the property located at 300 North West Street, Marengo, McHenry County, Illinois (the "Site"); and further states that information regarding its ownership of the Site has been produced in discovery in this litigation and that that information and related documentation speak for themselves. Arnold denies the remaining allegations contained in Paragraph 5 of Count I.

6. In response to Paragraph 6 of Count I, Arnold admits that, upon information and belief, 300 West currently owns the Site. Arnold denies the remaining allegations contained in Paragraph 6 of Count I for lack of information.

7. In response to Paragraph 7 of Count I, Arnold admits that it has leased portions of the Site from 300 West and that it has conducted manufacturing operations on the leased portions of the Site. Arnold denies any allegations not specifically admitted herein.

8. In response to Paragraph 8 of Count I, Arnold admits that it operated and continues to operate a manufacturing facility at portions of the Site. Answering further, Arnold states that, upon information and belief, it conducted operations in Buildings 1, 2/3/4/7, 5, 6, 10, 11/14, 12, and 16 at various times.

- a. In response to Paragraph 8.a. of Count I, Arnold admits that Building 1 was used for various manufacturing operations, and that Building 1 was demolished. Arnold denies the remaining allegations in Paragraph 8.a. of Count I.
- b. In response to Paragraph 8.b. of Count I, Arnold admits that it used building 2/3/4/7 for various manufacturing and administrative operations related to its business and that manufacturing operations ceased in Building 2/3/4/7. Arnold denies the remaining allegations in Paragraph 8.b. of Count I.
- c. In response to Paragraph 8.c. of Count I, Arnold admits that it has and continues to use Building 5 for its manufacturing operations. Arnold denies the remaining allegations in Paragraph 8.c. of Count I.
- d. In response to Paragraph 8.d. of Count I, Arnold admits that it performed various manufacturing operations in Building 6, including processing of hard ferrite materials and that use of Building 6 ceased and the building was demolished. Arnold denies the remaining allegations in Paragraph 8.d. of Count I.
- e. In response to Paragraph 8.e. of Count I, Arnold admits that it has and continues to use Building 10 for various purposes related to its manufacturing operations, including drum and record storage. Arnold denies the remaining allegations in Paragraph 8.e. of Count I.

- f. In response to Paragraph 8.f. of Count I, Arnold admits that it has and continues to use Building 11/14 for various purposes related to its manufacturing operations. Arnold denies the remaining allegations in Paragraph 8.f. of Count I.
- g. In response to Paragraph 8.g. of Count I, Arnold admits that it once used Building 12 as a warehouse.
- h. In response to Paragraph 8.h. of Count I, Arnold admits that it has stored hazardous and non-hazardous materials in Building 16.

9. In response to Paragraph 9 of Count I, Arnold states that it historically used certain chlorinated solvents at the Site, including 1,1,1-trichloroethane and perchloroethylene. Arnold denies any allegations not specifically admitted herein.

10. In response to Paragraph 10 of Count I, Arnold admits that underground storage tanks have been identified at the Site; and that such tanks have been removed or abandoned. Arnold denies the remaining allegations in Paragraph 10 of Count I.

11. In response to Paragraph 11 of Count I, Arnold admits that it uses a waste water treatment and recirculation system that uses ponds, and that four such ponds have been and are located in the northwest portion of the Site.

12. Arnold denies the allegations in Paragraph 12 of Count I.

13. In response to Paragraph 13 of Count I, Arnold states that between the mid-1980s and 2006 spent phosphoric acid was added to the Ponds to treat the wastewater as part of the wastewater treatment system. Arnold denies the remaining allegations in Paragraph 13 of Count I.

14. Arnold is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of Count I, and therefore denies the same.

15. In response to Paragraph 15 of Count I, Arnold admits that private water wells are located to the north-northwest of the Site and that Kishwaukee River is located north of the Site. Arnold is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 15 of Count I, and on that basis they are denied.

16. In response to Paragraph 16 of Count I, Arnold admits that Illinois EPA issued a Violation Notice numbered L-2008-01057, dated February 28, 2008, to Arnold Magnetic Technologies ("February 28, 2008 Notice"), and states that the February 28, 2008 Notice speaks for itself and is attached to the Complaint. Arnold denies that the February 28, 2008 Notice was issued to Arnold and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 16 of Count I, and therefore denies the same.

17. In response to Paragraph 17 of Count I, Arnold admits that a copy of Illinois EPA Violation Notice numbered L-2008-01123, dated April 15, 2008, addressed to 300 West ("April 15, 2008 Notice") is attached to the Complaint, and states that the document speaks for itself. Arnold is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 17 of Count I, and therefore denies the same.

18. In response to Paragraph 18 of Count I, upon information and belief, Arnold admits that 300 West enrolled the Site in the Illinois EPA's Site Remediation Program. Arnold denies the remaining allegations for lack of knowledge.

19. In response to Paragraph 19 of Count I, Arnold admits that, upon information and belief, 300 West has conducted on-Site and off-Site sampling from monitoring wells 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, by EGSL on behalf of 300 West. Arnold denies the remaining allegations in Paragraph 19 of Count I to the extent they are directed to Arnold, and does not answer to the extent any allegations are directed to 300 West.

20. In response to Paragraph 20 of Count I, Arnold states that, upon information and belief, 300 West has conducted on-Site soil sampling since entering the Site Remediation Program. Arnold denies the remaining allegations in Paragraph 20 of Count I, and does not answer to the extent any allegations are directed to 300 West.

21. In response to Paragraph 21 of Count I, Arnold states that any sampling results speak for themselves. Arnold denies the remaining allegations in Paragraph 21 of Count I for lack of knowledge sufficient to form a belief as to their truth or falsity, and does not answer to the extent any allegations are directed to 300 West.

22. Arnold denies the allegations in Paragraph 22 of the Complaint to the extent they are directed to Arnold, and does not answer to the extent the allegations are directed to 300 West.

23. Arnold states that the statutes and rules referenced in Paragraph 23 of the Complaint speak for themselves and that no further answer to Paragraph 23 of Count I is required.

24. Arnold states that the statute referenced in Paragraph 24 of Count I speaks for itself and that no further answer to Paragraph 14 of Count I is required.

25. Paragraph 25 of Count I contains statements of law and legal conclusions to which no response is required. To the extent that Paragraph 25 of Count I contains factual allegations, Arnold denies each such allegation contained therein.

26. Arnold states that the statute referenced in Paragraph 26 of Count I speaks for itself, that certain of the referenced substances are commonly known as chlorinated compounds, and that the

remainder of Paragraph 26 contains statements of law to which no response is required. To the extent Paragraph 26 of Count I requires an answer, the allegations are denied.

27. In response to Paragraph 27 of Count I, Arnold states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies the same.

28. In response to Paragraph 28 of Count I, Arnold states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies the same.

29. Arnold is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of Count I, and on that basis they are denied.

30. In response to Paragraph 30 of Count I, Arnold states that the recognitions, classifications, and conclusions of the organizations, departments, and agencies referenced in Paragraph 30 of Count I speak for themselves and no further response is required. To the extent a response is required, Arnold denies that it has caused adverse impacts to human health and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 30 of Count I, and on that basis they are denied.

31. In response to Paragraph 31 of Count I, Arnold states that the recognitions, classifications, and conclusions of the organizations, departments, and agencies referenced in Paragraph 31 of Count I speak for themselves and no further response is required. To the extent a response is required, Arnold denies that it has caused adverse impacts to human health and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 31 of Count I, and on that basis they are denied.

32. In response to Paragraph 32 of Count I, Arnold states that the recognitions, classifications, and conclusions of the organizations, departments, and agencies referenced in Paragraph 32 of Count I speak for themselves and no further response is required. To the extent a response is required, Arnold denies that it has caused adverse impacts to human health and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 32 of Count I, and on that basis they are denied.

33. In response to Paragraph 33 of Count I, Arnold states that the recognitions, classifications, and conclusions of the organizations, departments, and agencies referenced in Paragraph 33 of Count I speak for themselves and no further response is required. To the extent a response is required, Arnold denies that it has caused adverse impacts to human health and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 33 of Count I, and on that basis they are denied.

34. In response to Paragraph 34 of Count I, Arnold admits that EGSL sampled groundwater on-Site and states that the referenced sampling results speak for themselves. Arnold is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 34 of Count I, and therefore denies the same.

35. In response to Paragraph 35 of Count I, Arnold admits that EGSL sampled groundwater off-Site and states that the referenced sampling results speak for themselves. Arnold is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 35 of Count I, and therefore denies the same.

36. In response to Paragraph 36 of Count I, Arnold admits that, upon information and belief, EGSL sampled groundwater from private wells off-Site with oversight by the Illinois EPA and states that the referenced sampling results speak for themselves. Arnold is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 36 of Count I, and therefore denies the same.

37. Arnold states that the statute referenced in Paragraph 37 of Count I speaks for itself and that no further answer to Paragraph 37 of Count I is required.

38. Arnold denies the allegations in Paragraph 38 of Count I.

39. Arnold denies the allegations in Paragraph 39 of Count I directed toward it, and makes no answer to the allegations directed toward 300 West.

40. Arnold states that the statute referenced in Paragraph 40 of Count I speaks for itself and that no further answer to Paragraph 40 of Count I is required.

41. Arnold states that the statute referenced in Paragraph 41 of Count I speaks for itself and that no further answer to Paragraph 41 of Count I is required.

42. In response to Paragraph 42 of Count I, Arnold admits that it is a "person" and makes no answer to the allegations directed toward 300 West.

43. Arnold states that the statute referenced in Paragraph 43 of Count I speaks for itself and that no further answer to Paragraph 43 of Count I is required.

44. Arnold denies the allegations in Paragraph 44 of Count I.

45. In response to the allegations and requests for relief in Paragraphs 1 through 7 of Count I, Arnold denies that Plaintiff is entitled to any of the relief requested from Arnold, and further states that an alternate source of drinking water to owners of private wells is currently being provided, and that groundwater and soil investigations are on-going. Answering further, Arnold states that there is no authority for the State's recovery of litigation costs or expenses, as removal or remedial actions or otherwise. Arnold makes no answer to the allegations and requests for relief directed toward 300 West in the referenced Paragraphs 1 through 7.

COUNT II

WATER POLLUTION

46. In response to Paragraph 1 of Count II of the Complaint ("Count II"), Arnold admits the State purports to bring an action under the Illinois Environmental Protection Act. Arnold further states that the remainder of Paragraph 1 of Count II contains allegations to which no response is required. Arnold denies all remaining allegations in Paragraph 1 of Count II.

47. In answer to Paragraphs 2 through 41 of Count II, Arnold incorporates and realleges its specific answers to the preceding Paragraphs of Count I, as if fully rewritten herein.

48. Arnold states that the statute referenced in Paragraph 42 of Count II speaks for itself and that no further answer is required, and further answering, Arnold denies it has violated the Act and denies that it is subject to any civil penalties.

49. Arnold states that the statute referenced in Paragraph 43 of Count II speaks for itself and that no further answer is required, and further answering, Arnold denies it has violated the Act and denies that it is subject to any civil penalties.

50. Paragraph 44 of Count II contains statements of law and legal conclusions to which no response is required. Arnold denies any remaining allegations in Paragraph 44 of Count II.

51. Arnold states that the statute referenced in Paragraph 45 of Count II speaks for itself and that no further answer to Paragraph 45 of Count II is required. Arnold denies all allegations not specifically admitted herein.

52. Paragraph 46 of Count II contains statements of law and legal conclusions to which no response is required. Arnold denies all allegations not specifically admitted herein.

53. Arnold states that the statute referenced in Paragraph 47 of Count II speaks for itself and that no further answer to Paragraph 47 of Count II is required. Arnold denies all allegations not specifically admitted herein.

54. Arnold denies the allegations in Paragraph 48 of Count II directed toward Arnold, and makes no answer to the allegations directed toward 300 West.

55. Arnold denies the allegations in Paragraph 49 of the Count II.

56. Arnold denies the allegations in Paragraph 50 of Count II directed toward Arnold, and makes no answer to the allegations directed toward 300 West.

57. Arnold denies the allegations in Paragraph 51 of Count II.

58. In response to the allegations and requests for relief in Paragraphs 1 through 6 of Count II, Arnold denies that Plaintiff is entitled to any of the relief requested from Arnold, and further states that groundwater and soil investigations are on-going and that Arnold is not subject to civil penalties. Answering further, Arnold states that there is no authority for the State's recovery of litigation costs or expenses, as removal or remedial actions or otherwise. Arnold makes no answer to the allegations and requests for relief directed toward 300 West in the referenced Paragraphs 1 through 6 of Count II.

COUNT III

COST RECOVERY

59. In response to Paragraph 1 of Count III of the Complaint ("Count III"), Arnold admits the State purports to bring an action under the Illinois Environmental Protection Act. Arnold further states that the remainder of Paragraph 1 of Count III contains allegations to which no response is required. Arnold denies all remaining allegations in Paragraph 1 of Count III.

60. In response to Paragraphs 2-41 of Count III, Arnold incorporates and re-alleges its specific answers to the preceding Paragraphs of Counts I and II, as if fully rewritten herein.

61. Arnold states that the statute referenced in Paragraph 42 of Count III speaks for itself and that no further answer is required. Arnold denies all allegations not specifically admitted herein.

62. Arnold states that the statutes referenced in Paragraph 43 of Count III speak for themselves and that no further answer is required. Arnold denies all allegations not specifically admitted herein.

63. Arnold states that the statutes referenced in Paragraph 44 of Count III speak for themselves and that no further answer is required. Arnold denies all allegations not specifically admitted herein.

64. In response to Paragraph 45 of Count III, Arnold states that Paragraph 45 consists of a legal conclusion to which no response is required. Arnold denies all allegations not specifically admitted herein.

65. In response to Paragraph 46 of Count III, Arnold states that Paragraph 46 consists of a legal conclusion to which no response is required. Arnold denies all allegations not specifically admitted herein, and makes no answer as to the allegations directed to 300 West in Paragraph 46 of Count III.

66. In response to Paragraph 47 of Count III, Arnold states that Paragraph 47 consists of a legal conclusion to which no response is required. Arnold denies all allegations not specifically admitted herein.

67. Arnold denies the allegations in Paragraph 48 of Count III.

68. Arnold denies the allegations in Paragraph 49 of Count III.

69. Arnold denies the allegations in Paragraph 50 of Count III directed to it, and makes no answer as to the allegations directed to 300 West.

70. Arnold denies that the State is entitled to any of the relief requested in the requests for relief paragraphs 1 through 4 of Count III, and further states that groundwater and soil investigations are

on-going. Answering further, Arnold states that there is no authority for the State's recovery of litigation costs or expenses, as removal or remedial actions or otherwise. Arnold makes no answer to the allegations and requests for relief directed toward 300 West in the referenced Paragraphs 1 through 4 of Count III.

71. Arnold denies each and every allegation in the Complaint not expressly admitted to be true herein.

FIRST DEFENSE

72. Plaintiff has failed to state a claim upon which relief can be granted based on the failure to meet the prerequisites to plead.

SECOND DEFENSE

73. Chlorinated solvents are not being used in Arnold's production process at the Site and, as a result, Arnold is not creating or maintaining a substantial danger to the environment and public health and welfare.

THIRD DEFENSE

74. Bottled water is being supplied to residents that have requested it and, as a result, there is not a creation or maintenance of a substantial danger to the environment and public health and welfare.

FOURTH DEFENSE

75. Plaintiff has failed to establish a right to relief because, among other things, the relief being requested in the Complaint is being implemented pursuant to an Order entered by this Court.

FIFTH DEFENSE

76. Plaintiff's claims, or parts thereof, are barred by the doctrine of accord and satisfaction because relief being requested in the Complaint is being implemented pursuant to an Order entered by this Court.

SIXTH DEFENSE

77. Arnold did not engage in any conduct that warrants or forms the basis of an award of civil penalties.

SEVENTH DEFENSE

78. Plaintiff is not entitled to equitable or injunctive relief as there is insufficient proof to establish Plaintiff has sustained irreparable harm, and/or to establish that Plaintiff lacks an adequate remedy at law.

EIGHTH DEFENSE

79. All damages alleged by Plaintiff are proximately caused in whole or in part by persons or entities other than Arnold and over whom Arnold had and has no control.

NINTH DEFENSE

80. Plaintiff's claims are barred because there is no reliable scientific, epidemiologic and/or medical basis to support a claim that any of the substances referenced in the Complaint in the quantities which actually exist or existed in groundwater has proximately caused or created a substantial danger to the environment and public health and welfare, or created a substantial endangerment.

TENTH DEFENSE

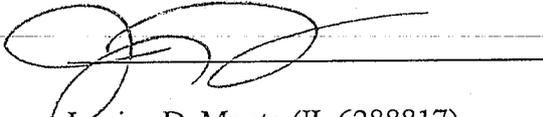
81. Plaintiff has failed to state a claim upon which relief may be granted with respect to the litigation costs and expenses sought in Counts I, II, and III.

82. Arnold reserves the right to supplement its defenses as they become known or available.

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

Date: May 11, 2015

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Defendant The Arnold Engineering Co's Answer to Plaintiff's First Amended Complaint For Injunction and Civil Penalties was served by regular U.S. Mail, postage prepaid, on the 11th day of May, 2015 upon the following:

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